

1 limitations prevent him from exhausting those claims, but his litigation of his claims in this
2 Court belies that.

3 Cordova also argues exhaustion would be futile, because there is no state or federal
4 precedent that deals with the situation he faced. In those circumstances, however,
5 exhaustion would not be futile; a petitioner must give the state courts a chance to pass on
6 what, for them, is a novel question of law. *Compare Lynce v. Mathis*, 519 U.S. 433, 436 n.4
7 (1997) (petitioner was excused from presenting his claim to the highest state court, because
8 that court had already decided the same question of law adversely to him in another case).

9 Cordova next argues that, because his claims are completely novel and not based on
10 any state or federal precedent, they are debatable among reasonable jurists, and a COA
11 should therefore issue. Assuming, *arguendo*, there is no precedent, federal habeas relief
12 would be unavailable. Cordova's claims depend on legal determinations, and in the absence
13 of any precedent those determinations would not be contrary to U.S. law as determined by
14 the U.S. Supreme Court. See 28 U.S.C. § 2254(d)(1). In reality, even if the fact pattern of
15 Cordova's case is unique, the legal principles underlying the Court's denial of Cordova's
16 petition are based on established law (notably, AEDPA), and on decisions of the U.S.
17 Supreme Court.

18 The state courts determined that the jury in Cordova's criminal trial was correctly
19 instructed about state law. That decision is unreviewable by this Court. See *Estelle v.*
20 *McGuire*, 502 U.S. 62, 67–68 (1991) (“[I]t is not the province of a federal habeas court to
21 reexamine state-court determinations on state-law questions.”) In the course of making their
22 ruling, the state courts made various factual determinations that were not central to their
23 ruling, such as what evidence was presented at trial, but Cordova made no meaningful
24 attempt to rebut those. They are therefore presumed correct. 28 U.S.C. § 2254(e)(1). The
25 only quibble he has is with the dates the jury returned its verdicts, but this argument is
26 contradicted by the record and furthermore does not serve as a basis for habeas relief.

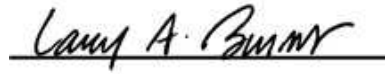
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1 For these reasons, and for the reasons set forth in the Court's order of March 20,
2 2013 (Docket no. 30), the COA is **DENIED**, without prejudice to the Ninth Circuit's granting
3 it.

4 **IT IS SO ORDERED.**

5 DATED: April 16, 2013

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7 **HONORABLE LARRY ALAN BURNS**
8 United States District Judge

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