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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RICKY JAMES HARRIS,

Petitioner-Appellant,

v.

MITCH MORROW,

Respondent-Appellee.

No. 06-35606

D.C. No. 03-1388-ST

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Argued and Submitted November 7, 2007
Portland, Oregon

Before: FISHER and BERZON, Circuit Judges, and MOSKOWITZ, District
Judge.**

Petitioner Ricky James Harris (“Petitioner”) appeals from the district court’s
denial of his petition for writ of habeas corpus under 28 U.S.C. § 2254. We affirm
on the certified issue of ineffective assistance of counsel regarding trial counsel’s

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

** The Honorable Barry Ted Moskowitz, United States District Judge
for the Southern District of California, sitting by designation.

failure to impeach Karen Harris with videotaped prior inconsistent statements. We deny the motion to expand the certificate of appealability (“COA”).

The state court’s determination that Petitioner was not prejudiced by trial counsel’s failure to impeach Karen Harris with her videotaped statements was not objectively unreasonable. *See Williams v. Taylor*, 529 U.S. 362, 409 (2000) (explaining standard for determining unreasonable application of clearly established federal law under AEDPA). Ms. Harris’s videotaped statement that the shooting was an “accident” was conclusory and did not include any factual observations that contradicted her trial testimony. Furthermore, there was other evidence from which the jury could infer that Petitioner deliberately shot the victim, Davie Nolen, after Nolen angered him by mocking his gun. In particular, Petitioner’s specific story – that he was not angry and that the gun simply went off after spinning the gun “cowboy style” and grabbing the handle – was contradicted by other witnesses so the jury in all likelihood concluded that Petitioner was lying overall, including with regard to his lack of intent.

We deny Petitioner’s motion to expand the COA to include the questions of whether his ineffective assistance of counsel claim regarding trial counsel’s alleged failure to adequately cross-examine Shawneen Mathews was exhausted and whether his sentence violated *Blakely v. Washington*, 542 U.S. 296 (2004). These

claims are not supported by a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

AFFIRMED.