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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JERMAINE AARON MOORE, Petitioner - Appellant, v. **KELLY HARRINGTON, Warden,** Respondent - Appellee.	No. 10-55030 D.C. No. 2:07-cv-02277-CAS-FMO **MEMORANDUM**[*]

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Submitted January 8, 2013[**]
Pasadena, California

Before: **KOZINSKI**, Chief Judge, **McKEOWN** and **M. SMITH**, Circuit Judges.

The California Court of Appeal's ruling wasn't "contrary to," and didn't involve "an unreasonable application of, clearly established Federal law." 28

[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

U.S.C. § 2254(d)(1); see also Harrington v. Richter, 131 S. Ct. 770, 786 (2011). The state court considered the totality of the circumstances, and it wasn't unreasonable in concluding that the trial judge's comments weren't coercive. See Lowenfield v. Phelps, 484 U.S. 231, 237–41 (1988); see also Wong v. Smith, 131 S. Ct. 10, 11–12 (2010) (Alito, J., dissenting from denial of certiorari). The judge made his comments only after the jury, which had spent relatively little time deliberating, indicated it was having trouble reaching a verdict. He made it clear that it was acceptable for the jury not to reach a verdict, and as in Lowenfield, 484 U.S. at 240 & n.4, the defense attorney didn't object to the judge's remarks. In fact, the jury in this case spent slightly more time deliberating after the judge's comments than did the Lowenfield jury. Id. at 235.

AFFIRMED.