

1 The Supreme Court of Nevada accepted this “strategic decision” and therefore rejected
2 Redeker’s claim. (Exhibit 204 at 2). Under the federal court’s doubly deferential review of
3 ineffective assistance of counsel claims on habeas, this holding was neither an unreasonable
4 determination of fact nor an unreasonable application of Supreme Court case law.

5 Ground 12 provides no basis for habeas relief.

6 **L. Ground 13**

7 In Ground 13, Redeker argues that his trial counsel was ineffective for failing to “properly
8 litigate the Fourth Amendment and *Miranda* issues” in violation of his Fifth, Sixth, and Fourteenth
9 Amendment rights. (ECF No. 28 at 29). In his Reply, Redeker concedes that, because

10 this Court has now determined that the majority of the underlying claims were
11 properly raised below as substantive issues and are now before this Court on the
12 merits, . . . this Court need not consider whether counsel was ineffective for failing to
raise the issues, other than to the extent any such failures contribute to cumulative
error as pled in Ground Fifteen.

13 (ECF No. 59 at 80–81).

14 Ground 13 provides no basis for habeas relief.

15 **M. Ground 14**

16 In Ground 14, Redeker argues that his trial counsel was ineffective because he “was not
17 qualified to handle Mr. Redeker’s case when he undertook representation of him” in violation of his
18 Fifth, Sixth, and Fourteenth Amendment rights. (ECF No. 28 at 30). The reason that counsel was not
19 qualified, according to Redeker, is that he was not “death-penalty qualified” because he had not
20 served as co-chair on a case where the State sought the death penalty, which is required for an
21 attorney to handle a capital case under Nevada state law. (*Id.*). That requirement is triggered when
22 the State informs the defense that it plans to seek the death penalty, as it did here. *See Nev. Sup. Ct.*
23 *Rule 250(2).*

24 Redeker’s trial counsel, upon being appointed, informed the court that he was not death-
25 penalty qualified at the preliminary hearing. (*See Exhibit 5 at 4; Exhibit 183 at 11*). At that stage, the
26 State had not yet decided if it was going to seek the death penalty. (*See Exhibit 5 at 4*). Nonetheless,
27 the State asked that the trial court find that Redeker fell into the exception of “otherwise [having] the
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1 competence to represent an indigent person in a capital case.” Nev. Sup. Ct. R. 250(e)(2). (Exhibit 5
2 at 4–5). The state court so found. (Exhibit 5 at 6). And on state habeas review, the state court
3 recognized that the trial court did so. (Exhibit 184 at 1). Therefore, trial counsel was death-penalty
4 qualified, and Redeker’s ineffective assistance of counsel claims relying on him not being death-
5 penalty qualified fails. Even if trial counsel were not death-penalty qualified, Redeker does not carry
6 his burden of establishing a constitutional violation.

7 Ground 14 provides no basis for habeas relief.

8 **N. Ground 15**

9 In Ground 15, Redeker argues “[c]ummulative error warrants reversal of Redeker’s
10 conviction under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.”
11 (ECF No. 28 at 31). The Ninth Circuit has held that

12 the Supreme Court has clearly established that the combined effect of multiple trial
13 errors may give rise to a due process violation if it renders a trial fundamentally
14 unfair, even where each error considered individually would not require reversal. . . .
15 [T]he fundamental question in determining whether the combined effect of trial errors
violated a defendant’s due process rights is whether the errors rendered the criminal
defense “far less persuasive” and thereby had a “substantial and injurious effect or
influence” on the jury’s verdict.

16 *Parle v. Runnels*, 505 F.3d 922, 928 (9th Cir. 2007) (citations omitted).

17 Redeker argues that “[f]or all of the reasons set forth in the [Second] Amended Petition and
18 [the] Reply, Redeker’s case was rife with error during every stage [and that all] of these errors
19 combined to violated Redeker’s right to a fair trial and due process.” (ECF No. 59 at 88). The
20 Supreme Court of Nevada summarily rejected Redeker’s claim. (Exhibit 159 at 1 n.1). As supported
21 in part by the reasons above, most of the alleged errors were not actually errors, and regardless they
22 did not amount to a fundamentally unfair trial.

23 Ground 15 provides no basis for habeas relief.

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Conclusion

Accordingly, IT IS HEREBY ORDERED that **Redeker's petition for a writ of habeas corpus is DENIED** on the merits, and this action is **DISMISSED with prejudice**.⁴

IT IS FURTHER ORDERED that a **certificate of appealability is GRANTED as to Ground Five and DENIED as to all other grounds**. The Clerk of Court is directed to enter judgment, in favor of respondents and against Redeker, dismissing this action with prejudice.

DATED August 23, 2017.



Andrew P. Gordon
United States District Judge

⁴ A petitioner may not use a reply to an answer to present additional claims and allegations that are not included in the federal petition. *See, e.g., Cacoperdo v. Demosthenes*, 37 F.3d 504, 507 (9th Cir. 1994). To the extent that Redeker has done so in his federal reply, this Court does not consider these additional claims and allegations.