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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL OQUITA GUTIERREZ, Petitioner - Appellant, v. RICHARD A. BOCK; ATTORNEY GENERAL OF THE STATE OF ARIZONA; CHARLES L. RYAN, Respondents - Appellees.	No. 13-16849 D.C. No. 4:12-cv-00712-DTF MEMORANDUM[*]

Appeal from the United States District Court
for the District of Arizona
D. Thomas Ferraro, Magistrate Judge, Presiding

Submitted September 16, 2015[**]
San Francisco, California

Before: CHRISTEN and FRIEDLAND, Circuit Judges and LEMELLE,[***] Senior District Judge.

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[*] 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).

[***] The Honorable Ivan L.R. Lemelle, Senior District Judge for the U.S. District Court for the Eastern District of Louisiana, sitting by designation.

After a shooting at a crowded party, an Arizona jury convicted Daniel Gutierrez on several counts of assault and one count of manslaughter. Gutierrez filed a petition for a writ of habeas corpus in state court alleging ineffective assistance of counsel. After that petition's denial and several unsuccessful appeals, Gutierrez filed a petition for a writ of habeas corpus in the district court. The district court dismissed the petition and Gutierrez appeals. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.[1]

Gutierrez argues his counsel's decision not to call Jose Baldenegro as a witness amounted to ineffective assistance. Gutierrez is not entitled to relief because the state court reasonably concluded that, even if counsel's performance was deficient, Gutierrez had not "show[n] that the deficient performance prejudiced the defense." *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); 28 U.S.C. § 2254(d)(1). Gutierrez's DNA was on the gun used in the shooting and Baldenegro's account would have been contradicted by that of two other witnesses.

AFFIRMED

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[1] The parties are familiar with the facts, so we will not recount them here.