

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Randy Lee Scroggins v. Steve Smith

Scroggins v. Smith · No. 1:24-cv-00519-JLT-CDB (HC) · Decided October 14, 2025

SUMMARY

The document is a magistrate judge’s findings and recommendation in a state prisoner’s 28 U.S.C. § 2254 habeas action. It recommends denying Randy Lee Scroggins’s petition, which alleged that the admission of his wife’s subsequently stricken testimony violated the Confrontation Clause and due process, and recommends declining to issue a certificate of appealability.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 RANDY LEE SCROGGINS, Case No. 1:24-cv-00519-JLT-CDB (HC) 12
Petitioner, FINDINGS AND RECOMMENDATION TO DENY PETITION FOR WRIT OF 13 v.
HABEAS CORPUS AND DECLINE TO ISSUE CERTIFICATE OF 14 STEVE SMITH,
APPEALABILITY 15 Respondent. 14-DAY DEADLINE 16 (Doc. 1) 17 18 On May 1, 2024,
Petitioner Randy Lee Scroggins (“Petitioner”), a state prisoner 19 proceeding pro se and in forma
pauperis, filed a petition for writ of habeas corpus under 28 20 U.S.C. § 2254 (“Petition”).

(Doc. 1). For the reasons set forth below, the undersigned 21 recommends that the district court
deny the Petition and decline to issue a certificate of 22 appealability. 23 I. PROCEDURAL AND
FACTUAL BACKGROUND 24 On December 13, 2019, a jury in the Tulare County Superior
Court convicted Petitioner of 25 attempted murder with additional findings regarding the use of a
firearm and causing bodily 26 injury; assault with a firearm; injuring a spouse; being a felon in
possession of a firearm; and 27 1 This matter was referred to the undersigned pursuant to 28
U.S.C. § 636(b)(1)(B) and Local Rule 1 unlawful possession of ammunition.

(Doc. 16-28 at 9-10; see Doc. 16-18 at 222-27). 2 The court 2 sentenced Petitioner to a total of 81
years to life in prison. (Doc. 16-28 at 11; Doc. 16-20 at 130- 3 33). 4 On appeal, the Second
Appellate District Court of Appeal summarized the pertinent facts 5 of the underlying offense, 3
and outlined the relevant trial proceedings: 6 I. BACKGROUND 7 A. The Shooting and the
Police Response 8 In May 2019, defendant, L.R., and her children, I.M., Le.M., and La.M., lived
in Farmersville, a city near Fresno.

Defendant and L.R. 9 argued about L.R.’s Facebook account in their front yard. The argument
became physical. L.R. bit defendant, and defendant 10 slapped L.R. 11 Defendant and L.R. argued
over her Facebook account again on May 22, 2019. Defendant’s brother, Baudelio Luna (Luna),

was 12 also present at the house. Luna suggested defendant and L.R. take a break from arguing, and offered to drive L.R. and her children to 13 another location.

Defendant agreed. Luna, Le.M., and La.M. went outside to Luna's car. Defendant exited the home and then 14 reentered, locking the screen door behind him. As Luna, Le.M., and La.M. were loading the car, they heard a gunshot. 15 A few moments later, defendant and L.R. came toward the front 16 door. Defendant supported L.R., who had blood dripping down her arm as she opened the screen door.

L.R. said "the idiot shot me" 17 after walking outside. Defendant tried to get L.R. into a car to take her to the hospital. 18 Luna convinced defendant to give him his (defendant's) gun. Luna 19 ejected the clip and cleared the gun. He then gave it to James, defendant's son, who took the gun inside his house, a separate 20 home on the same property. 21 When I.M. arrived at the home and saw L.R. bloody and holding her arm, I.M. asked defendant why he shot L.R.

Defendant admitted 22 he shot L.R. but he did not explain why. I.M. called 911, and while he was on the phone, defendant said he was "done" and ran away, 23 fleeing into nearby orchards. 24 Officer Ashley Hoppert of the Farmersville Police Department responded to the 911 call. Upon arriving, Officer Hoppert observed 25 L.R. rolling on the ground, wailing and screaming in pain.

L.R. told Officer Hoppert she had been shot with a black handgun. Officer 26 27 2 Record citations herein are to the CM/ECF-assigned pages. 3 These facts are entitled to a rebuttable presumption of correctness. See 28 U.S.C. § 2254(e)(1); 1 Hoppert observed a through and through gunshot wound below L.R.'s left wrist, and a wound to her left shoulder, which appeared 2 to have a bullet lodged in it.

L.R. stated she had been shot once and denied having brought her arm up when she was shot. L.R. told 3 Officer Hoppert she and defendant had been arguing for the last week over dumb stuff. 4 James Scroggins turned defendant's gun over to another police 5 officer at the scene. A detective retrieved a single spent shell casing inside the home. Detective Richard Morley located defendant and 6 took him into custody.

7 B. Trial 8 In October 2019, the Tulare County District Attorney's Office charged defendant in a 12-count information. Six of the counts— 9 attempted murder (count 1), assault with a firearm (count 2), false imprisonment (count 3), injuring a spouse (count 6), and cruelty to 10 a child (counts 9 and 10)—were brought in connection with the shooting on May 22, 2019.

Two of the counts related to acts 11 defendant committed against L.R. on May 21, 2019, namely assault with a firearm (count 4) and dissuading a witness from reporting a 12 crime (count 5). The remaining counts, for being a felon in possession of a firearm (count 7) and possession of ammunition 13 (count 8), were based on actions taken on or about and between both dates.

Firearm, Three Strikes law, and prior felony conviction 14 enhancements were also alleged. 15 At trial, I.M., La.M., Le.M., Luna, and James Scroggins testified, as did officers from the Farmersville Police Department and others 16 involved in the investigation. Several of the witnesses testified to hearing defendant admit he shot L.R.—indeed, the fact of the 17 shooting was not contested by the defense (the defense theory was the gun accidentally discharged when L.R. tried to disarm 18 defendant so he would not commit suicide).

The prosecution also introduced evidence that Le.M. told an investigator that she saw 19 defendant drag L.R. by the hair the day before the shooting and— after the shooting—heard defendant say “because she’s a ‘ho’” 20 when asked why he shot L.R.

In addition—as we now describe in greater detail in light of the principal issue raised on appeal—L.R. 21 was also called as a witness. 22 1. The initial colloquy regarding whether L.R. will testify 23 The prosecution called L.R. to testify.

After stating her name for the record and stating defendant was her husband, L.R. said she was 24 choosing not to testify against her husband. The prosecution asked the court to order L.R. to testify. 25 The trial court then informed L.R. that because the matter was a 26 criminal proceeding, L.R. did not have the right to refuse to testify against her husband.

In response, L.R. asked if that was true under 27 section 1219 of the “California Code.” The trial court told L.R. that if she did not testify the court would have the option of having her 1 incarcerated for up to six months. L.R. questioned whether the contempt remedy applied and defendant interposed an objection but 2 did not articulate a basis for it. 3 The trial court reiterated the law permitted L.R. to be found in contempt of court and incarcerated for the duration of the trial or 4 prosecuted for a longer amount of jail time.

L.R. asked if she could assert marital privilege. The court maintained she could not and 5 reiterated that if she did not testify she would be subjecting herself to criminal prosecution and incarceration. L.R. acquiesced and 6 agreed to testify. 7 Counsel for defendant asked to “make a record.” The court said counsel could be heard later, and overrode his subsequent attempt 8 to interject, stating they were bringing in the jury.

9 2. L.R.’s testimony 10 Under questioning from the prosecutor, L.R. testified that at some point toward the beginning of the day on May 22, defendant came 11 into their bedroom and woke her up and they began arguing about Facebook, a topic about which they had been arguing for a month. 12 (Earlier in the week, L.R. left the house for a few hours and went to her daughter’s residence.

L.R. returned home because things had 13 calmed.) They moved the argument into the garage, where they remained for two to three hours. 14 When asked, L.R. said she did not recall speaking to a Deputy 15 Gates; she also testified reviewing a transcript of her statement to Deputy Gates

did not refresh her recollection. L.R. denied telling 16 the deputy she returned to the home because defendant threatened to hurt her children if she did not.

When the prosecutor stated she 17 had said those words, L.R. said she did not remember. She denied telling Deputy Gates that defendant was going to hurt himself and 18 had a gun. She also denied there was an incident between her and defendant involving a firearm on May 21 in which defendant 19 pushed a gun against her head. L.R. also denied pointing out for the deputy the area on her head where defendant pushed the gun or 20 claiming it left a mark.

L.R. additionally denied seeing defendant with a gun prior to May 22 and asking to leave the garage that day 21 when arguing with defendant. 22 L.R. testified she wanted to stop fighting with defendant and leave the situation alone. When asked about a prior statement in which 23 she said defendant got angrier and more violent, and then went outside, grabbed a crowbar, and tried to hit her with it, L.R. said the 24 part about the crowbar was untrue.

25 L.R. stated that after the argument in the garage, she went back into the house and slept for a few hours, until the afternoon. L.R. said a 26 document describing her prior statements was not true when it said defendant dragged her by the hair. She said she did not remember 27 her kids seeing it and stopping defendant. 1 Luna was going to take her and the children somewhere else.

Le.M. and La.M. were outside already, and Luna walked outside as well. 2 3. The trial court correctly advises L.R. 3 The trial court took a recess at this point in L.R.'s testimony. 4 Defendant requested to make an argument outside of the presence of the jury regarding a mistrial.

The trial court stated it intended to 5 proceed. Defendant objected to not being able to make a record. The court then invited counsel to sidebar. 6 At sidebar, the prosecutor agreed with defense counsel that Code of 7 Civil Procedure section 1219, subdivision (b), specified the maximum punishment for a domestic violence victim's refusal to 8 testify is a fine.

Defendant requested a mistrial. The trial court did not grant a mistrial and stated it would correctly advise L.R. of the 9 consequences of her refusal to testify. Defendant then requested counsel be appointed for L.R.

The court denied the request and 10 indicated that if L.R. refused to testify, her testimony would be stricken from the record and the jury would be instructed to 11 disregard it. 12 After concluding the sidebar, the court stated for the record that counsel agreed the maximum punishment L.R. could face for 13 refusing to testify against defendant was a \$10,000 fine, not jail time.

L.R. asked the court to clarify whether a \$10,000 fine would 14 definitely be imposed. The court said no and explained the chain of potential consequences of refusing to testify. L.R. then requested 15 and received a minute to consider the court's updated advisement. She ultimately

decided she would not testify against defendant. 16 4. Subsequent proceedings concerning L.R.'s testimony 17 When the jury returned to the courtroom, the trial court informed 18 the jury L.R. had left the witness stand and stated it was striking L.R.'s testimony.

The court instructed the jury not to consider the 19 testimony during the course of the trial, or to allow it to affect their verdict. L.R. later confirmed in the presence of the jury that she was 20 choosing not to testify. 21 Defendant orally moved for a mistrial, arguing L.R.'s testimony was highly prejudicial, particularly the testimony regarding prior 22 bad acts for which there were no other witnesses.

Defendant argued there was no way to "unring the bell," and contended he would be 23 deprived of a fair trial. The trial court denied the motion. 24 When the trial court instructed the jury, it reminded the jury it had stricken L.R.'s testimony from the record and again instructed the 25 jury to disregard it and not consider it for any purpose.

The court also instructed the jury that nothing the attorneys say is evidence 26 and their questions are not evidence. It further instructed the jury not to "assume something is true just because one of the attorneys 27 asked a question that suggested it was true." 1 the reasons for its denial of his request for a mistrial.

The trial court did so, explaining the evidence against defendant through the 2 examination of other witnesses was strong and complete. The court opined that, if anything, L.R.'s stricken testimony was favorable to 3 defendant because she denied any criminal wrongdoing on defendant's part.

The court additionally emphasized it had stricken 4 the testimony, admonished the jury to disregard it, and had reminded the jury of that during its recitation of the jury 5 instructions. The court concluded there was nothing about L.R.'s aborted testimony that unfairly advantaged the prosecution. 6 D. Verdict and Sentencing 7 1. Verdict 8 The jury found defendant guilty of attempted murder (count 1) and 9 found true associated allegations that defendant personally and intentionally discharged a firearm that caused great bodily injury to 10 L.R., that defendant personally and intentionally discharged a firearm, that defendant personally and intentionally used a firearm, 11 and that defendant personally inflicted great bodily injury on L.R.

The jury also found defendant guilty of assault with a firearm 12 (count 2) and injuring a spouse (count 6). As to both of those counts, the jury found true allegations that defendant personally and 13 intentionally used a firearm and personally inflicted great bodily injury on L.R.

Finally, the jury found defendant guilty of being a 14 felon in possession of a firearm (count 7) and of possession of ammunition (count 8). The trial court separately found true 15 allegations that defendant sustained three prior convictions qualifying as "strikes" under the Three Strikes law. 16 2. Motion for new trial 17 After the verdicts, defendant filed a motion for new trial based

on 18 the trial court's incorrect advisement to L.R. concerning the consequences of declining to testify and the decision to overrule the 19 defense objection prior to L.R.'s (misadvised) decision to testify.

The trial court acknowledged its instruction to L.R. stating she 20 could be imprisoned for refusing to testify against defendant was clearly erroneous. But it found the error had not resulted in a 21 miscarriage of justice.

In so finding, the court reasoned L.R.'s testimony consisted primarily of denials of defendant's wrongdoing 22 during the days preceding the shooting and noted there were no subsequent witnesses called to impeach those denials.

The court 23 also emphasized its decision to strike the testimony immediately after L.R. declined to testify further, the multiple admonitions it 24 gave the jury to disregard L.R.'s testimony, and the strength of the other evidence against defendant, which the court believed was 25 overwhelming. 26 3. Sentencing 27 The trial court sentenced defendant to a total of 81 years to life in prison.

On the attempted murder conviction (count 1), the court 1 subdivision (c)(2)(A)(iii), plus 25 years to life for discharge of a firearm causing great bodily injury (§ 12022.53, subd. (d)) and 10 2 years for defendant's two prior serious felony convictions.

On the felon in possession of a firearm conviction, the court imposed a 3 term of four years, consecutive to the sentence on count 1. Sentences and enhancements on the assault with a firearm, injuring 4 a spouse, and possession of ammunition convictions (counts 2, 6, and 8) were either ordered stricken or imposed and stayed pursuant 5 to section 654. 6 Defendant was ordered to pay a restitution fine in the amount of \$10,000 pursuant to section 1202.4.

The court also imposed a court 7 operations assessment in the amount of \$240 and a criminal conviction assessment in the amount of \$180. 8 Defendant asked the court to stay all fines and fees until the People 9 proved he had the ability to pay them.

The court said it was not inclined to stay the fines because defendant had the ability to work 10 in prison. The court referenced a letter from a friend and sometime co-employee of defendant indicating defendant was a good worker, 11 and concluded defendant should be able to meet the demands of the fines while incarcerated. Defendant argued he would not likely earn 12 a gainful income because the prison work program is not a regular salary, he would be in prison for a very long time, and there was no 13 reasonable likelihood he would be able to pay.

The court found defendant had the ability to earn and pay all the fees and fines 14 imposed. 15 Defendant represented he had accrued 412 days of custody credits, and he was credited in that amount. 16 17 (Doc. 16-28 at 2-12 (footnotes omitted)).

The appellate court affirmed Petitioner's convictions 18 but remanded for further proceedings concerning Petitioner's sentence. (Id. at 23). On May 17, 19 2023, the California Supreme Court summarily denied review. (See Doc. 16-30). 20 Petitioner filed the instant Petition on May 1, 2024. (Doc. 1).

The Petition raises a single 21 ground for relief, arguing that the "jury's receipt of complaining witness's subsequently stricken 22 testimony, given after the trial court's erroneous advisement" violated both his right to confront 23 the witnesses against him and his right to due process. (Id. at 5).

On September 2, 2025, 24 Respondent filed an answer (Doc. 17), arguing Petitioner was not entitled to habeas relief, and 25 lodged the state court record in support (Docs. 16, 16-1 through 16-30). Petitioner constructively 26 filed a traverse on October 1, 2025. (Doc. 18). 27 II. STANDARD FOR FEDERAL HABEAS RELIEF A federal court's statutory authority to issue habeas corpus relief for persons in state 1 custody is set forth in 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death 2 Penalty Act of 1996 (AEDPA).

AEDPA requires a state prisoner seeking federal habeas relief to 3 first "exhaust[t] the remedies available in the courts of the State."⁴ 28 U.S.C. § 2254(b)(1)(A). 4 Where the state court adjudicates the claim on the merits, a petitioner is not entitled to habeas 5 relief unless the adjudication (1) "resulted in a decision that was contrary to, or involved an 6 unreasonable application of, clearly established Federal law, as determined by the Supreme Court 7 of the United States," or (2) "resulted in a decision that was based on an unreasonable 8 determination of the facts in light of the evidence presented in the State court proceeding." 28 9 U.S.C. § 2254(d).

10 "Deciding whether a state court's decision 'involved' an unreasonable application of 11 federal law or was 'based on' an unreasonable determination of the facts requires the federal 12 habeas court to train its attention on the particular reasons—both legal and factual—why state 13 courts rejected a state prisoner's federal claims." *Wilson v. Sellers*, 584 U.S. 122, 125 (2018) 14 (internal quotation and citation omitted).

When the state court's decision "does not come 15 accompanied with [its] reasons" for the decision, a federal court "should 'look through' the 16 unexplained decision to the last related state-court decision that does provide a relevant 17 rationale." *Id.* However, when there is no reasoned decision to "look through," it may be 18 presumed—in "the absence of any indication or state-law procedural principles to the contrary"— 19 that the state court adjudicated the claim on the merits and the petitioner must show "there was no 20 reasonable basis for the state court to deny relief." *Harrington v. Richter*, 562 U.S. 86, 98-99 21 (2011).

22 Under 2254(d)(1), a decision is "contrary to" clearly established federal law if the state 23 court either: (1) applied a rule that contradicts the governing law set forth by Supreme Court case

24 law; or (2) reached a different result from the Supreme Court when faced with materially 25 indistinguishable facts. *Mitchell v. Esparza*, 540 U.S. 12, 16 (2003).

A state court decision 26 involves an “unreasonable application” of the Supreme Court’s precedents if the state court 27 correctly identifies the governing legal principle but applies the facts of the petitioner’s case in an 1 objectively unreasonable manner, *Brown v. Payton*, 544 U.S. 133, 134 (2005), or “if the state 2 court either unreasonably extends a legal principle from [Supreme Court] precedent to a new 3 context where it should not apply or unreasonably refuses to extend that principle to a new 4 context where it should apply.” *Williams v. Taylor*, 529 U.S. 362, 407 (2000). “A state court’s 5 determination that a claim lacks merit precludes federal habeas relief so long as ‘fairminded 6 jurists could disagree’ on the correctness of the state court’s decision.” *Harrington*, 562 U.S. at 7 101 (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)).

The petitioner must show that 8 the state court decision “was so lacking in justification that there was an error well understood 9 and comprehended in existing law beyond any possibility for fairminded disagreement.” *Id.* at 10 103. 11 Under § 2254(d)(2), “a state-court factual determination is not unreasonable merely 12 because the federal habeas court would have reached a different conclusion in the first instance.” 13 *Wood v. Allen*, 558 U.S. 290, 301 (2010). “State courts are accorded substantial deference.

If 14 reasonable minds reviewing the record might disagree about the finding in question, on habeas 15 review that does not suffice to supersede the trial court’s determination.” *Marks v. Davis*, 106 16 F.4th 941, 949 (9th Cir. 2024) (citations and quotation marks omitted) (quoting *Brumfield v. 17 Cain*, 576 U.S. 305, 314 (2015)). 18 III. ANALYSIS 19 Petitioner alleges that his confrontation clause and due process rights were violated when 20 the jury heard some testimony from his wife without Petitioner having an opportunity to cross 21 examine her.

(Doc. 1 at 5). 22 A. Background 23 At trial, the prosecution called Petitioner’s wife, L.R., to testify and she indicated her 24 desire not to testify against her husband. (Doc. 16-7 at 120). The trial court advised her that if 25 she failed to testify, she could be held in contempt and incarcerated. (*Id.* at 120-22). L.R. 26 proceeded to testify. 27 In her testimony, L.R. indicated that on May 22, she and Petitioner were arguing about 1 earlier in the week, she had left her residence for “a couple of hours” to go to her daughters and 2 allow things to calm down.

(*Id.* at 124). The prosecution questioned her regarding statements she 3 made to a deputy at the hospital that she returned home after four days because Petitioner 4 threatened to harm L.R.’s kids, but L.R. denied making the statements. (*Id.* at 124-27).

The 5 prosecution also asked L.R. about her report to the deputy that the day before the shooting, 6 Petitioner pushed a gun against her head, but L.R. again denied the statements. (*Id.* at 127-30). 7

L.R. also denied reporting that Petitioner dragged her by the hair before the shooting. (Id. at 132-8 33). 9 Following a break in the proceedings, defense counsel requested to make an argument out 10 of the presence of the jury regarding a mistrial, and the court and attorneys held a sidebar 11 conference.

(See Doc. 16-7 at 135-36). At sidebar, the parties agreed the trial court had 12 misadvised L.R. and that the actual maximum punishment for refusing to testify was a fine. 13 (Doc. 16-16 at 5). The trial court refused defense counsel's requests for a mistrial and that L.R. 14 be appointed counsel, and indicated that if L.R. refused to testify further, her testimony would be 15 stricken from the record.

(Id. at 5-6). 16 The trial court then advised L.R. that the maximum punishment she could face if she 17 chose not to testify would be a fine rather than imprisonment. (Doc. 16-7 at 136-37). After 18 taking time to consider, L.R. indicated she was not going to testify further against Petitioner. (Id. 19 at 138).

The trial court struck the testimony of L.R. and instructed the jury that they were not to 20 consider the testimony in any way or allow it to affect their decision. (Id. at 142-43). During jury 21 instructions, the trial court advised the jury that "[n]othing the attorneys say is evidence," 22 including their questions, which "are significant only if they helped [the jury] to understand the 23 witnesses' answers." (Doc.

16-8 at 54). The trial court also reminded the jury that L.R.'s 24 testimony was stricken, and they were to disregard it and not consider it for any purpose. (Id. at 25 54-55). 26 B. State Appellate Court Ruling 27 On appeal, Petitioner challenged the denial of a mistrial or new trial, asserting that his 1 28 at 2).

The state appellate court rejected both these arguments, explaining: 2 1. Confrontation rights 3 Relying primarily on *People v. Shipe* (1975) 49 Cal.App.3d 343 4 (Shipe), defendant contends his confrontation rights were violated and he was irreparably prejudiced by the violation.

In *Shipe*, the 5 police arrested the defendant and two other men for murdering a drug dealer. (Id. at 345-346.) The other men pled guilty to being 6 accessories after the fact, and the prosecutor subsequently called them as witnesses at the defendant's trial. 7 Each of the men answered preliminary questions but then asserted 8 the Fifth Amendment when the prosecutor began asking questions about the incident.

(*Shipe*, supra, 49 Cal.App.3d at 346.) The court 9 determined the witnesses did not have the right to assert the Fifth Amendment privilege and ordered them to answer. The prosecutor 10 asked both witnesses leading questions such as, "Is it not true that... you came back and saw the body of [the victim and] that 11 [the defendant] was on top of him?" and "Is it not further true... that in

your presence [the victim] was stabbed multiple times by 12 your brother, [the defendant]?” (Id. at 347-348.)

By asking these questions, “the prosecutor placed before the jury information which 13 overwhelmingly established [the defendant] as the murderer, provided a narcotics-related motive for the crime, and provided a 14 basis for the inference that two witnesses had revealed this information in their statements to the authorities.” (People v. 15 Burciago (1978) 81 Cal.App.3d 151, 164.)

16 The Shipe court reversed the conviction and held the prosecutor’s questions violated the defendant’s Confrontation Clause rights. 17 (Shipe, supra, 49 Cal.App.3d at 349, 355.) The court called the prosecutor’s questions “flagrantly suggestive” and stated a 18 prosecutor may not, “under the guise of cross-examination, get before the jury what is tantamount to devastating direct testimony.” 19 (Id. at 351, 349.)

The court also concluded the People could not demonstrate the confrontation violation did not contribute to the 20 verdict obtained because the evidence of the defendant’s guilt was “entirely circumstantial.” (Id. at 355.) 21 The pertinent facts in Shipe differ from the facts here in two key 22 respects.

First, in Shipe, the testimony in question was not stricken. (Shipe, supra, 49 Cal.App.3d at 346-349.) Here, by contrast, the 23 trial court struck the entirety of L.R.’s testimony and instructed the jurors they were not to consider her testimony or allow it to affect 24 their decision. During its delivery of jury instructions, the trial court reminded the jury it had stricken L.R.’s testimony and again 25 instructed it to disregard the testimony.

The trial court also instructed the jury that the attorneys’ questions were not evidence, 26 and not to assume something was true because an attorney’s question suggested it was true. These differences are important 27 because “[t]he assumption that jurors are able to follow the court’s instructions fully applies when rights guaranteed by the 1 U.S. 409, 415, fn.

6; accord, People v. Smithey (1999) 20 Cal.4th 936, 962 [holding the defendant was not denied his right to 2 confrontation where “the jury was instructed to disregard all questions regarding defendant’s intent and any answers”].)

As a 3 result, we assume the jury followed the court’s instructions. 4 Second, in Shipe, there was no significant independent evidence of guilt other than what was brought out by the challenged 5 questioning. (Shipe, supra, 49 Cal.App.3d at 355 [“The evidence of appellant’s guilt was entirely circumstantial...”].)

Here, however, 6 the other evidence of defendant’s guilt on the crimes of conviction was strong. Defendant was the only person in the home with L.R. at 7 the time of the shooting. After she was

shot, L.R. identified defendant as the person who shot her, and defendant admitted the 8 same to I.M. Defendant and L.R. had been fighting the week of the shooting, and one of their arguments turned violent.

Though 9 L.R. had two wounds, one below her left wrist, which the bullet went through, and a wound to her left shoulder, where the bullet 10 lodged, the evidence reflected only one shot was fired. The jury could properly find based on all this evidence (and Le.M.'s 11 statement to the investigator about defendant's post-shooting "because she's a ho" statement) that defendant attempted to kill 12 L.R. and she raised her arm to shield herself when defendant fired (though L.R. denied this).

(See, e.g., *People v. Smith* (2005) 37 13 Cal.4th 733, 741-742 [act of firing a gun toward a victim at a close, but not point blank, range is sufficient to support an inference of 14 intent to kill where the shot could have inflicted a mortal wound had the shot been on target].) 15 In contrast to *Shipe* and the other cases on which defendant relies, 16 the facts here are more akin to those found in *People v. Morgain* (2009) 177 Cal.App.4th 454 (*Morgain*).

That case holds a 17 defendant's right to confrontation was not violated where a witness was granted use immunity and ordered to testify but refused to 18 answer a handful of questions posed by the prosecutor, including whether the defendant told her that he shot the victim. (*Id.* at 459- 19 462.)

The trial court in *Morgain*, like the trial court here, granted the defendant's motion to strike the entirety of the witness's 20 testimony and instructed the jury not to consider the prosecution's questions as evidence. (*Id.* at 462, 465.)

The *Morgain* court held the 21 defendant suffered no infringement of his Confrontation Clause rights requiring retrial because the trial court struck the witness's 22 testimony, because the court instructed the jury not to consider the prosecution's questions as evidence, and because there was 23 independent evidence of defendant's guilt. (*Id.* at 465-466.)

The facts here are analogous and we reach the same conclusion. 24 2. Due process 25 Defendant also contends his Fourteenth Amendment due process 26 right to a fair trial was violated by L.R.'s testimony. In so arguing, defendant acknowledges that, generally, "the admission of improper 27 evidence is harmless if it is subsequently stricken out and the jury is told to disregard it." (*People v. Sourisseau* (1944) 62 Cal.App.2d 1 prejudicial that striking it and admonishing the jury to disregard it could not cure the error.

2 In support of this argument, defendant cites a handful of cases in 3 which appellate courts have held a mistrial should have been granted on significantly different facts. (See, e.g. *People v. Allen* 4 (1978) 77 Cal.App.3d 924, 934-935 [reference to the defendant's parole status was not cured by trial court striking testimony and 5 admonishing jury where the evidence presented an extremely

close case] (Allen); *People v. Ozuna* (1963) 213 Cal.App.2d 338, 339, 6 342 [admonition to jury did not remove harmful effect of testimony referring to defendant as “ex-convict”; evidence was not strong 7 enough to preclude finding of innocence] (Ozuna); *People v. Bentley* (1955) 131 Cal.App.2d 687, 689-690 [curative admonition 8 insufficient where police witness in child sexual abuse case improperly revealed defendant’s suspected involvement in prior 9 similar cases and another witness revealed the defendant “trie[d] to date up all the married women in the neighborhood”] (Bentley); 10 *People v. Navarrete* (2010) 181 Cal.App.4th 828, 834 [curative instruction could not undo prejudice where jury was likely to 11 interpret testimony to mean the defendant made a confession of guilt] (Navarrete.).

All of these cases involve “exceptional” 12 circumstances in which “‘the improper subject matter is of such a character that its effect... cannot be removed by the court’s 13 admonitions.’ [Citation.]” (Allen, *supra*, 77 Cal.App.3d at 935.)

The testimony in Allen and Ozuna, for instance, improperly 14 revealed the respective defendants had prior convictions. The subject testimony in Bentley indicated the defendant, charged with 15 child abuse, had previously been suspected of abusing another child. And the testimony in Navarrete suggested the defendant had 16 confessed to the crime.

Here, by contrast, L.R.’s answers to questions before refusing to testify further mainly augmented 17 testimony by other witnesses establishing that she and defendant had been arguing, and one of those arguments had turned physical. 18 That is not an “exceptional” circumstance like those in the cited cases. 19 20 (Doc. 16-28 at 13-18 (footnote omitted)). 21 C. Arguments and Analysis 22 Petitioner argues L.R.’s testimony violated his right to confront the witnesses against him 23 because the prosecution used her questions to read L.R.’s previous testimonial statements into the 24 record and allow the jury to hear the contents of these inculpatory statements.

(Doc. 1 at 31). 25 Petitioner argues the state appellate court’s rejection of his confrontation claim was contrary to 26 *Douglas v. Alabama*, 380 U.S. 415 (1965) because the prosecutor’s questioning was so suggestive 27 that it overpowered the jury’s ability to follow the court’s instructions. (Id. at 34). Similarly, Petitioner asserts his due process right to have his guilt decided solely on the basis of evidence 1 admitted at trial was violated because “the jurors heard that petitioner engaged in additional 2 violence which went far beyond merely engaging in an argument with L.R. which ‘turned 3 physical.’” (Id. at 35-36).

Finally, Petitioner argues the error had a substantial and injurious 4 effect on the verdict because “L.R.’s testimony struck right at the heart” of his defense that the 5 shooting was accidental. (Id. at 37). 6 Respondent argues the state court’s reasoned rejections of Petitioner’s claims were not 7 contrary to, or an unreasonable application of, federal law.

(Doc. 17 at 16). Respondent argues 8 Douglas “is inapt” because in that case, “the trial court neither struck the testimony at issue nor 9 instructed the jury to wholly disregard it.” (Id. at 17). Additionally, Respondent argues that 10 unlike in Douglas where the prosecutor “read the entire confession of Douglas’s co-conspirator 11 into the record, line by line,” the prosecutor here “referenced the victim’s statements to 12 investigator’s only to refresh her recollection when the victim allegedly could not remember her 13 statements” and the questioning otherwise “focused on the actual events and on eliciting the 14 victim’s testimony about what happened.” (Id.).

Further, Respondent argues the trial court 15 remedied any error by striking L.R.’s testimony and while Petitioner “asserts that the jury was 16 overpowered by the prosecutor’s questions and unable to follow the court’s instructions,” he 17 “does not persuasively explain why.” (Id. at 18).

Thus, Respondent’s position is that the state 18 court reasonably rejected both Petitioner’s confrontation and due process claims. (Id. at 19-20). 19 Further, Respondent argues the “strong independent direct evidence of Petitioner’s guilt apart 20 from the victim’s testimony” means that any error did not have a substantial and injurious effect 21 on the verdict.

(Id. at 20-21). 22 Petitioner responds that since “[t]he jury heard L.R.’s direct examination testimony but 23 defense counsel never had a chance to cross-examine her,” there was a “textbook confrontation 24 violation.” (Doc. 18 at 6). Petitioner argues that the trial’s court striking the testimony “did not 25 prevent the jury from hearing it” and therefore did not cure the confrontation violation.

(Id.). 26 Petitioner further argues that the evidence the state appellate court relied on as “strong 27 independent evidence of [his] guilt” only establishes that he shot L.R., which he does not dispute, 1 accident defense. (Id. at 9-11). 2 “The Sixth Amendment’s Confrontation Clause provides that, ‘in all criminal 3 prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him.’” 4 *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (internal alterations omitted). “[T]he main and 5 essential purpose of confrontation is to secure for the opponent the opportunity of cross- 6 examination.” *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986) (citation modified).

7 Based on Petitioner’s reliance on Douglas, a review of the facts in that case is warranted. 8 Douglas “and one Loyd were tried separately ... on charges of assault with intent to murder.” 9 Douglas, 380 U.S. at 416. Loyd was tried and convicted and was subsequently called to testify at 10 Douglas’s trial. Id. However, because he intended to appeal his conviction, Loyd invoked his 11 privilege against self-incrimination and refused to answer any questions.

Id. After receiving 12 permission to treat Loyd as a hostile witness, the prosecutor “produced a document said to be a 13 confession signed by Loyd” and “[u]nder the guise of cross-examination to refresh Loyd’s 14 recollection,” proceeded to read the document. Id. When asked if he had

made the various 15 statements in the document, Loyd asserted the privilege and refused to answer.

Id. Douglas was 16 found guilty, the Court of Appeals of Alabama affirmed, and the Supreme Court of Alabama 17 denied review. Id. at 418. 18 The United States Supreme Court granted certiorari and reversed Douglas's conviction. 19 Id. The Court concluded "petitioner's inability to cross-examine Loyd as to the alleged 20 confession plainly denied him the right of cross-examination secured by the Confrontation 21 Clause." Id. at 419.

Critically, "Loyd's alleged statement that [Douglas] fired the shotgun 22 constituted the only direct evidence that he had done so; coupled with the description of the 23 circumstances surrounding the shooting, this formed a crucial link in the proof both of petitioner's 24 act and of the requisite intent to murder." Id. The Court specifically noted that the prosecution's 25 reading of Loyd's statement "may well have been the equivalent in the jury's mind of testimony 26 that Loyd in fact made the statement; and Loyd's reliance upon the privilege created a situation in 27 which the jury might improperly infer both that the statement had been made and that it was 1 witness' refusal to answer added critical weight to the prosecution's case in a form not subject to 2 cross-examination, and thus unfairly prejudiced the defendant.'" Id. at 420.

3 The undersigned agrees with Respondent that the circumstances here are significantly 4 different than those presented in Douglas. Here, after L.R. refused to testify, the trial court struck 5 her testimony and ordered the jury that it could not be considered for any purpose. (Doc. 16-16 at 6 142-43; Doc. 16-8 at 54-55). Striking the testimony was an appropriate remedy following L.R.'s 7 refusal to continue.

See *United States v. Case*, 851 F. App'x 105, 106 (9th Cir. 2021) 8 ("Moreover, to the extent [defendant] believed he was prejudiced by his inability to cross- 9 examine [witness], any such prejudice would have been remedied by striking [witness's] 10 testimony in its entirety and instructing the jury to disregard it."); *United States v. Wilmore*, 381 11 F.3d 868, 873 (9th Cir.

2004) (finding witness's testimony obtained in violation of the 12 Confrontation Clause "should have been stricken"); *United States v. Seifert*, 648 F.2d 557, 561 13 (9th Cir. 1980) ("Where a witness asserts a valid privilege ... on cross-examination, all or part of 14 that witness's testimony must be stricken if invocation of the privilege blocks inquiry into matters 15 which are 'direct' and not merely 'collateral.'").

16 Further, contrary to Petitioner's argument, the trial court eliminated any prejudice to 17 Petitioner by striking L.R.'s testimony. The trial court instructed the jury to disregard L.R.'s 18 testimony immediately after determining she was no longer willing to testify and repeated the 19 instruction to not consider her testimony for any purpose in the closing instructions. "A jury is 20 presumed to follow its instructions." *Weeks v. Angelone*, 528 U.S. 225, 234 (2000). "The 21

assumption that jurors are able to follow the court's instructions fully applies when rights 22 guaranteed by the Confrontation Clause are at issue." *Tennessee v. Street*, 471 U.S. 409, 415 n.6 23 (1985).

Additionally, L.R.'s testimony "was hardly the sort of statement that might be considered 24 so inherently and overwhelmingly incriminating that a jury could not be expected to follow an 25 explicit instruction directing them to disregard it." *United States v. Saelee*, 51 F.4th 327, 345 (9th 26 Cir. 2022). Rather, as highlighted by the state appellate court, L.R.'s testimony largely contained 27 denials of her previous statements to law enforcement.

(See Doc. 16-7 at 127-35). 1 evidence concerning violence between L.R. and Petitioner from which the jury could have 2 inferred Petitioner shot L.R. intentionally rather than by accident as he claimed. I.M. testified 3 that earlier in the week, Petitioner and L.R. argued and the fight became physical, with Petitioner 4 on top of L.R. wrestling; Petitioner admitted to shooting L.R.; and Petitioner ran away when I.M.

5 called law enforcement. (Doc. 16-7 at 38-42). Le.M. also testified that Petitioner and L.R. got 6 physical while fighting, including Petitioner pulling L.R.'s hair. (Id. at 57-58). When questioned 7 regarding whether she previously told an investigator that Petitioner said, "I'll be back to kill your 8 mom," Le.M. indicated it had been a lie but still described Petitioner as "very abusive" and said 9 she feared "he was going to do something bad" when he locked the door while L.R. was still 10 inside the home.

(Id. at 60-62, 68). Similarly, La.M. testified that while he did not remember 11 seeing Petitioner slap his mom, if he previously told a detective that he did, that was the truth. 12 (Id. at 78-79). Thus, there was additional, unchallenged evidence establishing a pattern of 13 violence between the parties from which the jury could infer Petitioner shot L.R. intentionally 14 rather than accidentally.⁵ 15 Ultimately, Petitioner has not shown that the state appellate court's rejection of his 16 confrontation and due process claims was contrary to, or an unreasonable application of, clearly 17 established federal law, or based on an unreasonable determination of the facts.

The undersigned 18 recommends that the petition be denied. 19 IV. CERTIFICATE OF APPEALABILITY 20 "[A] state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a 21 district court's denial of his application." *Miller-El v. Cockell*, 537 U.S. 322, 335-36 (2003). Rule 22 11 of the Rules Governing § 2254 Cases requires a court to "issue or deny a certificate of 23 appealability when it enters a final order adverse to the applicant." A certificate of appealability 24 will issue "only if the applicant has made a substantial showing of the denial of a constitutional 25 right." 28 U.S.C. § 2253(c)(2).

To make this showing for claims rejected on procedural grounds, 26 a movant must demonstrate "that jurists of reason would find it debatable whether the petition 27 5 To the extent Petitioner

argues there is an alternative inference that could have been drawn that would have 1 states a valid claim of denial of a constitutional right and that jurists of reason would find it 2 debatable whether the district was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 3 473, 484 (2000).

When a claim is rejected on the merits, the petitioner “must demonstrate that 4 reasonable jurists would find the district court’s assessment of the constitutional claims debatable 5 or wrong” to warrant a certificate of appealability. 6 Because Petitioner has not made a substantial showing of the denial of a constitutional 7 right, the undersigned recommends that the court decline to issue a certificate of appealability.

8 V. RECOMMENDATION 9 For the reasons set forth above, it is RECOMMENDED: 10 1. Petitioner be DENIED all relief on his Petition for Writ of Habeas Corpus (Doc. 1); 11 and 12 2. Petitioner be denied a certificate of appealability. 13 These findings and recommendations are submitted to the district judge assigned to this 14 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the 15 United States District Court, Eastern District of California.

Within 14 days of service of this 16 recommendation, any party may file written objections to these findings and recommendations 17 with the Court and serve a copy on all parties. Such a document should be captioned “Objections 18 to Magistrate Judge’s Findings and Recommendations” and shall not exceed 15 pages without 19 leave of Court and good cause shown.

The Court will not consider exhibits attached to the 20 Objections. To the extent a party wishes to refer to any exhibit(s), the party should reference the 21 exhibit in the record by its CM/ECF document and page number, when possible, or otherwise 22 reference the exhibit with specificity. Any pages filed in excess of the 15-page limitation may be 23 disregarded by the District Judge when reviewing these Findings and Recommendations under 28 24 U.S.C. § 636(b)(1)(C).

The parties are advised that failure to file objections within the specified 25 time may waive the right to appeal the district judge’s order. Wilkerson v. Wheeler, 772 F.3d 26 /// 27 /// 1 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). 2 TT IS SO ORDERED. 3 Dated: _ October 14, 2025 | MwnnAD i 4 UNITED STATES MAGISTRATE JUDGE 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 19