

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAVON MIGUEL,

Petitioner,

v.

JERRY HOWELL, *et al.*,

Respondents.

Case No. 2:18-cv-02111-RFB-BNW

ORDER

I. INTRODUCTION

In 2014, a jury convicted Javon Miguel (“Petitioner” or “Miguel”), a former Nevada prisoner,¹ of (1) Pandering of a Child; (2) First-Degree Kidnapping; and (3) Pandering by Furnishing Transportation. (ECF No. 14-10.) This matter is before the Court on the remaining grounds of Miguel’s Pro Se Petition for Writ of Habeas Copus under 28 U.S.C. § 2254 (ECF No. 4) (“Petition”). The Court denies the Petition and denies a Certificate of Appealability.

II. BACKGROUND²

The complaining victim, A.B.,³ testified she engaged in prostitution at least twice in Hesperia, California when she was 13 years old, but her pimp kept the money. (ECF No. 12-1 at 67–69, 106–107.) When she was 14 years old she, and her grandparents who were her legal

¹ Miguel initiated this habeas proceeding while he was incarcerated. (ECF No. 1.) He was released on parole on January 30, 2019. (ECF No. 21.)

² The Court makes no credibility findings or other factual findings regarding the truth or falsity of evidence or statements of fact in the state court. The Court summarizes the same solely as background to the issues presented in this case and does not summarize all such material. No assertion of fact made in describing statements, testimony, or other evidence in the state court constitutes a finding by this Court. Any absence of mention of a specific piece of evidence or category of evidence does not signify the Court overlooked the evidence in considering the claims.

³ The Local Rules of Practice state: “[p]arties must refrain from including—or must partially redact, where inclusion is necessary—[certain] personal-data identifiers from all documents filed with the court, including exhibits, whether filed electronically or in paper, unless the court orders otherwise.” LR IA 6-1(a). As this includes the names of minor children, only a child’s initials should be used. Id. The witness referred to here as “A.B.” was a minor at the time the events occurred.

1 guardians, moved to Apple Valley, which is near Victorville, California. (*Id.* at 39–40, 57–59, 69.)
2 Thereafter, A.B. met a man in Victorville called “Papa John” who, during a discussion about
3 prostitution, told her about his brother Miguel. (ECF No. 13-1 at 31–35.)

4 A.B. testified that on August 24, 2012, while she was 14 years old, her grandfather dropped
5 her off at a park in Victorville where she encountered Miguel when she and her girlfriend entered
6 a nearby store. (ECF No. 12-1 at 61–63.) Miguel asked for her name and they ended up hanging
7 out at the park with their friends. (ECF Nos. 12-1 at 61–66, 99–100; 13-1 at 28–29.) A.B. said
8 Miguel confirmed Papa John was his brother and she informed Miguel she previously prostituted.
9 (ECF Nos. 12-1 at 66–68; 13-1 at 33.) A.B. believed her disclosure led to Miguel’s statements that
10 he was “hanging out making money,” doing “prostitution,” and had “girls who work for him and
11 make money for him.” (ECF Nos. 12-1 at 66–67; 13-1 at 36–38.) A.B. testified she believed
12 Miguel was a pimp because of “his personality;” his “real fancy,” “nice—proper,” clothes; and
13 because he displayed a wad of cash. (ECF No. 12-1 at 69–70, 102–04.) A.B. said Miguel did not
14 dress like a stereotypical pimp as portrayed on television, but instead wore a “nice shirt,” “blackish
15 jeans,” and a watch. (*Id.*) A.B. did not know whether or not Miguel’s wad of cash consisted merely
16 of a \$20 bill wrapped around \$1 bills. (*Id.*) A.B. also testified that Miguel never came right out
17 and told her he was a pimp; rather, she “kind of all put it together” and thought he “must have girls
18 working for [him],” based on her belief that he “was a player,” “makes money,” and has “a lot of
19 females.” (ECF Nos. 12-1 at 104; 13-1 at 35–38.)

20 A.B. testified while they were at the park, Miguel asked her age, and she falsely told him
21 she was 18 years old. (ECF No. 12-1 at 70.) And when Miguel asked for her identification, she
22 had none. (ECF No. 13-1 at 22, 39.) She told Miguel she lived with her grandparents but did not
23 tell him they were her legal guardians. (*Id.* at 40.) A.B. said Miguel told her she could “get a fake
24 ID” they could “get an apartment together,” and she would make money. (ECF No. 12-1 at 70.)

25 A.B. testified that Miguel told her she could work with him as a prostitute if she wanted to,
26 but she did not have to if she did not want to, and he did not force, trick, or use threats, to get her
27 to do so. (ECF No. 12-1 at 70, 108, 112–13.) Miguel provided A.B. with his phone number written
28 on a business card. (*Id.* at 70, 72–73.) A.B. testified Miguel never said he wished to date her; rather,

1 her impression was he wanted to “make money” through her “work,” by which she believed he
2 meant “prostitution.” (ECF No. 13-1 at 38–39.)

3 A.B. said she told Miguel she was interested in working as a prostitute with him and they
4 agreed to meet at his house the next day. (ECF No. 12-1 at 73.) When Miguel told A.B. he was
5 going to Las Vegas to see his friend, Punchy, who was staying at the Golden Nugget, she agreed
6 to go with him. (ECF Nos. 12-1 at 109–10; 13-1 at 23.) A.B. said when her grandfather dropped
7 her off at Miguel’s house the following day, she knew they were going to Las Vegas for her to
8 work as a prostitute, so when Miguel asked if she wanted to go to “make money and go to Vegas,”
9 and if she wanted to “go find work,” she told him “yes,” believing he meant she would go with
10 him to “prostitute” in Las Vegas. (ECF No. 12-1 at 74–75, 114–15.) Miguel’s brother-in-law,
11 Terrell Timothy Parker, testified he was present at Miguel’s home the night Miguel and A.B. left
12 together for Las Vegas. (ECF No. 13-2 at 30–31.) A.B.’s grandfather, Daniel Heimbecher, testified
13 he filed a missing person report with police when A.B. did not call or come home. (ECF No. 13-1
14 at 49–51, 54–55.) Heimbecher identified A.B.’s birth certificate, which verified she was 14 years
15 old at the time of the Las Vegas trip with Miguel. (*Id.* at 52–54.) Heimbecher never met Miguel
16 before this case and never gave him permission to prostitute A.B. or take her to Las Vegas. (*Id.*)

17 A.B. agreed to prostitution because she was tired of not having money of her own. (ECF
18 Nos. 12-1 at 109–10; 13-1 at 44.) She said she would never have agreed to prostitute if Miguel had
19 not told her he would help her make money at it; and she would not have gone to Las Vegas if he
20 had not suggested it and agreed to pimp her. (ECF No. 13-1 at 43–45.) She said Miguel did not
21 force or trick her into going to Las Vegas; did not threaten or coerce her to go; and did not lock
22 her in a car or room. (ECF No. 12-1 at 111–13.)

23 According to A.B., Miguel drove them to Las Vegas in his “old-looking” burgundy-colored
24 car. (ECF No. 12-1 at 75.) She said that, during the drive, Miguel told her she would be “making
25 money in Vegas” prostituting and assured her that he would walk behind her, so nothing happened
26 to her. (*Id.* at 76–77.) She said he told her to look for clients “with like a lot of money, like nice
27 cars.” (ECF Nos. 12-1 at 121; 13-1 at 41.) She said he instructed her to charge no less than \$100;
28 and they agreed to split the proceeds fifty-fifty. (ECF No. 12-1 at 77–79.) She said he instructed

1 her to give the proceeds to him, and he would return her portion to her. (Id.) She said Miguel gave
2 her condoms “[f]or protection” on “dates,” which she explained meant a client “wants to have sex
3 with you for money.” (Id.) She said he instructed her not to have sex with a client who refused to
4 use a condom. (Id. at 80.) She said he told her to ignore “black males” “[b]ecause they will try to
5 make you their prostitute,” and never “look them in the eye” or speak to them. (Id.) She said he
6 told her she could have sex in his car, or in a motel at his expense. (ECF No. 13-1 at 41–42.) She
7 said he told her, after Las Vegas, they would go where there was money. (Id. at 45.)

8 A.B. testified they arrived in Las Vegas in the early morning of August 25, 2012, and ate
9 at a McDonald’s near the Stratosphere as A.B. had not eaten since her arrival at Miguel’s house.
10 (ECF No. 12-1 at 80–82.) She said after they ate, Miguel told her to “get down what I was supposed
11 to do,” meaning prostitute, to earn “gas money” for the return trip to Victorville. (Id. at 81–82.)
12 She said she walked down Las Vegas Boulevard to the Stratosphere with Miguel trailing behind
13 her. (Id. at 82–83.) She said she occasionally looked back to ensure he was watching her because
14 she would have been “mad” and “scared” if he was not. (Id. at 82–84.) She said Miguel never
15 asked her to initiate conversations with men and never introduced her to men. (Id. at 121–22.)
16 Although four men approached her about sex in exchange for money, no deals were struck, and
17 after two hours her feet hurt so they went to rest in Punchy’s hotel room at the Golden Nugget. (Id.
18 at 84–85.) A.B. said they rested in Punchy’s hotel room until they returned to the Stratosphere area
19 later that night, where A.B. once again walked the strip while Miguel walked behind her. (ECF
20 No. 12-1 at 85–88.) She said this time three men approached her about sex or doing drugs in
21 exchange for money, but no deals were struck. (Id.) She engaged in no sexual conduct based on
22 her walks on the strip, and around 4:00 a.m., they were ready to return to California, as planned,
23 and Miguel told her he would meet her at his car. (ECF Nos. 12-1 at 87–88, 116, 121; 13-1 at 42.)

24 Officers Erik Perkett and Andrew Keller, of the Las Vegas Metropolitan Police Department
25 (“Metro”), testified they stopped A.B. around 4:00 a.m., near the Stratosphere, in an area locals
26 call “the Naked City.” (ECF No. 11-1 at 28–31, 35, 64–67.) The officers stopped her because she
27 was jaywalking; but as they approached, they noticed she was wearing “provocative” clothes and
28 appeared “about 12 to 13 years old.” (Id. at 31–33, 46–47, 68.) According to both officers, A.B.

1 spontaneously told them she was “not a prostitute.” (*Id.* at 46–47, 67.) A.B. told the officers she
2 was 18 years old, gave them a phony birthdate in 1993 that placed her at 19 years old, and said she
3 was meeting her “boyfriend” or “friend” at his red or maroon four-door sedan. (ECF Nos. 11-1 at
4 31–33, 69–70; 12-1 at 88–90.) The officers told A.B. that giving false information to an officer is
5 against the law, but she maintained she was 18 years old. (ECF No. 11-1 at 48.) The officers
6 confirmed, through the California Department of Motor Vehicles, that A.B. was from California
7 and only 14 years old. (*Id.* at 33, 50, 69.) When the officers confronted A.B. with the information,
8 she admitted she was only 14 years old. (*Id.*) Based on A.B.’s age, clothes, statements, and the
9 area, Keller called vice detectives to investigate prostitution. (*Id.* at 49, 51.)

10 Officers Perkett and Keller noticed Miguel and a woman watching from a distance. (ECF
11 No. 11-1 at 34–35, 38, 62, 70–71.) Perkett peered at them using binoculars, and they started
12 walking away. (*Id.*) Keller said the woman was dressed in the “seductive style” of a prostitute, and
13 although people wear provocative clothing to all-night clubs on the strip, such as the Stratosphere
14 nightclub, he detected nothing indicating she was clubbing when he spoke to her.⁴ (*Id.* at 73, 77,
15 80.) Based on their knowledge that pimps and prostitutes maintain proximity, the officers believed
16 the couple were “involved with [A.B.] being a prostitute,” and Miguel might be a “pimp,” for both
17 females, so they stopped them to investigate. (*Id.* at 39, 58–59, 74–75.)

18 Miguel identified himself with a California driver’s license; told them A.B. was his
19 girlfriend and he was concerned about her; and permitted the officers to search his vehicle, which
20 matched A.B.’s description of her boyfriend’s car. (ECF No. 11-1 at 39–41, 51–53, 57, 71–72,
21 76.) The officers found no contraband in Miguel’s car. (*Id.*) Officer Keller thought Miguel lied
22 when he told them he was walking to his car because Keller saw Miguel walking away from his
23 car. (*Id.* at 80.) Officer Perkett believed Miguel was A.B.’s “boyfriend” because they each said so.
24 (*Id.* at 52, 57.) Police did not arrest Miguel for any crimes, but they arrested A.B. for “jaywalking,
25 curfew violations and providing false information to a police officer.” (*Id.* at 42, 56.) Metro found
26 a business card and three condoms in A.B.’s possession. (*Id.* at 43–44, 53–54.)

27
28 ⁴ The woman was arrested on an outstanding warrant, but not for prostitution although she
had a previous arrest for prostitution. (ECF No. 11-1 at 41, 56, 63, 77–81, 96–97.)

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