

No.

IN THE SUPREME COURT
OF THE UNITED STATES

Troy Seales,

Petitioner,

v.

The People of the State of California,

Respondent.

On Petition For Writ of Certiorari
To The Court of Appeal of the State of
California First Appellate District
(Division 4)

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Supreme Court err in failing to rule that the exclusion of Petitioner and his counsel from an *ex parte* hearing violated Petitioner's rights to be personally present, to counsel at all stages of the Proceedings and to due process of law?
2. Did the Supreme Court err in failing to rule that the order preventing defense counsel from revealing to Petitioner the existence of a statement obtained from Kendrick Riley pursuant to P.C. 1054.7 violated Petitioner's rights to a fair trial, to present a defense and to due process of law?
3. Should the Supreme Court have determined that trial counsel was ineffective by failing to object to inadmissible evidence about uncharged crimes, in violation of Petitioner's' rights to a jury trial, to counsel, and to due process of law?

PARTIES TO THE PROCEEDINGS

The Petitioner, Troy Seales, is a prisoner of the State of California, unlawfully confined to the California State Prison, Sacramento, 100 Prison Road, Represa, CA 95671 CDRC number BI1336.

The Respondent is the State of California.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Troy Seales, petitions for a Writ of Certiorari to review the opinion of the Court of Appeal of the State of California, First Appellate District (Division 4), entered in the above entitled case on February 26, 2021. On May 26, 2021, the California Supreme Court entered an order denying Petitioner's petition for review.

OPINIONS BELOW

APPENDIX A: Opinion of the California Court of Appeal, First Appellate District, Division Four

APPENDIX B: Order of the California Supreme Court denying Petitioner's petition for review.

JURISDICTION

Petitioner seeks review of the opinion of the California Court of Appeal, First Appellate District (Division 4) released on February 26, 2021. This Court's Jurisdiction is invoked under 28 U.S.C. § 1254(1) by the timely filing of this petition. A timely petition for review was denied by the California Supreme Court on May 26, 2021.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides that:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution provides that:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which

district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Fourteenth Amendment, Section 1, to the United States Constitution provides that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Status of the Case.

Troy Seales, (hereinafter “Mr. Seales”) was charged with the murder of Deandre Adams, a violation of P.C. 187(a). Petitioner was also charged with shooting at an occupied motor vehicle, a violation of P.C. 246. (1CT1-4).¹

On December 20, 2017, an Information was filed charging Petitioner with a violation of P.C. 187(a) (Count One) and a violation of P.C. 246 (Count Two).

With respect to Count One, the Information charged that Petitioner personally and intentionally discharged a firearm, and caused great bodily injury and

¹ References herein are to the Reporter’s Transcript on Appeal, and to the Clerk’s Transcript on Appeal. References to the Reporter’s Transcript on Appeal are designated as RT __, and references to the Clerk’s Transcript on Appeal are designated as CT__.

death to Adams, within the meaning of P.C. 12022.7(a) and P.C. 12022.53(d). It was further alleged that Petitioner personally inflicted great bodily injury on another person within the meaning of P.C. 12022.7, that Petitioner personally and intentionally discharged a firearm within the meaning of P.C. 12022.53(c), and that Petitioner personally used a firearm within the meaning of P.C. 12022.5(a), P.C. 12022.53(b), and P.C. 12022.53(g). (1CT128-135).

After a jury trial, Petitioner was convicted of Count One and Count Two. (1CT216-217). The Court imposed a total sentence of 50 years to life to be served in state prison. (10RT1049).

A notice of appeal was timely filed on December 4, 2018. (2CT345-349). On February 26, 2021, the Court of Appeal affirmed the judgment in full. (Appendix A [Opinion]). On May 26, 2021, the California Supreme Court denied Petitioner's petition for review.

B. Factual Background and Relevant Evidence

For the purposes of this petition, Petitioner relies on the facts set out in the Court of Appeal decision, and to the extent that they are not inconsistent with the facts set forth below. (Appendix A [Opinion]). Additional facts will be cited in Petitioner's argument;

The Alameda County District Attorney filed an information charging defendant with the murder of Deandre Adams on or about August 25, 2017. (§ 187, subd. (a) (count one)) and shooting at an occupied motor vehicle (§ 246 (count two)).² The

² All further statutory references are to the Penal Code unless otherwise indicated.

information alleged that defendant personally and intentionally discharged a firearm and caused great bodily injury and death (§§12022.53, subds. (c), (d), 12022. 7, subd. (a)), and personally used a firearm (§ 12022.5, subd. (a), 12022.53, subds. (b), (g)). A jury found defendant guilty as charged. The trial court denied defendant's motion for a new trial, and it sentenced defendant to a total term of 50 years to life in prison. Defendant appealed.

The Prosecution's Case

On August 11, 2017, defendant's sister used her Hertz Rental Car employee discount to rent a white Dodge Charger, and she listed defendant as an additional driver.

In August 2017, Doneisha Guidry lived with her mother, her two children, and Mercedes Tanner in a two-bedroom apartment located on 89th Avenue near Olive Street in Oakland, California. Guidry's cousins, Kendrick Riley and his younger brother, Dupree Riley³ often hung out at her apartment.

On August 24, 2017, Kendrick, his son, and his son's mother stayed in the living room of Guidry's apartment. In the morning of August 25, 2017 (August 25), Deandre Adams broke Guidry's car windows. After the vandalism, defendant, the father of Guidry's children, came to her apartment in a white Dodge Charger. Kendrick testified that defendant appeared that morning, and, at some point, he saw that defendant had a duffle bag. Tanner, Dupree, Dupree's girlfriend, and Naja Sims-Harris (a cousin of Guidry, Kendrick, and Dupree) were also at Guidry's apartment on August 25. At some point, Tanner, Sims-Harris, and Dupree walked to the corner store. Tanner testified that there were gunshots while they were at the store, and she saw a green Honda. Sims-Harris pushed Tanner into the store, and Tanner called Guidry to ask if defendant could pick her up. Tanner was not sure whether Dupree was inside or outside of the store when she called Guidry. Sims-Harris testified that Dupree left and did not come into the store with the two women.

³ Kendrick and Riley are referred to by their first names to distinguish them.

Kendrick testified that, after leaving to go to the store with his two cousins, Dupree returned to Guidry's apartment and said that something happened at the store. Defendant, Kendrick, and Dupree walked out of the apartment together. Kendrick testified that he and Dupree ran to the store to check on their cousins, and Dupree carried a gun that fired blanks.

Defendant picked up Tanner and Sims-Harris at the store in the white Dodge Charger and dropped them back at Guidry's apartment. He then left. At about the time defendant dropped off Tanner and Sims-Harris, Kendrick and Dupree returned on foot. Kendrick, Dupree, and Sims-Harris spoke outside of the apartment building with Dupree's girlfriend, who was in her car. Kendrick, Dupree, and Sims-Harris heard gunshots. Sims-Harris heard about four gunshots, saw a dark green Honda driving fast on Olive Street, and ran into the apartment. Kendrick and Dupree ran towards the gunshots, but when they heard additional gunshots, they ran back to the apartment.

Around 10:20 a.m. on August 25, Damien Jackson was driving his black Audi on 89th Avenue and turned left off of 89th Avenue onto Olive Street. After he turned left onto Olive Street, he heard gunshots. He looked in his rearview mirror and saw a man shooting an AK-style rifle in his direction and a green car driving fast behind him. Jackson made a quick left turn onto 90th Avenue and looked over his shoulder. The driver of the green car was slumped, and the car was drifting to the right.

Around 10:20 a.m. on August 25, from her mother's house on the intersection of 89th Avenue and Olive Street, Megan Thompson looked out the window and saw a man shooting an assault rifle. Thompson described the shooter as a thin male about five feet, six or seven inches tall, having short black hair, lighter skin color (possibly Hispanic), and wearing a black shirt and baggy blue jeans.

Swazeere Dean, an EMT, lived near the crime scene. On August 25 around 10:20 a.m., his daughter woke him up and said that someone had been shot and crashed their car. Dean rendered assistance to Adams, who was in the crashed car and had two bullet holes through his chest.

Police recovered fourteen 7.62 rifle shell casings on Olive Street between 88th and 89th Avenues and a bullet fragment from a car parked on Olive Street and 89th. Criminalist Mark Bennet examined the bullet fragment and shell casings and determined that they were consistent with having been fired from an AK-47 assault rifle or an SKS-type rifle. Inspector Hawks, an expert on cell phone data analysis, determined that the cell phone defendant had been using moved north from Hayward to San Leandro and into Oakland near the crime scene between 9:00 a.m. and 10: 18 a.m. on August 25. At 10:27 a.m., the cell phone pinged off a tower at 10850 MacArthur in Oakland and then moved southward to Hayward until 11:08

1. Video Surveillance Evidence

The prosecution showed surveillance video from the morning of August 25. The first video was recovered from 2036 89th Avenue and it showed both 89th Avenue and the parking lot in front of Guidry's apartment building.

The video showed Adams vandalizing Guidry's car. It also showed that, sometime later that morning, defendant parked a white Dodge Charger outside the apartment building, got out, and walked to the apartment building carrying a dark bag in his right hand.

The video then captured Dupree, Tanner, and Sims-Harris leaving the apartment, and subsequently showed Dupree running back into the apartment. Very shortly thereafter, defendant, Kendrick, and Dupree left the apartment together. Kendrick and Dupree looked around, defendant looked around, and defendant got into the driver's side of his car and drove in the direction of the corner store. Dupree then went back inside the apartment and came back out. At that point, Kendrick and Dupree ran down the street in the direction that defendant had driven. A couple minutes later, defendant returned in the white Dodge Charger, dropped off Tanner and Sims-Harris, and drove off. Surveillance video captured Damien Jackson driving his black Audi on 89th Avenue behind defendant as defendant pulled back onto the road after dropping the women off. Kendrick and Dupree then returned on foot and spoke with

Dupree's girlfriend, who had pulled up on 89th Avenue in front of the apartment building. Kendrick and Dupree then suddenly took off running, again in the direction that defendant had driven.

The prosecutor also played surveillance video taken from 2006 89th Avenue on August 25. At trial, Kendrick confirmed that this video depicted a white Dodge Charger that looked similar to the car defendant drove on August 25. The white car turned right onto Olive Street at the intersection of 89th Avenue and Olive Street about sixteen seconds after 10:20 a.m. Damien Jackson confirmed that this surveillance showed him driving behind the white car and turning left onto Olive Street approximately twenty seconds after 10:20 a.m. At approximately forty-two seconds after 10:20 a.m., Kendrick and Dupree are depicted running on 89th Avenue towards the corner of the intersection with Olive Street, and Dupree extends his arm in what appears to be a shooting motion with a blank firing gun.

2. Kendrick's Statements and Testimony

When the police detained Kendrick on August 25, he told them he had been in Guidry's apartment when he heard gunshots and he did not know what happened. Kendrick claimed that he saw a white Dodge Charger parked down the street, but he did not tell police who had been driving the car. Kendrick did not tell the police that Dupree had a gun or that he had been involved in a crime.

On February 21, 2018, Investigator Basa and the prosecutor met with Kendrick. Kendrick was "very hesitant" to speak with them, and Basa assured Kendrick they would not record the conversation. Kendrick told them defendant drove a white Dodge Charger just before the shooting, and defendant had showed Kendrick a rifle in a duffle bag that day. Basa served Kendrick with a subpoena; Kendrick said that he was afraid to testify and feared for his family's safety.

On March 5, 2018, Investigator Basa and the prosecutor met with Kendrick again. They assured him that their conversation was not being recorded and showed him the surveillance video.

After watching the video, Kendrick said there was no reason for him to lie. He said that defendant had been driving the white Dodge Charger on August 25, and defendant arrived at Guidry's apartment carrying a duffle bag. At some point, Dupree came into the apartment and said that Adams had shot at him. Defendant came out of Guidry's bedroom with a rifle and said he was going to "take care of this." Defendant, Kendrick, and Dupree left the apartment. When they reached the security gate, defendant "racked a round" and hid the rifle inside his pants. Kendrick and Dupree served as lookouts while defendant put the rifle in the white Dodge Charger. Kendrick also said that, after the shooting, he overheard defendant on the phone tell Guidry, "You know what I'm about, and tell everybody keep their mouth shut." Further, a day or two after the shooting, defendant threatened Kendrick's safety and told him he had to leave. Kendrick told Basa several times that he was afraid to come to court to testify, and he took defendant's threats seriously.

At trial, Kendrick said defendant showed up at Guidry's apartment on August 25. He remembered defendant asking for a cigarette but claimed he did not hear defendant say anything else. He never saw defendant put anything in the white Dodge Charger. He could not remember if he saw defendant with a rifle that day or if he had told Basa that he had seen defendant with a rifle. He could not remember if he told Basa that defendant said something like, "I'm about to take care of this once and for all," or if he told Basa that that defendant put the rifle in his pants and told Dupree and Kendrick to "keep a lookout" as they left the apartment. Kendrick did not remember telling Basa that defendant "racked a round." Kendrick testified that he was aware that surveillance video showed everything, and the video was "accurate." Kendrick also conceded that he was honest with the prosecutor and Basa when he spoke to them. He admitted that he lied several times when he first talked to police because he wanted to protect Dupree.

3. Milisa English's Statement and Testimony

On September 10, 2017, police interviewed Milisa English, defendant's ex-girlfriend, after she contacted them. English

said that, on the morning of August 25, while defendant was at her place, his "baby mama" called and told him something had happened. After the call, defendant said he was going to go "take care [of] this nigga," and left; he had a duffle bag containing an AK-4 7 rifle and a pistol in his car. When defendant returned a couple of hours later, he told English, "I think I killed that nigga." Defendant explained that the guy crashed his car, and defendant did not believe the guy would have crashed unless he was dying.

At trial, English testified that she lied to police about defendant's involvement in the shooting because she had been upset about seeing him with another woman. She confirmed that she broke up with defendant because she caught him at a casino with another woman. After her interview with police, the FBI gave English \$2,000 to relocate from her apartment in Hayward.

The Defense Case

Me'Ya Swazeere, Dean's daughter, testified that she heard gunshots and a car crashing on August 25, and she saw a black Volvo speeding up the street. Investigator Stannard drove three different routes to see how far a person could get in twenty-one seconds from the intersection of 89th Avenue and Olive Street, and then marked his stopping points on a chart for the jury to view.

REASONS FOR GRANTING THE PETITION

I. The Exclusion of Petitioner and His Counsel from an Ex Parte Hearing Violated Petitioner's Rights to be Personally Present, to Counsel at All Stages of the Proceedings and to Due Process of Law.

This Court should grant review because the Supreme Court erred in finding that the exclusion of Petitioner and his counsel from an an *ex parte* hearing regarding discovery of a critical witness did not deprive Petitioner of his

rights to be personally present, to counsel at all critical stages of the proceedings, and to due process of law. The Court should have held this was in violation of Petitioner's Fifth, Sixth, and Fourteenth Amendment rights. This is an issue of great importance, given the facts of the case, and this Court is called upon to settle this important question of law.

A. The Trial Court Erred in Conducting a Portion of the P.C. 1054.7 Hearing Ex Parte

Petitioner was denied his right to be personally present and to be represented by counsel at all critical stages of the proceedings when the trial court conducted an *ex parte* hearing concerning Kendrick. A defendant "is entitled to the assistance of counsel at all critical stages of the proceedings under the Sixth Amendment of the United States Constitution." (*People v. Stewart* (1983) 145 Cal.App.3d 967, 972.) There is an absolute right to counsel in felony cases. (*Gideon v. Wainwright* (1963) 372 U.S. 335.) Cases interpreting the *Gideon* ruling have held that a defendant is entitled to counsel at every stage of the proceedings where a substantial right may be affected. (*United States v. Wade* (1967) 388 U.S. 218, 224; *Mempha v. Rhay* (1967) 389 U.S. 128, 134.) A defendant's right to effective assistance of counsel encompasses the investigations stage of the proceedings and so the right to counsel during the discovery stage certainly constitutes a critical stage of a criminal trial.

The accused has the right to be personally present “at any stage of the criminal proceedings that is critical to its outcome if [his] presence would contribute to the fairness of the procedure.” (*Kentucky v. Stincer* (1987) 482 U.S. 730, 745; *People v. Bradford* (1997) 15 Cal.4th 1229, 1357.)

In the instant case, the prosecution filed a motion pursuant to P.C. 1054.7. The Court held an *ex parte* hearing with respect thereto. As noted in Petitioner’s Motion for New Trial:

Prior to trial on February 21, 2018, the prosecutor and his DA Inspector met with Kendrick Riley in the District Attorney’s Office and interviewed him. In this initial interview, Mr. Riley, for the first time, gave statements that were highly incriminating to defendant, including stating that he had seen defendant in possession of an assault weapon on the day of the shooting. Thereafter, Riley met with the District Attorney and his Inspector again and was more specific, telling them that just prior to the shooting, defendant said that he planned to “take care of” the victim, and then armed himself with an assault rifle prior to leaving the apartment. Mr. Riley’s interview was not recorded.

Prior to trial, while in the trial court, the prosecution sought and obtained an order that defense counsel not reveal to anyone, including the defendant, the existence and/or contents of the statements obtained from Mr. Riley. Over defense counsel’s objection, the order was made pursuant to Penal Code 1054.7, and based upon an allegation that defendant would do harm to the witness. The order was lifted two days prior to jury selection. (2CT273).

Notably, the trial court rendered its ruling on the matter based on *ex parte* comments made by the prosecutor. The trial court stated, “And so I’ll order, as I said, that the statement be disclosed but restricted in terms of its

disclosure.” It was only after this pronouncement that the trial court invited counsel for the Petitioner to “make any statements or comments for the record.” (1RT29-30). Specifically, the trial court stated:

And so I'm finding that there has been a sufficient showing made in that regard with respect to this witness. And so I'll order, as I said, that the statement be disclosed but restricted in terms of its disclosure.

So, Mr. Bequette, if you want to make any statements or comments for the record, you certainly may. (1RT29-30).

It is clear that the Court had made up its mind *prior* to hearing from defense counsel. It is also clear that trial counsel was unaware of the specifics of what was discussed during the *ex parte* portion of the hearing. Trial counsel stated, “in reviewing Mr. Ford’s declaration, and I don’t know whether this declaration was supplemented by any remarks that he made in camera...” (1RT30).

P.C. 1054.7 provides in pertinent part that, “[u]pon the request of any party, the court may permit a showing of good cause for the denial or regulation of disclosures, or any portion of that showing, to be made in camera.” The plain wording of P.C. 1054.7 provides for “in camera” hearings and does not authorize *ex parte* hearings. The terms “in camera” and “*ex parte*” are not synonymous.

Black’s Law Dictionary defines “in camera” as:

1. In the judge's private chambers. 2. In the courtroom with all spectators excluded. 3. Of a judicial action taken when court is not in session. (Black's Law Dictionary (11th ed. 2019).)

Black's Law Dictionary defines "*ex parte*" as:

2. A motion made to the court without notice to the adverse party; a motion that a court considers and rules on without hearing from all sides. (Black's Law Dictionary (11th ed. 2019).)

P.C. 1054.7 does not permit the prosecution to obtain an *ex parte* order or to appear alone in the judge's chambers to obtain P.C. 1054.7 relief. The exclusion of counsel from an *ex parte* hearing is prejudicial per se. The essence of a "critical stage" in a proceeding does not turn on whether it bears a formal resemblance to a trial. Rather, it turns on the adversarial nature of the proceeding along with the possibility that a defendant will be prejudiced in a significant way by the absence of counsel. (*United States v. Leonti* (2003) 326 F.3d 1111 [citing *United States v. Wade* (1967) 388 U.S. 218 228-229].) Here, the *ex parte* hearing was most definitely a critical stage of the proceeding. And Petitioner was prejudiced by having his counsel excluded from a portion thereof.

The absence of counsel during this critical stage constitutes a "structural defect" and is per se reversible error. (*United States v. Gonzalez Lopez* (2006) 548 U.S. 140, 148.) As the Court held in *Roe v. Flores-Ortega* (2000) 528 U.S. 470, "[t]he complete denial of counsel during a critical stage of a judicial

proceeding mandates a presumption of prejudice.” In the instant case, counsel was excluded during a critical stage and so a *per se* reversal is required. (*Perry v. Leeke* (1989) 488 U.S. 272, 277-80.)

The exclusion of Petitioner and his counsel from the *ex parte* hearing rendered the trial fundamentally unfair in violation of Mr. Seales’ Fifth, Sixth and Fourteenth Amendment rights to be personally present, to counsel at all critical stages of the proceedings, and to due process of law. The Court should grant review on this important issue of law.

II. The Order Preventing Defense Counsel from Revealing to Petitioner the Existence of a Statement Obtained from Kendrick Riley, Pursuant to P.C. 1054.7 Violated Petitioner’s Rights to Fair Trial, to Present a Defense and to Due Process of Law.

This Court should grant review because the Supreme Court should have found that the trial court abused its discretion in issuing an order that defense counsel not reveal to Petitioner the existence of a statement obtained from Kendrick Riley pursuant to P.C. 1054.7. This was in violation of Petitioner’s Fifth, Sixth and Fourteenth Amendment rights to a fair trial, to present a defense and to due process. This is an important question of law.

A. The Trial Court Abused its Discretion in Issuing an Order Pursuant to P.C. 1054.7

On February 21, 2018, prior to the commencement of trial, the prosecution and an inspector from the District Attorney’s office met with Kendrick Riley and interviewed him. (6RT578) Kendrick asserted that he had

seen Petitioner in possession of an assault weapon on the day of the shooting. (6RT580, 585-587). On March 5, 2018, Kendrick met with the prosecution and his inspector a second time. This time, he told them that right before the shooting, Petitioner stated that he planned to “take care of” Deandre Adams and that he armed himself before leaving the apartment. (2CT273). These interviews were not recorded. (2CT273). Prior to these interviews, Kendrick made no mention of Petitioner during statements to the police. (2CT274).

Before the commencement of trial, the prosecution obtained a court order precluding defense counsel from revealing to anyone, including the Petitioner, the existence and/or contents of Kendrick’s statements. (2CT273). This court order, which was issued pursuant to P.C. 1054.7, and based on an allegation that Petitioner would harm the witness, was granted over defense counsel’s objections. (2CT273) The order was only lifted two days prior to jury selection, thus depriving Petitioner from properly preparing for trial. (2CT273). It was only on March 13, some nineteen days after Kendrick’s statement and just one week prior to the commencement of trial, that the prosecution even provided defense counsel with a summary of Kendrick’s statement. (2CT274). Given that trial was set to start in less than one week, defense counsel was unable to locate or interview Kendrick prior to trial. (2CT274). This was highly prejudicial in circumstances where Kendrick’s testimony was devastating to Petitioner.

P.C. 1054.7 states:

The disclosures required under this chapter shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. “Good cause” is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement.

Upon the request of any party, the court may permit a showing of good cause for the denial or regulation of disclosures, or any portion of that showing, to be made in camera. A verbatim record shall be made of any such proceeding. If the court enters an order granting relief following a showing in camera, the entire record of the showing shall be sealed and preserved in the records of the court, and shall be made available to an appellate court in the event of an appeal or writ. In its discretion, the trial court may after trial and conviction, unseal any previously sealed matter.

“Under the due process clause of the Fourteenth Amendment to the United States Constitution, the prosecution has a duty to disclose all substantial material evidence favorable to an accused, including evidence bearing on the credibility of a prosecution witness; the duty exists whether or not the evidence has been requested, and it is violated whether or not the failure to disclose is intentional.” (*People v. Hayes* (1990) 52 Cal.3d 577, 611.) The purpose of this disclosure is to facilitate the ascertainment of truth and is based on the fact that an accused is entitled to a fair trial and an intelligent

defense based on all relevant and reasonably accessible information. (*Clinton K. v. Superior Court* (1995) 37 Cal.App.4th 1244, 1247.)

P.C. 1054.5 empowers a Court to make any lawful order and gives the Court the discretion to instruct the jury on the prosecution's failure to comply with disclosure, including excluding the evidence.

P.C. 1054.7 states that "Good cause is limited to threats of possible danger to the safety of a witness, possible destruction or loss of evidence, or possible compromise of other investigations."

Here, the trial court granted the prosecution's motion precluding defense counsel from sharing information about Kendrick to Petitioner. The trial court's decision ran afoul of well-entrenched principles of criminal discovery and violated Petitioner's Sixth and Fourteenth Amendment rights to confront and cross-examine Kendrick. (*Alfred v. United States* (1931) 282 U.S. 687.)

The Court made it clear in *Reid v. Superior Court* (1997) 55 Cal.App.4th 1326, 1336, that a trial court simply cannot fashion an alternative discovery process unless it has been shown that there is a sufficient danger of harassment, threats, or harm to the witness. To the extent that there was any evidence that Kendrick had been threatened or harassed, no sufficient evidence was ever presented in defense counsel's presence. (1RT30). Thus, the standard enumerated in *Reid* was simply not satisfied. There simply was no sufficient evidence that Kendrick was in danger. (Appendix A, at p. 14).

As noted in the preceding section, the trial court made its ruling before ever giving defense counsel an opportunity to voice his objections. Specifically, the trial court stated:

And so I'm finding that there has been a sufficient showing made in that regard with respect to this witness. And so I'll order, as I said, that the statement be disclosed but restricted in terms of its disclosure.

So, Mr. Bequette, if you want to make any statements or comments for the record, you certainly may. (1RT29-30).

Defense counsel objected to the order due to the vague allegations set out in the prosecutor's declaration which made vague and generalized remarks. For example, the declaration stated:

The witness is in danger as a result of the defendant's known associates and the defendant's threats regarding this incident. (1RT30).

The declaration failed to describe these alleged threats. The declaration also stated that "the defendant and these associates have engaged in numerous violent acts." Equally vague was a paragraph in the declaration which stated that "the defendant has repeatedly divulged information about this case to his associates and relatives." The declaration also stated that "the defendant has repeatedly described witnesses as snitching or lying on him to his associates." (1RT30-31).

Petitioner was incarcerated prior to trial. And, as counsel stated on the record, there was scant evidence provided in the discovery as to these vague

and conclusory allegations. (1RT30-32). The prosecution simply failed to provide specifics.

Simply stated, the prosecution failed to prove that Petitioner, or anyone on his behalf, made any efforts to threaten or harass Kendrick. The trial court allowed the prosecution to withhold discovery from the Petitioner based purely on a purported generalized fear, without any actual threats. Thus, the Court abused its discretion by restricting discovery from the Petitioner in accordance with P.C. 1054.7. As the Court stated in *United States v. Cook* (1979) 608 F.2d 1175, 1180:

As a general rule, a witness belongs neither to the government nor to the defense. Both sides have the right to interview witnesses before trial. *Callahan v. United States*, 371 F.2d 658 (9th Cir. 1967); *United States v. Long*, 449 F.2d 288 (8th Cir. 1971), Cert. denied, 405 U.S. 974, 92 S.Ct. 1191, 31 L.Ed.2d 247 (1972). Exceptions to this rule are justifiable only under the “clearest and most compelling circumstances”. *Dennis v. United States*, 384 U.S. 855, 86 S.Ct. 1840, 16 L.Ed.2d 973 (1966). Where there is no overriding interest in security, the government has no right to interfere with defense access to witnesses. *Gregory v. United States*, 125 U.S.App.D.C. 140, 369 F.2d 185 (1966), Cert. denied, 396 U.S. 865, 90 S.Ct. 143, 24 L.Ed.2d 119 (1969).

In the result, the prosecution failed to meet its burden of showing “actual rather than conjectural threats to the witness’ safety.” (*People v. Benjamin* (1975) 52 Cal.App.3d 63, 74.)

In fact, Kendrick testified that Petitioner had never threatened him. Moreover, no one anyone related or associated with Petitioner ever threatened him. (10RT989-990).

Petitioner was prejudiced by the Court's ruling in circumstances where defense counsel was unable to locate or interview Kendrick prior to trial and Petitioner was unable to assist defense counsel in refuting Kendrick's false statements. (2CT274).

The trial court's order preventing defense counsel from revealing Kendrick Riley's statements to Mr. Seales was an abuse of discretion that rendered the trial fundamentally unfair in violation of Mr. Seales' Fifth, Sixth and Fourteenth Amendment rights to a fair trial, to present a defense, and to due process of law. The Court should grant review of this issue.

III. Trial Counsel was Ineffective by Failing to Object to Inadmissible Evidence about Uncharged Crimes in Violation of Petitioner's Rights to a Jury Trial, to Counsel and to Due Process of Law

This Court should grant review because the Supreme Court should have held that trial counsel provided ineffective assistance of counsel when he failed to object to inadmissible evidence about uncharged crimes. This was in violation of Petitioner's Fifth and Fourteenth Amendment rights to a jury trial, to counsel, and to due process.

A. Trial Counsel Provided Ineffective Assistance under Federal and State Standards when he Failed to Object to Inadmissible Evidence about Uncharged Crimes.

At trial, the prosecution elicited testimony from Milisa English that Petitioner had committed an uncharged armed robbery of a local Target store and that he had gotten away with tens of thousands of dollars. She saw the robbery video on the news, so she knew that she “could add on to it to make him go to jail.” (5RT385). Defense counsel stated on the record that he was not objecting to this statement because he reasoned that this statement would cast doubt on her credibility. Specifically, he stated:

Strategically, strategically, from that statement by Miss English, that mentions selling weed and a Target robbery -- -- as well as the charged murder offense. I hope to convey to the jury that she was reaching for straws and -- -- and making grandiose claims and sort of – with the understanding that the prosecution is not going to seek to admit any evidence that Mr. Seales did commit any crimes other than the ones that he's currently charged with. (6RT597).

Simply stated, trial counsel’s decision, viewed in conjunction with his explanation, constitute ineffective assistance of counsel. This is doubly true in circumstances where counsel failed to object when the prosecution played Milisa’s interview with police for the jury. (6RT569). Between 4:22:13 and 4:33:48, Milisa told police that Petitioner was part of an armed robbery at Target and that she heard the planning of the robbery. Milisa also stated that Petitioner’s father was in prison for life for murder. She further stated, “I know Troy had the guns” and that she could tell it was Petitioner in the picture. (Exhibit 9). These statements were incredibly prejudicial to Petitioner. The

prejudice was further compounded when Sergeant Zhou testified that he followed up with that portion of Milisa's statement, that there was a robbery at Target, and that based on his investigation, it appeared as though "an assault rifle or AK-style rifle was used in that Target robbery." (7RT667). Sergeant Zhou's testimony should have been anticipated by defense counsel.

Counsel's representation in this regard fell below an objective standard of reasonableness, as judged by prevailing professional norms. Both the Sixth Amendment of the United States Constitution and Article I, section 15 of the California Constitution guarantee Petitioner the right to effective assistance of counsel. Petitioner was entitled to the "reasonably competent assistance of an attorney acting as his diligent, conscientious advocate." (*People v. Ledesma*, (1987) 43 Cal.3d 171, 215; see also *Strickland v. Washington* (1988) 466 U.S. 668.)

In evaluating whether Petitioner demonstrated that he was deprived of his constitutional right to the effective assistance of counsel, the Court must look at trial counsel's explanation on the record for counsel's actions. In doing so, "the court must inquire whether the explanation demonstrates that counsel was reasonably competent and acting as a conscientious, diligent advocate." (*People v. Pope* (1979) 23 Cal.3d 412, 425.) While a court's review is deferential in nature, "[d]eference is not abdication'... [and] must never be used to insulate counsel's performance from meaningful scrutiny..." (*People v. Ledesma*, *supra*,

43 Cal.3d, at 217). In order to establish that counsel was ineffective, “a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case.” (*Strickland v. Washington*, supra, 466 U.S., at 694.) It requires a “significant but something-less-than-50 percent likelihood of a more favorable verdict.” (*People v. Howard* (1987) 190 Cal.App.3d 41, 48). Of course, the failure to object to inadmissible evidence may constitute ineffective assistance of counsel. (*People v. Williams* (1971) 22 Cal.App.3d 34, 50.)

The Courts have recognized that uncharged conduct may be highly prejudicial, hence why the Supreme Court has cautioned that evidence of other offenses should only be received with “extreme caution” and after the trial court conducts a careful weighing of the evidence under Evidence Code section 352.

As the Court stated in *People v. Thomas* (1978) 20 Cal.3d 457:

[W]e have said that “[other-crime] evidence should be received with ‘extreme caution,’” that relevancy and admissibility of the evidence “must be examined with care,” and “if its connection with the crime charged is not clearly perceived, the doubt should be resolved in favor of the accused.” [Citations.] [A]lthough the admission of other offenses is essentially a discretionary matter, “that discretion must in all cases be exercised within the context of the fundamental rule that relevant evidence whose probative value is outweighed by its prejudicial effect should not be admitted.” [Citations.]

(*People v. Thomas*, supra, 20 Cal.3d at 466-467; accord *People v. Sam* (1969) 71 Cal.2d 194, 203; *People v. Schader* (1969) 71 Cal.2d 761, 774-776.)

In the present case, evidence of the uncharged crimes was far too prejudicial to be admissible and defense counsel was ineffective for allowing

evidence of the Target robbery to be introduced. It defies credulity to believe that the jury could have somehow restricted itself from using information from the Target robbery and other uncharged conduct which was introduced to the jury by way of Milisa's testimony for improper purposes.

This evidence was highly inflammatory and prejudicial and violated Petitioner's rights to due process and a fair jury trial as protected by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Counsel's explanation for failing to object was neither compelling nor defensible. (6RT597).

Defense counsel was patently ineffective for failing to ensure that highly prejudicial evidence of the Target robbery never reached the jury. The wrongful introduction of this highly damaging evidence "undermine[s] confidence in the outcome." (*Strickland v. Washington*, supra, 466 U.S., at 694.) Absent counsel's failings, "the result would have been more favorable to [Petitioner]." (Id. at 687.)

Resultingly, the ineffective assistance provided by trial counsel constituted a denial of Petitioner's Fifth, Sixth and Fourteenth amendment rights to a fair jury trial, to counsel and to due process of law. The Court should grant review of this issue.

CONCLUSION

Petitioner respectfully requests that this Honorable Court grant review.

Date: August 20, 2021

/s/

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CERTIFICATE OF COMPLIANCE

No.

Troy Seales,

Petitioner,

v.

The People of the State of California,

Respondent.

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains fewer than 6,674 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d). I declare under penalty of perjury that the foregoing is true and correct.

Date: August 20, 2021

/s/

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APPENDIX A

Filed 2/26/21

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

TROY SEALES,

Defendant and Appellant.

A155975

(Alameda County
Super. Ct. No. 17CR026867)

A jury convicted defendant Troy Seales of murder and shooting at an occupied vehicle. He contends that the trial court committed reversible error because it restricted the pretrial disclosure of a key witness's statements to defendant under Penal Code¹ section 1054.7. He further claims the trial court erred in conducting the good cause hearing resulting in the restricted disclosure order in camera on an ex parte basis. Defendant finally argues that his trial counsel rendered ineffective assistance of counsel. Finding no merit in defendant's contentions, we shall affirm the judgment.

I. BACKGROUND

The Alameda County District Attorney filed an information charging defendant with the murder of Deandre Adams on or about August 25, 2017

¹ All further statutory references are to the Penal Code unless otherwise indicated.

(§ 187, subd. (a) (count one)) and shooting at an occupied motor vehicle (§ 246 (count two)). The information alleged that defendant personally and intentionally discharged a firearm and caused great bodily injury and death (§§ 12022.53, subds. (c), (d), 12022.7, subd. (a)), and personally used a firearm (§ 12022.5, subd. (a), 12022.53, subds. (b), (g)). A jury found defendant guilty as charged. The trial court denied defendant's motion for a new trial, and it sentenced defendant to a total term of 50 years to life in prison. Defendant appealed.

A. The Prosecution's Case

On August 11, 2017, defendant's sister used her Hertz Rental Car employee discount to rent a white Dodge Charger, and she listed defendant as an additional driver.

In August 2017, Doneisha Guidry lived with her mother, her two children, and Mercedes Tanner in a two-bedroom apartment located on 89th Avenue near Olive Street in Oakland, California. Guidry's cousins, Kendrick Riley and his younger brother, Dupree Riley,² often hung out at her apartment.

On August 24, 2017, Kendrick, his son, and his son's mother stayed in the living room of Guidry's apartment. In the morning of August 25, 2017 (August 25), Deandre Adams broke Guidry's car windows. After the vandalism, defendant, the father of Guidry's children, came to her apartment in a white Dodge Charger. Kendrick testified that defendant appeared that morning, and, at some point, he saw that defendant had a duffle bag. Tanner, Dupree, Dupree's girlfriend, and Naja Sims-Harris (a cousin of Guidry, Kendrick, and Dupree) were also at Guidry's apartment on August

² We will refer to Kendrick and Dupree Riley by their first names to distinguish them.

25. At some point, Tanner, Sims-Harris, and Dupree walked to the corner store. Tanner testified that there were gunshots while they were at the store, and she saw a green Honda. Sims-Harris pushed Tanner into the store, and Tanner called Guidry to ask if defendant could pick her up. Tanner was not sure whether Dupree was inside or outside of the store when she called Guidry. Sims-Harris testified that Dupree left and did not come into the store with the two women.

Kendrick testified that, after leaving to go to the store with his two cousins, Dupree returned to Guidry's apartment and said that something happened at the store. Defendant, Kendrick, and Dupree walked out of the apartment together. Kendrick testified that he and Dupree ran to the store to check on their cousins, and Dupree carried a gun that fired blanks.

Defendant picked up Tanner and Sims-Harris at the store in the white Dodge Charger and dropped them back at Guidry's apartment. He then left. At about the time defendant dropped off Tanner and Sims-Harris, Kendrick and Dupree returned on foot. Kendrick, Dupree, and Sims-Harris spoke outside of the apartment building with Dupree's girlfriend, who was in her car. Kendrick, Dupree, and Sims-Harris heard gunshots. Sims-Harris heard about four gunshots, saw a dark green Honda driving fast on Olive Street, and ran into the apartment. Kendrick and Dupree ran towards the gunshots, but when they heard additional gunshots, they ran back to the apartment.

Around 10:20 a.m. on August 25, Damien Jackson was driving his black Audi on 89th Avenue and turned left off of 89th Avenue onto Olive Street. After he turned left onto Olive Street, he heard gunshots. He looked in his rearview mirror and saw a man shooting an AK-style rifle in his direction and a green car driving fast behind him. Jackson made a quick left turn onto

90th Avenue and looked over his shoulder. The driver of the green car was slumped, and the car was drifting to the right.

Around 10:20 a.m. on August 25, from her mother's house on the intersection of 89th Avenue and Olive Street, Megan Thompson looked out the window and saw a man shooting an assault rifle. Thompson described the shooter as a thin male about five feet, six or seven inches tall, having short black hair, lighter skin color (possibly Hispanic), and wearing a black shirt and baggy blue jeans.

Swazeere Dean, an EMT, lived near the crime scene. On August 25 around 10:20 a.m., his daughter woke him up and said that someone had been shot and crashed their car. Dean rendered assistance to Adams, who was in the crashed car and had two bullet holes through his chest.

Police recovered fourteen 7.62 rifle shell casings on Olive Street between 88th and 89th Avenues and a bullet fragment from a car parked on Olive Street and 89th. Criminalist Mark Bennet examined the bullet fragment and shell casings and determined that they were consistent with having been fired from an AK-47 assault rifle or an SKS-type rifle. Inspector Hawks, an expert on cell phone data analysis, determined that the cell phone defendant had been using moved north from Hayward to San Leandro and into Oakland near the crime scene between 9:00 a.m. and 10:18 a.m. on August 25. At 10:27 a.m., the cell phone pinged off a tower at 10850 MacArthur in Oakland and then moved southward to Hayward until 11:08 a.m.

1. Video Surveillance Evidence

The prosecutor showed surveillance video from the morning of August 25. The first video was recovered from 2036 89th Avenue and it showed both 89th Avenue and the parking lot in front of Guidry's apartment building.

The video showed Adams vandalizing Guidry's car. It also showed that, sometime later that morning, defendant parked a white Dodge Charger outside the apartment building, got out, and walked to the apartment building carrying a dark bag in his right hand.

The video then captured Dupree, Tanner, and Sims-Harris leaving the apartment, and subsequently showed Dupree running back into the apartment. Very shortly thereafter, defendant, Kendrick, and Dupree left the apartment together. Kendrick and Dupree looked around, defendant looked around, and defendant got into the driver's side of his car and drove in the direction of the corner store. Dupree then went back inside the apartment and came back out. At that point, Kendrick and Dupree ran down the street in the direction that defendant had driven. A couple minutes later, defendant returned in the white Dodge Charger, dropped off Tanner and Sims-Harris, and drove off. Surveillance video captured Damien Jackson driving his black Audi on 89th Avenue behind defendant as defendant pulled back onto the road after dropping the women off. Kendrick and Dupree then returned on foot and spoke with Dupree's girlfriend, who had pulled up on 89th Avenue in front of the apartment building. Kendrick and Dupree then suddenly took off running, again in the direction that defendant had driven.

The prosecutor also played surveillance video taken from 2006 89th Avenue on August 25. At trial, Kendrick confirmed that this video depicted a white Dodge Charger that looked similar to the car defendant drove on August 25. The white car turned right onto Olive Street at the intersection of 89th Avenue and Olive Street about sixteen seconds after 10:20 a.m. Damien Jackson confirmed that this surveillance showed him driving behind the white car and turning left onto Olive Street approximately twenty seconds after 10:20 a.m. At approximately forty-two seconds after 10:20 a.m.,

Kendrick and Dupree are depicted running on 89th Avenue towards the corner of the intersection with Olive Street, and Dupree extends his arm in what appears to be a shooting motion with a blank firing gun.

2. Kendrick's Statements and Testimony

When the police detained Kendrick on August 25, he told them he had been in Guidry's apartment when he heard gunshots and he did not know what happened. Kendrick claimed that he saw a white Dodge Charger parked down the street, but he did not tell police who had been driving the car. Kendrick did not tell the police that Dupree had a gun or that he had been involved in a crime.

On February 21, 2018, Investigator Basa and the prosecutor met with Kendrick. Kendrick was "very hesitant" to speak with them, and Basa assured Kendrick they would not record the conversation. Kendrick told them defendant drove a white Dodge Charger just before the shooting, and defendant had showed Kendrick a rifle in a duffle bag that day. Basa served Kendrick with a subpoena; Kendrick said that he was afraid to testify and feared for his family's safety.

On March 5, 2018, Investigator Basa and the prosecutor met with Kendrick again. They assured him that their conversation was not being recorded and showed him the surveillance video. After watching the video, Kendrick said there was no reason for him to lie. He said that defendant had been driving the white Dodge Charger on August 25, and defendant arrived at Guidry's apartment carrying a duffle bag. At some point, Dupree came into the apartment and said that Adams had shot at him. Defendant came out of Guidry's bedroom with a rifle and said he was going to "take care of this." Defendant, Kendrick, and Dupree left the apartment. When they reached the security gate, defendant "racked a round" and hid the rifle inside

his pants. Kendrick and Dupree served as lookouts while defendant put the rifle in the white Dodge Charger. Kendrick also said that, after the shooting, he overheard defendant on the phone tell Guidry, “You know what I’m about, and tell everybody keep their mouth shut.” Further, a day or two after the shooting, defendant threatened Kendrick’s safety and told him he had to leave. Kendrick told Basa several times that he was afraid to come to court to testify, and he took defendant’s threats seriously.

At trial, Kendrick said defendant showed up at Guidry’s apartment on August 25. He remembered defendant asking for a cigarette but claimed he did not hear defendant say anything else. He never saw defendant put anything in the white Dodge Charger. He could not remember if he saw defendant with a rifle that day or if he had told Basa that he had seen defendant with a rifle. He could not remember if he told Basa that defendant said something like, “I’m about to take care of this once and for all,” or if he told Basa that that defendant put the rifle in his pants and told Dupree and Kendrick to “keep a lookout” as they left the apartment. Kendrick did not remember telling Basa that defendant “racked a round.” Kendrick testified that he was aware that surveillance video showed everything, and the video was “accurate.” Kendrick also conceded that he was honest with the prosecutor and Basa when he spoke to them. He admitted that he lied several times when he first talked to police because he wanted to protect Dupree.

3. Milisa English’s Statement and Testimony

On September 10, 2017, police interviewed Milisa English, defendant’s ex-girlfriend, after she contacted them. English said that, on the morning of August 25, while defendant was at her place, his “baby mama” called and told him something had happened. After the call, defendant said he was going to

go “take care [of] this nigga,” and left; he had a duffle bag containing an AK-47 rifle and a pistol in his car. When defendant returned a couple of hours later, he told English, “I think I killed that nigga.” Defendant explained that the guy crashed his car, and defendant did not believe the guy would have crashed unless he was dying.

At trial, English testified that she lied to police about defendant’s involvement in the shooting because she had been upset about seeing him with another woman. She confirmed that she broke up with defendant because she caught him at a casino with another woman. After her interview with police, the FBI gave English \$2,000 to relocate from her apartment in Hayward.

B. The Defense Case

Me’Ya Dean, Swazeere Dean’s daughter, testified that she heard gunshots and a car crashing on August 25, and she saw a black Volvo speeding up the street. Investigator Stannard drove three different routes to see how far a person could get in twenty-one seconds from the intersection of 89th Avenue and Olive Street, and then marked his stopping points on a chart for the jury to view.

II. DISCUSSION

A. Pretrial Disclosure under Section 1054.7

Under criminal discovery rules, the prosecution must disclose to the defendant “[r]elevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial.” (§ 1054.1, subd. (f).) These disclosures must be made at least thirty days before trial “unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information [to be disclosed] becomes known to, or comes into the possession of, a party within

thirty days of trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. ‘Good cause’ is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement. [¶] Upon the request of any party, the court may permit a showing of good cause for the denial or regulation of disclosures, or any portion of that showing, to be made in camera. A verbatim record shall be made of any such proceeding.” (§ 1054.7.)

Pursuant to section 1054.7, the trial court ordered that defendant, but not his counsel, would be restricted from seeing a summary of Kendrick’s statements. Defendant argues that his exclusion and his counsel’s exclusion from the in camera hearing to determine the existence of good cause violated his right to counsel and to due process of law under the federal Constitution. He also argues that the trial court abused its discretion in finding good cause for the restricted disclosure based on threats or possible danger to Kendrick and asserts that the prejudice he suffered therefrom requires reversal of the judgment. Defendant’s claims lack merit.

1. Additional Background

On February 21, 2018 and March 5, 2018, Kendrick made oral, unrecorded, statements to Investigator Basa and the prosecutor, and Investigator Basa later drafted a detailed summary of these statements. On March 13, 2018, the prosecutor filed a section 1054.7 motion seeking to restrict the disclosure of Kendrick’s statements to defendant and his counsel, or, alternatively, to preclude disclosure to defendant on the ground that Kendrick’s safety was endangered. The prosecutor asked the court to conduct an in camera review of Investigator Basa’s report of Kendrick’s statements to make its decision.

The trial court held an in camera hearing without defendant or his counsel on March 13. Immediately thereafter, the court conducted a hearing in open court with all parties. The court asked if defense counsel was willing to waive defendant's presence for the proceeding, and defense counsel did so. The trial court stated that it had conducted an in camera hearing, and, based on its review of the summary of Kendrick's statements, the prosecutor's declaration supporting the motion, and the prosecutor's comments in camera, the court intended to order the disclosure of the summary of Kendrick's statements with the restriction that defense counsel not reveal its contents to defendant. The trial court stated that this would allow defense counsel to work with his investigator to prepare for trial.

Defense counsel raised a number of objections to the court's intended ruling, arguing that the prosecutor failed to establish a sufficient threat or danger to Kendrick. Defense counsel noted that he was "in the dark" to some extent because he had not read Kendrick's statements. The prosecutor stated that he was not requesting an indefinite restriction, and he intended to concede that defense counsel could speak to defendant about the statements closer to trial. The prosecutor stated that many of the incriminating facts in the case were reflected in other evidence, including the statement of another witness and surveillance video. Additionally, the prosecutor clarified that he had obtained the bulk of the information in the summary of Kendrick's statements from the March 5 interview, his investigator then left the country for five days, and the prosecutor brought the motion as soon as Investigator Basa returned and authored his report. The prosecutor also clarified that he had called defense counsel the week before, told him that he intended to bring the section 1054.7 motion, and told defense counsel that the witness was Kendrick. Defense counsel confirmed that the prosecutor's comments on

the timing and substance of the disclosure were accurate, and he had no issue with the notice.

After hearing argument, the trial court stated that it understood that defense counsel was “in the dark to an extent,” because he had not reviewed Kendrick’s statements. Thus, the trial court invited defense counsel to provide further argument on the issue and check in with the court on Friday, March 16, if he thought it necessary after he read the summary but ruled that disclosure to defendant would be restricted for the time being. The trial court ordered the in camera hearing be sealed and the prosecutor’s filing be kept in a confidential envelope in the court file. On March 16, three days before the beginning of jury selection, the trial court lifted its restriction on disclosure.³

2. Defendant Has Not Established Prejudicial Error

We first address defendant’s argument that his exclusion from the in camera hearing violated his constitutional rights to counsel and to due process of law under the federal Constitution. (U.S. Const., 6th & 14th Amends.) “ ‘ “Under the Sixth Amendment, a defendant has the right to be personally present at any proceeding in which his appearance is necessary to prevent ‘interference with [his] opportunity for effective cross-examination.’ [Citations.] Due process guarantees the right to be present at any ‘stage . . . that is critical to [the] outcome’ and where the defendant’s ‘presence would contribute to the fairness of the procedure.’ ” ’ ” (*People v. Thompson* (2016) 1 Cal.5th 1043, 1098 (*Thompson*).)

³ In defendant’s motion for a new trial, defendant states that the order was lifted two days prior to jury selection. Jury selection began on Monday, March 19, so Friday, March 16 was the last day the court was in session before the March 19 date.

Initially, it appears that defendant forfeited his challenge by failing to object and obtain a ruling in the trial court. Defense counsel received prior notice of the March 13 hearing and was present in court that day. The court's minute order reflects that the hearing began at 9:41 a.m. with all counsel present, and counsel conferred with the court in chambers. At 10:26 a.m., the court granted the prosecutor's request and conducted an in camera hearing. After the in camera hearing, at 10:39 a.m., the court went on the record in open court. Defense counsel objected to the court issuing an order restricting disclosure of Kendrick's statements to his client because the prosecutor's declaration did not show that Kendrick was in danger. Defense counsel did not object to the court having conducted the in camera hearing with the prosecutor. Further, the prosecutor stated for the record that, the week before the hearing, he had informed defense counsel that he intended to file a motion under 1054.7 related to Kendrick. Defense counsel again did not object to the ex parte in camera review, and he confirmed that he had no issue with the prosecution's notice. Defendant forfeited his constitutional challenges by failing to object that the in camera hearing should not have been held on an ex parte basis. (*People v. Valdez* (2012) 55 Cal.4th 82, 121–125 (*Valdez*) [defendant appeared to forfeit challenge that he was denied the right to counsel and due process by ex parte in camera hearings under section 1054.7 by failing to raise the issue below].)

In any event, even if defendant preserved the challenge for appeal, reversal would not be warranted. “Contrary to defendant’s assertion, even where a court errs in proceeding ex parte, the error is not reversible per se.” (*Valdez, supra*, 55 Cal.4th at p. 125.) In *Valdez*, our Supreme Court held that prejudicial error review applies to evaluation of alleged federal constitutional violations resulting from the conduct of ex parte in camera hearings under

section 1054.7. (*Id.* at pp. 125–126.) In *Thompson*, our Supreme Court reviewed for prejudicial error a claim that the defendant’s constitutional rights to counsel and to due process were violated by the conduct of an ex parte hearing regarding the discovery of letters in a co-defendant’s possession, and ultimately found no prejudice. (*Thompson, supra*, 1 Cal.5th at p. 1098.)

Likewise, we perceive no prejudice on the record before us. Defense counsel was given a detailed summary of Kendrick’s statements on March 13, and he enlisted the assistance of his investigator to interview Kendrick. Although defendant’s investigator could not locate Kendrick because Kendrick apparently had no stable residence, defendant does not challenge the timing of the prosecution’s initial disclosure of Kendrick’s statements in this appeal, and counsel’s inability to locate Kendrick did not result from the court’s order restricting disclosure of Kendrick’s statements to defendant for a few days.

Nor do we perceive reversible error in defense counsel’s inability to discuss Kendrick’s statements with defendant for a short period of time. On March 16, three days before jury selection, the trial court lifted the order restricting disclosure. Opening statements and the presentation of evidence began on March 27, and Kendrick testified on March 27 and 28, giving defense counsel ample time to discuss Kendrick’s statements with defendant. At the March 13 hearing, the trial court informed defense counsel that he could seek to revisit the restricted disclosure order if counsel felt it was necessary once he reviewed the summary of Kendrick’s statements. Defendant did not ask for a continuance or raise any further objections to the court’s ruling after the prosecution disclosed the summary to him on March 13, indicating that counsel was able to effectively prepare for trial. Indeed,

review of the record shows that defense counsel thoroughly cross-examined Kendrick about his statements and used surveillance video to point out inconsistencies with these statements. There was thus no prejudicial error under state or constitutional standards. (See *Valdez, supra*, 55 Cal.4th at p. 128.)

Defendant next argues the trial court abused its discretion in finding good cause to restrict disclosure of Kendrick's statements. Specifically, he claims that the vague, generalized assertions regarding danger to Kendrick in the prosecutor's declaration did not establish good cause. We reject defendant's argument because the trial court's order is presumed correct, and defendant failed to provide an adequate record demonstrating error. (*People v. Garza* (2005) 35 Cal.4th 866, 881 [the trial court's order is presumed correct, and it is appellant's burden to demonstrate error]; *People v. Chubbuck* (2019) 43 Cal.App.5th 1, 13 [rejecting the defendant's sentencing challenge where he failed to provide an adequate record].) The trial court relied on the prosecutor's in camera statements, Investigator Basa's summary of Kendrick's statements, and the prosecutor's declaration in making its good cause ruling. Defendant cites to the public hearing transcript where his counsel discusses some of the prosecutor's declaration, and he augmented the record to include the sealed transcript of the in camera hearing. But the record does not contain Investigator Basa's summary of Kendrick's statements or the prosecutor's declaration. Defendant thus fails to establish error in the court's ruling. In any event, even if we were to assume the court abused its discretion, for the reasons set forth above, the error was harmless under any standard.

B. Ineffective Assistance of Counsel

Defendant argues that his trial attorney rendered ineffective assistance of counsel by not objecting to the introduction of Milisa English's statement that defendant robbed a Target store. We disagree.

1. Additional Background

In her September 10 statement to police, in addition to the information she provided regarding the shooting, English disclosed that defendant robbed a Target store with three others and got away with \$60,000. At trial, English reluctantly testified because she understood that she could be arrested if she did not testify. She claimed that she had fabricated everything that she told the police on September 10, including her allegations about the Target robbery, a robbery she saw on the news and thought she could "add on" to make defendant's situation worse. She lied because she wanted defendant to go to jail. The prosecutor asked if English would be considered a snitch if she had been truthful with the police, and she confirmed that was the case. English's statement was played to the jury, including the part about the Target robbery.

After English's statement was played, outside of the jury's presence, the trial court, the prosecutor, and defense counsel discussed her statement with respect to the Target robbery. Defense counsel stated that, with the understanding that the prosecutor was not going to seek to introduce evidence of uncharged crimes, he had not objected to playing this part of English's statement because his strategy was to argue that English had been "reaching for straws" and making up "grandiose" claims. The prosecutor stated for the record that, pursuant to the parties' agreement, he had deleted English's reference to defendant having been in federal prison. He also confirmed that he did not intend to introduce any evidence regarding the

Target robbery other than to ask one of the officers who interviewed English “whether he had followed up in identifying the people who Miss English makes reference to.”

2. Analysis

To establish ineffective assistance, a defendant must show counsel’s performance was “deficient, in that it fell below an objective standard of reasonableness under prevailing professional norms.” (*People v. Mai* (2013) 57 Cal.4th 986, 1009.) Reviewing courts defer to counsel’s reasonable tactical decisions in examining a claim of ineffective assistance of counsel, and there is a presumption that counsel’s conduct falls within the wide range of reasonable professional assistance. (*Ibid.*) Courts should not second-guess reasonable, if difficult, tactical decisions in the “harsh light of hindsight.” (*People v. Scott* (1997) 15 Cal.4th 1188, 1212 (*Scott*).) Counsel’s decisionmaking must be evaluated in the context of the circumstances at the time. (*Ibid.*) To establish ineffective assistance, a defendant must also show “resulting prejudice, i.e., a reasonable probability that, but for counsel’s deficient performance, the outcome of the proceeding would have been different.” (*Mai*, at p. 1009.) A reasonable probability is one sufficient to undermine confidence in the outcome. (*Scott*, at pp. 1211–1212.)

Defendant does not satisfy his burden of showing his trial counsel made a tactical decision that fell below an objective standard of reasonableness. English testified that she lied to the police, and the prosecutor began her testimony by introducing evidence that she tried to leave the courthouse that day and had to be handcuffed, she did not want anything to do with the trial, and she had received a threatening message calling her a snitch. The prosecutor clearly intended to show that English was lying on the stand but had told the truth in her interview, and defense counsel needed to show the

opposite. Counsel had reviewed English's statement, and he believed that what it conveyed about the Target robbery would be of use to show that English was not credible in her interview. We are not in a position to second-guess counsel's impressions of how a jury would receive English's statement. Defense counsel also highlighted English's "outlandish tales" to police in his closing argument and emphasized that there was no evidence that defendant robbed Target. He obtained the prosecutor's agreement that he would not present evidence or argue that defendant committed the robbery, and the court instructed the jury that they could only consider English's statements about the robbery to evaluate her credibility. On this record, defense counsel made a reasonable tactical decision that we will not second-guess "in the harsh light of hindsight." (*Scott, supra*, 15 Cal.4th at p. 1212.)

Defendant also fails to show prejudice. His prejudice argument depends on the assumption that jurors would have relied on the robbery to conclude that defendant was a person of bad character who therefore committed the murder. The fallacy in this argument is that English's statement provided the only evidence that defendant robbed Target, and, in that same statement, she provided strong evidence that defendant killed Adams. Thus, any credence the jurors placed in the evidence of the robbery depended entirely on their acceptance of the veracity of English's statement. If jurors did not believe English was truthful about what she told police regarding the shooting, it is unlikely they would have believed her statement about the robbery. There was also strong additional evidence of defendant's guilt, including Kendrick's statements to Investigator Basa, the shells and bullet fragments recovered, the surveillance showing the events outside of Guidry's apartment leading to the time of the shooting, Damien Jackson's testimony, and the surveillance video of Jackson and defendant driving down

89th Avenue just before the shooting and turning in opposite directions onto Olive Street. Defendant thus has not shown that it is reasonably probable that English's statements about the robbery improperly led the jury to conclude that defendant was a bad person and therefore committed the charged crimes.

III. DISPOSITION

The judgment is affirmed.

BROWN, J.

WE CONCUR:

STREETER, ACTING P. J.
TUCHER, J.

People v. Seales (A155975)

APPENDIX B

SUPREME COURT
FILED

MAY 26 2021

Court of Appeal, First Appellate District, Division Four - No. A155975

Jorge Navarrete Clerk

S268066

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

TROY SEALES, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 11500 W. Olympic Blvd., Suite 400 Los Angeles, CA 90064.

On August 20, 2021, I served a true and correct copy of the within Petition for Review on all interested parties listed below by transmitting to all interested parties a true copy thereof as follows:

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District Attorney's Office
1225 Fallon Street, Suite 900
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Via US Mail

Office of the Attorney General
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Alameda County
For delivery to the Honorable
Kevin Murphy
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I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 20, 2021, at Los Angeles, California.

/s/

Michael Alfi