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2 **II. ANALYSIS**

3 **A. Standard of Review**

4 This court may entertain a petition for writ of habeas corpus on "behalf of a person in  
5 custody pursuant to the judgment of a state court only on the ground that he is in custody in violation  
6 of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*,  
7 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an order directing the  
8 respondent to show cause why the writ should not be granted, unless it appears from the application  
9 that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

10 **B. Petitioner's Claims**

11 Petitioner seeks relief from his incarceration and raises the following violations of his  
12 constitutional rights: (1) petitioner was denied his right to the effective assistance of counsel; (2)  
13 petitioner's rights were violated by the introduction of Lucille Houston's statements to police and  
14 hospital personnel to support the two alleged incidents of domestic violence; (3) petitioner's right to  
15 a fair trial and due process were violated when the trial court admitted prior uncharged acts of  
16 domestic violence; (4) petitioner's rights to due process and a fair trial were violated when the trial  
17 court permitted the introduction of inflammatory character evidence; (5) jury instructions as  
18 provided impermissibly lessened the prosecution's burden of proof in violation of petitioner's due  
19 process rights; (6) petitioner's rights were violated when the trial court permitted the introduction of  
20 DNA evidence; (7) petitioner was denied his right to the effective assistance of appellate counsel.  
21 The court will require respondent to show cause why the petition for a writ of habeas corpus should  
22 not be granted.

23 **III. ORDER**

24 Respondent is ordered to show cause why petitioner's petition for writ of habeas corpus filed  
25 August 30, 2007 should not be granted.:

26 1. The Clerk of the Court shall serve a copy of this order and the petition and all  
27 attachments thereto upon respondent and respondent's attorney, the Attorney General of the State of  
28 California.

29 2. Respondent shall file with this court and serve upon petitioner, within sixty (60) days  
30 of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing  
31 Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent  
32 shall file with the answer a copy of all portions of the relevant state records that have been


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transcribed previously and that are relevant to a determination of the issues presented by the petition.

3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within thirty (30) days of his receipt of the answer. Should petitioner fail to do so, the petition will be deemed submitted and ready for decision thirty (30) days after the date petitioner is served with respondent's answer.

4. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court and serve on respondent an opposition or statement of non-opposition to the motion within thirty (30) days of receipt of the motion, and respondent shall file with the court and serve on petitioner a reply within fifteen (15) days of receipt of any opposition. IT IS SO ORDERED

Dated: 11/20/09

  
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RONALD M. WHYTE  
United States District Judge

