

**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

OPINION

David L. Sandstrom v. Patrick Covello, Warden

PER CURIAM.

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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 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