

FILED

OCT 28 2016

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL DAVID BENSON, Sr.,

Petitioner-Appellant,

v.

JERI TAYLOR,

Respondent-Appellee.

No. 15-35455

D.C. No. 2:12-cv-01099-MA

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Malcolm F. Marsh, District Judge, Presiding

Argued and Submitted October 6, 2016  
Portland, Oregon

Before: THOMAS, Chief Judge, and CLIFTON and NGUYEN, Circuit Judges.

Michael Benson appeals the district court's denial of his 28 U.S.C. § 2254 habeas petition challenging his felony murder conviction. We affirm the judgment of the district court for the reasons set forth in detail in the district court's opinion dated June 8, 2015.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

We agree with the district court that (1) Benson's claims are not procedurally defaulted given the objections at trial and the fact that the Oregon Court of Appeals did not expressly invoke a procedural bar, *see Smith v. Or. Bd. of Parole & Post-Prison Supervision*, 736 F.3d 857, 860 (9th Cir. 2013); (2) the state trial court's admission of certain statements was contrary to, or an unreasonable application of the Supreme Court's decisions in *Bruton v. United States*, 391 U.S. 123 (1968) and *Gray v. Maryland*, 523 U.S. 185 (1998); and (3) the constitutional error was harmless given Benson's own testimony, the testimony of Frank Perotte, and other corroborating evidence, *see Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993).

**AFFIRMED.**