UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

NICHOLAS JAMES WILLING,

Petitioner,

v.

WILLIAM HUTCHINGS,[1] *et al.*,

Respondents.

Case No. 2:14-cv-01194-RFB-BNW

ORDER

Petitioner Nicholas James Willing, who was sentenced to 30 to 75 years in prison after a jury found him guilty of various charges stemming from a home invasion and robbery, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. (See ECF Nos. 48; 51-6.) This matter is before this court for adjudication of the merits of the remaining[2] grounds in Willing's second amended petition, which allege that the prosecution suppressed favorable evidence and he was denied an adequate opportunity to confront the prosecution's witnesses. (ECF No. 48.) For the reasons discussed below, this court denies the petition and a certificate of appealability.

I. BACKGROUND[3]

On December 11, 2010, around 8:00 p.m., Susan Jones (hereinafter "Susan") was watching television in her living room with her seven-year-old daughter, M.T., while her husband, Robert Jones (hereinafter "Bob"), was in another room working on a computer when four individuals, one

[1] The state corrections department's inmate locator page states that Willing is incarcerated at Southern Desert Correctional Center. William Hutchings is the current warden for that facility. At the end of this order, this court directs the clerk to substitute William Hutchings as a respondent for the prior respondent Brian Williams. See Fed. R. Civ. P. 25(d).

[2] This court previously dismissed grounds 1(c), 2(c), and 3(a) as untimely. (ECF No. 98.)

[3] This court makes no credibility findings or other factual findings regarding the truth or falsity of the evidence from the state court. This court's summary is merely a backdrop to its consideration of the issues presented in the case.

of whom was wielding a shotgun, entered her residence in Pahrump, Nevada wearing black masks and black clothing. (ECF No. 50-7 at 59, 61–64, 80.) The intruders ordered Susan and M.T. to "[g]et on the floor." (Id. at 65.) While Bob was being "rough[ed] up in the hallway" after hitting one of the intruders with a pool stick, the man with the shotgun repeatedly asked Susan, "[w]here's the cash?" (Id. at 66–67.) The intruders tied Bob's hands, and Susan took the man with the shotgun to the master bedroom and opened a safe. (Id. at 67–68, 112.) The man took some silver coins and money from the safe, and after he again asked Susan where the cash was located, Susan took the man to the garage where another safe was opened. (Id. at 69–70, 73.) The intruders then obtained several hundred dollars from another room in the house, ordered Susan, Bob, and M.T. into a closet, and told them they would kill them if they called the police. (Id. at 74–75.)

The following day, a man and woman "cash[ed] in a large amount of 50-cent" coins at a store, and employees of the store called law enforcement. (ECF No. 50-8 at 63.) Detective Michael Eisenloffel with the Nye County Sheriff's Office obtained video surveillance footage from the store, and a married couple—Jamie Sexton and Dylan Spellman—were identified as the individuals who cashed in the coins. (Id. at 70, 75–76.) Sexton and Spellman were apprehended, interviewed, and "indicated that they had indeed been part of the reported robbery at [the] Jones' house." (Id. at 79.) A search warrant was executed on their residence, and law enforcement recovered a "notebook contain[ing] handwriting, which . . . appeared to be entry instructions into [the] Jones' home," "a two-page floor plan or diagram of the home," and a shotgun. (Id. at 80.) Sexton and Spellman implicated three other people in the robbery: Joshua Cotton, Jemere Reid, and Willing. (Id. at 90, 92, 99.) A search of Cotton's residence yielded money and a bandana, and a search of Reid's residence yielded money, a handgun, a black hat, and rope. (Id. at 89, 92.)

Spellman testified that he had worked as a manual laborer and Willing had been his supervisor. (ECF No. 50-8 at 122–24, 150.) Spellman testified that Willing "was the one that gave [him and Sexton] the information about where . . . the safes were [located in the Jones' residence], the layout of the house."[4] (Id. at 150.) Spellman explained that the robbery started as a joke, but "then stuff started getting more detailed." (Id. at 160.) Although Willing was not going to be present for the robbery and did not know when it was going to occur, Willing "knew it was going to happen" and promised to compensate Spellman and Sexton for committing the robbery. (Id. at 170–72; ECF No. 50-9 at 18.) Spellman and Sexton recruited Reid and Cotton to assist them in completing the robbery. (ECF No. 50-8 at 173.) Spellman, Sexton, Cotton, and Reid all pleaded guilty to second-degree kidnapping and robbery.[5] (Id. at 177.)

Bob testified that he was the public administrator and facilities manager for Nye County at the time of the robbery. (ECF No. 50-7 at 140.) Willing worked for Bob as "a Maintenance Man II in Buildings and Grounds." (Id. at 144.) Bob had directed Willing to do some groundskeeping work at a park, and Willing had been using a backhoe to complete that work. (Id. at 145.) Willing complained to Bob that he was "working out of class" by using the backhoe and "wanted to be paid as a Maintenance Man III." (Id. at 148–50.) Instead of increasing Willing's classification and compensation, Bob took "the backhoe from [Willing] and g[a]ve him a wheelbarrow." (Id. at 150.) Thereafter, Willing injured his back at the park jobsite and required surgery. (Id. at 151–52.)

[4] Susan and Bob testified that Willing had been to their residence several times. (ECF No. 50-7 at 78–79, 155–56.)

[5] Sexton's testimony was consistent with Spellman's testimony concerning Willing's involvement in the robbery: the robbery was conducted at Willing's behest, Willing told her and Spellman that Bob had safes and "there were over 30 gold bars in the house," Willing was going to compensate her and Spellman for the robbery, Willing told her and Spellman the layout and location of the house, Willing showed her and Spellman some pictures of the Jones' house, Willing had multiple planning sessions with her and Spellman, and Willing knew the robbery was going to happen. (ECF No. 50-9 at 42, 46–48, 50–51, 57, 63.)

Spellman and Willing's ex-girlfriend testified that Willing hated and blamed Bob for his back injury. (ECF Nos. 50-8 at 157; 51 at 7–8, 11.) And Sexton testified that Willing wanted revenge on Bob: "He said that Bob was going to pay like he was because he was out of work and he was going through financial struggles, and he wasn't able to move. He wasn't able to work. He had a hard time paying his medical bills, and he wanted revenge." (ECF No. 50-9 at 28, 44.) Sexton also testified that Willing "didn't want anything from the robbery. He just wanted . . . Bob to be robbed so that when [the robbery] was investigated," it would be clear that Bob "was stealing from the County and that there would be things in his house that weren't supposed to be, which would help [Willing] with his lawsuit" against Bob. (Id. at 60.)

Willing was interviewed by law enforcement and "made several comments in relation to the event that he didn't intend for or didn't want Bob Jones' wife or daughter to be injured, that his . . . anger was for Bob Jones specifically." (ECF No. 50-9 at 120–21.) Willing also "eventually admit[ted] that he told [Sexton and Spellman] details about the [Jones'] house" and "admitted that he told at least two people that he would do the robbery himself except for his lawsuit." (Id. at 122, 126.) Willing testified at the trial and denied having discussions with Sexton and Spellman about robbing Jones and denied telling them to rob Jones. (ECF No. 51 at 41, 54, 70.)

A jury found Willing guilty of burglary with the use of a deadly weapon, robbery with the use of a deadly weapon, three counts of first-degree kidnapping with the use of a deadly weapon, grand larceny with the use of a deadly weapon, grand larceny of firearms with the use of a deadly weapon, battery with intent to commit grand larceny, three counts of assault with a deadly weapon, and conspiracy to commit robbery. (ECF No. 51-6.) Willing's judgment of conviction was affirmed by the Nevada Supreme Court. (ECF No. 51-19.) While his direct appeal was pending, Willing moved for a new trial based on the discovery of new evidence. (ECF No. 51-10.) The state

district court denied the motion, and the Nevada Supreme Court affirmed the denial. (ECF Nos. 51-17; 51-24.)

II. GOVERNING STANDARDS OF REVIEW

28 U.S.C. § 2254(d) sets forth the standard of review generally applicable in habeas corpus cases under AEDPA:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

A state court decision is contrary to clearly established Supreme Court precedent, within the meaning of 28 U.S.C. § 2254, "if the state court applies a rule that contradicts the governing law set forth in [the Supreme Court's] cases" or "if the state court confronts a set of facts that are materially indistinguishable from a decision of [the Supreme] Court." Lockyer v. Andrade, 538 U.S. 63, 73 (2003) (quoting Williams v. Taylor, 529 U.S. 362, 405–06 (2000), and citing Bell v. Cone, 535 U.S. 685, 694 (2002)). A state court decision is an unreasonable application of clearly established Supreme Court precedent within the meaning of 28 U.S.C. § 2254(d) "if the state court identifies the correct governing legal principle from [the Supreme] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." Id. at 75 (quoting Williams, 529 U.S. at 413). "The 'unreasonable application' clause requires the state court decision to be more than incorrect or erroneous. The state court's application of clearly established law must be objectively unreasonable." Id. (quoting Williams, 529 U.S. at 409–10) (internal citation omitted).

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