

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

David L. Sandstrom v. Patrick Covello, Warden

Sandstrom v. Covello · No. 5:24-cv-01344-JWH (DTB) · Decided October 20, 2025

SUMMARY

The United States District Court for the Central District of California accepts and adopts a magistrate judge’s Report and Recommendation denying David L. Sandstrom’s federal habeas petition. The court rejects Sandstrom’s objections concerning actual innocence, the CALCRIM 207 timeframe instruction, his alibi defense, juror confusion, and related ineffective-assistance claims. The action is dismissed with prejudice.

CASE DETAILS

COURT	United States District Court for the Central District of California
JURISDICTION	United States District Court for the Central District of California
DECIDED	October 20, 2025
DOCKET	5:24-cv-01344-JWH (DTB)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner sought federal habeas relief and objected to a magistrate judge’s Report and Recommendation recommending denial of the petition and dismissal with prejudice. The district court conducted de novo review of the portions to which objections were made, accepted and adopted the Report and Recommendation, denied the petition, and dismissed the action with prejudice.
STANDARD OF REVIEW	The district court conducted a de novo determination of the portions of the Report and Recommendation to which objections were made. In reviewing the habeas claims, the court held that alleged errors in the state court’s interpretation of state law cannot provide a basis for federal habeas relief and considered the strength of the evidence supporting the conviction in assessing the instructional-error claim.
PRECEDENTIAL VALUE	unknown
PARTIES	David L. Sandstrom, Petitioner v. Patrick Covello, Warden, Respondent

TOPICS

federal habeas corpus actual innocence post-conviction relief jury instructions constitutional law

PRACTICE AREAS

federal habeas corpus criminal procedure constitutional law ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether Sandstrom had established a freestanding actual-innocence claim warranting habeas relief.
2. Whether the state court's determination that CALCRIM 207 was properly given under state law could support federal habeas relief.
3. Whether CALCRIM 207 violated Sandstrom's constitutional right to present an alibi defense.
4. Whether the prosecution was required to disprove the alibi as an independent affirmative defense.
5. Whether trial counsel was ineffective for failing to object to CALCRIM 207 or request an alibi instruction under CALCRIM 3400.
6. Whether the state court improperly considered the pretext phone call and the strength of the evidence supporting the conviction.
7. Whether the jury was confused by CALCRIM 207 or was improperly required to consider the alibi as carrying a burden of proof.

HOLDINGS

1. A freestanding actual-innocence claim would fail where the petitioner presents no new evidence establishing innocence.
2. An alleged error in a state court's determination of whether state law authorized a jury instruction cannot, by itself, form the basis for federal habeas relief.
3. CALCRIM 207 did not violate Sandstrom's constitutional right to present an alibi defense because the two-day timeframe did not prevent him from presenting that defense.
4. An alibi is not an affirmative defense that the defendant must prove; it must be considered together with all other evidence, and the evidence was sufficient for a reasonable jury to find Sandstrom guilty beyond a reasonable doubt.
5. Counsel was not ineffective for failing to object to CALCRIM 207 or request an alibi instruction where the challenged timeframe instruction was not improper and a reasonable-doubt instruction already gave the jury what it needed to evaluate the alibi theory.
6. In assessing a claim of instructional error, a state or federal court may consider the strength of the evidence supporting the conviction.

KEY QUOTATIONS

“Requiring affirmative proof of innocence is appropriate, because when a petitioner makes a freestanding claim of innocence, he is claiming that he is entitled to relief despite a constitutionally valid conviction.” (at

1)

“Any error in the state court’s determination of whether state law allowed for an instruction in this case cannot form the basis for federal habeas relief.” (at 1)

“a reasonable juror would have understood everything necessary to evaluate that theory of [Petitioner’s] defense” (at 2)

FACTUAL BACKGROUND

Sandstrom was convicted in state court of offenses involving alleged sexual abuse. His defense included an alibi, and the jury received CALCRIM 207 concerning the two-day timeframe during which the offenses were alleged to have occurred. The record included a pretext phone call in which Sandstrom made statements that the state court viewed as corroborating the victim's account and inconsistent with the alibi. Sandstrom challenged the timeframe instruction, the treatment of his alibi, and related ineffective-assistance claims in federal habeas proceedings.

PROCEDURAL HISTORY

The magistrate judge recommended denying Sandstrom's habeas petition and dismissing the action with prejudice. Sandstrom filed nine objections concerning the analysis of his challenge to a jury instruction addressing the timeframe of the charged offenses. The district court rejected the objections, accepted and adopted the Report and Recommendation, denied the petition, and ordered dismissal with prejudice.

DISPOSITION

dismissed

CASES CITED

- Carriger v. Stewart, 132 F.3d 463, 476 (9th Cir. 1997) (en banc)
- Menendez v. Terhune, 422 F.3d 1012, 1029 (9th Cir. 2005)
- People v. Freeman, 22 Cal. 3d 434, 438 (1978)
- Waddington v. Sarausad, 555 U.S. 179, 193 (2009)
- Boyer v. Chappell, 793 F.3d 1092, 1108 (9th Cir. 2015)

OPINION

David L. Sandstrom v. Patrick Covello, Warden

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 DAVID L. SANDSTROM,) Case No. 5:24-cv-01344-JWH (DTB)) 11 Petitioner,)

) ORDER ACCEPTING FINDINGS,

12 v.) CONCLUSIONS, AND

) RECOMMENDATIONS OF

13 PATRICK COVELLO, Warden,) UNITED STATES MAGISTRATE

) JUDGE

14 Respondent.)) 15 16 17 18 19 20 21 22 23 24 25 26 27 1 Pursuant to 28 U.S.C. § 636, the
Court has reviewed the Petition, all the 2 records and files herein, and the Report and
Recommendation of the United States 3 Magistrate Judge. Objections to the Report and
Recommendation have been filed 4 herein. 5 The Report and Recommendation (“Report”)
recommends the denial of the 6 Petition and the dismissal of this action with prejudice. (ECF No.
25.) Petitioner 7 David L. Sandstrom objects, for nine reasons, to the Report’s analysis of Ground
8 Three, regarding a jury instruction about the timeframe when the offenses were 9 alleged to have
occurred. (ECF No. 27.) Sandstrom’s objections do not merit any 10 change to the Report’s
findings or recommendations. 11 First, Sandstrom objects that the claim is one of actual
innocence. (ECF

12 No. 27 at 1-2.) The Court agrees with the Report that Sandstrom failed to raise a

13 claim of actual innocence in the Petition. (ECF No. 25 at 47 n.69; see also ECF

14 No. 1 at 5-6.) Even assuming that Sandstrom had properly raised a claim of actual

15 innocence, the claim would fail because Sandstrom has presented no new evidence 16
establishing his innocence. See *Carriger v. Stewart*, 132 F.3d 463, 476 (9th Cir. 17 1997) (en banc)
 (“Requiring affirmative proof of innocence is appropriate, because 18 when a petitioner makes a
freestanding claim of innocence, he is claiming that he 19 is entitled to relief despite a
constitutionally valid conviction.”). 20 Second, Sandstrom objects that the timeframe instruction,
CALCRIM 207, 21 was improperly given. (ECF No. 27 at 2-3.) But as the state court found, under
22 state law, the instruction was properly given. (ECF No. 16-16 at 7-8.) Thus, 23 “[a]ny error in
the state court’s determination of whether state law allowed for an 24 instruction in this case
cannot form the basis for federal habeas relief.” *Menendez 25 v. Terhune*, 422 F.3d 1012, 1029
(9th Cir. 2005). 26 Third, Sandstrom objects that the instruction violated the Constitution, 27
apparently because it violated his right to present an alibi defense. (ECF No. 27 at 1 3-6.) The
Court agrees with the Report that nothing about the instruction, which 2 set out a two-day
timeframe, prevented Sandstrom from presenting an alibi 3 defense, which he did present. (ECF
No. 50 at 25; see also ECF No. 16-6 at 12.) 4 Fourth, Sandstrom objects that the prosecution failed
to disprove his alibi 5 defense. (ECF No. 27 at 6-7.) But “an alibi is not an affirmative defense
and, 6 accordingly, . . . the alibi [cannot] be considered by itself, but must be considered 7 in
connection with all other evidence in the case.” *People v. Freeman*, 22 Cal. 3d 8 434, 438 (1978).
The other evidence in the case was sufficient for a reasonable 9 jury to find Sandstrom guilty
beyond a reasonable doubt. In particular, as the state 10 court observed, Sandstrom’s alibi defense
was “irreconcilable with Petitioner’s 11 statements made during the pre-text phone call,” during
which he corroborated the 12 victim’s report of sexual abuse. (ECF No. 16-16 at 7.) 13 Fifth,

Sandstrom objects that his counsel was ineffective for failing to object 14 at trial to CALCRIM 207. (ECF No. 27 at 8.) The Court agrees with the Report 15 that, because Sandstrom failed to show that the instruction was improper, he also 16 failed to show that his counsel was ineffective for failing to object to it. (ECF

17 No. 25 at 50-51.)

18 Sixth, Sandstrom objects to the state court's finding that the pretext phone 19 call corroborated the victim's account. (ECF No. 27 at 8-9.) According to 20 Sandstrom, "to suggest what the jury was thinking is dangerous and irrational" (Id. 21 at 9.) On the contrary, the state court was not improperly making findings about 22 the jury's internal deliberations. (ECF No. 16-16 at 8.) Rather, in assessing a 23 claim of instructional error, it is permissible for a state or federal court to consider 24 "the strength of the evidence supporting the conviction." *Waddington v. Sarausad*, 25 555 U.S. 179, 193 (2009). 26 Seventh, Sandstrom objects that there was "juror confusion" because his 27 pretext phone call corroborated only some, not all, of the charges. (ECF No. 27 at 1 9-10.) The Court agrees with the Report that Sandstrom cited no authority 2 supporting the proposition that CALCRIM 207 created confusion for the jurors. 3 (ECF No. 25 at 50.) As the state court found, "Petitioner was not convicted 4 because of anything remotely related to CALCRIM 207, but rather because the 5 jury did not accept the alibi defense – the jury believed the victim regardless of the 6 time discrepancy revealed by the evidence." (ECF No. 16-16 at 8.) 7 Eighth, Sandstrom objects that, had his counsel requested that the jury be 8 instructed with CALCRIM 3400, an alibi instruction, the trial outcome would have 9 been different. (ECF No. 27 at 10.) But when, as here, the jury was given a 10 reasonable doubt instruction, an alibi instruction "would have been redundant." 11 *Freeman*, 22 Cal. 3d at 438. Thus, because "a reasonable juror would have 12 understood everything necessary to evaluate that theory of [Petitioner's] defense," 13 counsel was not ineffective for failing to request the instruction. *Boyer v. 14 Chappell*, 793 F.3d 1092, 1108 (9th Cir. 2015). 15 Ninth, Sandstrom objects that he was required to prove his alibi. (ECF

16 No. 27 at 11-12.) On the contrary, Sandstrom had no burden of proof. Instead, as 17 the state court found, the jury did not accept the alibi defense but believed the 18 victim. (ECF No. 16-16 at 8.) 19 Having made a de novo determination of those portions of the Report and 20 Recommendation to which objections have been made, the Court hereby 21 ORDERS as follows: 22 1. The findings, conclusions, and recommendations of the Magistrate 23 Judge are ACCEPTED and ADOPTED. 24 25 26 27 1 2. Judgment shall be entered DENYING the Petition and DISMISSING 2 action with prejudice. 3 IT IS SO ORDERED. osmenans OME Dated: October 20, 2025 ' United States District Judge 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27