

HALL OF JUSTICE  
190 W. HEDDING STREET  
SAN JOSE, CA 95110

PEOPLE VS.

L.K.A.

JUDGE

REPORTER

DEF. ATTY.

CHARGES

KENT TAYLOR

GENERAL DELIVERY

PALO ALTO, CA 94303

HON. JOSE S. FRANCO

RECORDER

PUBLIC DEFENDER

M (001) PC417(A) (1)

DATE

CLERK

HEARING

AGENCY

STATUS

08/22/2017 9:00AM

08/14/1959

D CRISWELL

JURY TRIAL

CN-043AM-501

O - WP

APO

CASE NO.

CEN

C1522785

15524172

DEPT.

50

BFJ251

-CLARK

17AP002265

TW

VIOLATION DATE

09/09/2015

NEXT APPEARANCE

☒ Defendant Present ☐ Not Present

☐ Arr'd ☐ Adv ☐ Arr Wav ☐ Amend Comp/Info ☐ Arr ☐ Plea ☐ IDC ☐ PTC ☐ Prob / Sent

☐ PC977 ☐ Filed ☐ On File ☐ Repr. Adv / Wav ☐ Bail/ OR/ SORP ☐ Rect Dr Rpt ☐ FAR/ ERC

☐ NG ☐ Entered by CRT ☐ NGBRI / Adv ☐ PSet ☐ Prelim ☐ Readiness ☐ S / B MTC

☐ Denies Priors/ Allegations/ Enhancements/Refusal ☐ Further ☐ CT ☐ Peo / Def Wav Jury

☐ TW ☐ TNW ☐ TW / WD ☐ TW Sentence ☐ Ref'd ☐ PC SAD

☐ Rel / Appt PD / ADO / IDO ☐ Con Decl ☐ Adm A / F ☐ APO / DADS/ Prop 36 ☐ P36 Re-Assmt

☐ Relieved ☐ Appt'd ☐ Crim Proc Susp ☐ Rein ☐ Status Hrg

☐ ~~Relieved~~ ☐ ~~Appt'd~~ ☐ Doubt Decl Pursuant PC 1368

☐ Granted ☐ Denied ☐ Submitted ☐ Off Cal ☐ Subm on Report ☐ Found

☐ Stip to Comm ☐ Drs. Appointed ☐ Max Term ☐ Committed

☐ Prelim Wav ☐ Certified to General Jurisdiction ☐ MDA / COM Amended to

☐ Amended to ☐ (M) VC12500(a) / VC23103(a) ☐ Pur VC23103.5 ☐ DA Stmt Filed

PLEA Conditions: ☐ None ☐ No State Prison ☐ PC17 after 1 Yr Prob ☐ Includes VOP

☐ Jail / Prison Term of ☐ Dismissal / Striking

☐ Adv Max Pen / Parole / Prob / Immig / Appeal ☐ Reg HS11590/PC290/PC457.1/PC186.30

☐ Wav Right to ☐ Counsel ☐ Court / Jury Trial ☐ Subpoena / Confront / Examine Witnesses

☐ COP ☐ GUILTY ☐ NOLO CONTENDERE to charges & admits enhancements / allegations / priors

☐ Prop 36 Granted / Unamenable / Refused / Term ☐ DEJ Eligibility Filed ☐ DEJ Granted / Rein / Term

☐ Waives Referral ☐ APO Full Rpt ☐ CR110 issued ☐ Fines/Fees Pay to: ☐ APO

☐ Sent Suspended ☐ PROBATION DENIED ☐ COUNT

☐ PROBATION ☐ Execution ☐ Imposition of sentence suspended for probation period

☐ COURT ☐ FORMAL PROBATION GRANTED for 1 Days / Mos (Yrs)

☐ Report to APO within Days ☐ Terminated ☐ Upon Release

☐ Perform 240 Hrs Volunteer Work as directed PO (SAP) in lieu of fine/jail

☐ Not drive w/o valid DL & Ins ☐ Adv VC23600 ☐ HTO ☐ Re-refer

☐ MOP ☐ FOP ☐ 12 hrs ☐ 3 mos ☐ 9 mos ☐ Enroll within days

☐ DL Susp/ Restr'd/ Rvk'd for ☐ IID Not/Ordered/ Rmv'd Term Yrs

☐ No contact with victim or family / co-defts unless appr by APO ☐ PC1202.05

☐ DVPO issued / mod / term'd Exp ☐ Victim Present

☐ No Contact ☐ Peaceful Contact ☐ DSA thru APO / DOR / CRT ☐ Filed

☐ Not own/possess deadly weapons ☐ Destroy/return weapon

☐ Stay away from ☐ MURKIN BARNHART

☐ Submit Search/Testing ☐ Educ/Voc Tmg/Emp ☐ No alcohol / drugs or where sold

☐ Substance Abuse, Psych, Theft, Anger Mgmt, DV, Parenting cns / prgm

☐ PC296 (DNA) ☐ PC1202.1 HIV Test / Education

VOP: ☐ Wav ☐ Arr'd ☐ Admits/Denies Viol ☐ Court Finds VOP / No VOP

Prob Rein / Mod / Term'd / Revoked / Remains Revoked / Ext to

☐ Original Terms & Conditions Except as Amended herein

☐ Co-terminous with ☐ No Further Penalties / Reviews

Other: ☐ As determined by APO/Court ☐ Referred to VWAC ☐ Collect Civilly

JAIL/PRISON

☐ See Attachm't Pg

☐ CDCR/Parole collect restit from Def's earnings

☐ Blended Sentence

☐ Violation

☐ Prison Term / Yrs

☐ Enhancement / Priors

Count

F/M

Yrs / Styd / Strkn

HRS / DAYS / MOS

County Jail

30 DAYS

240 HRS

Enhancement

Yrs/S

Enhancement

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**CR-132****Notice of Appeal  
(Misdemeanor)****Instructions**

- This form is only for appealing in a misdemeanor case. You can get other forms for appealing in a civil or infraction case at any courthouse or county law library or online at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).
- Before you fill out this form, read *Information on Appeal Procedures for Misdemeanors* (form CR-131-INFO) to know your rights and responsibilities. You can get form CR-131-INFO at any courthouse or county law library or online at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).
- You must file this form no later than 30 days after the trial court issued the judgment or order you are appealing (see rule 8.853(b) of the California Rules of Court for very limited exceptions). If your notice of appeal is late, the court will not take your appeal.
- Fill out this form and make a copy of the completed form for your records.
- Take or mail the completed form to the clerk's office for the same trial court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

**1 Your Information****a. Appellant (the party who is filing this appeal):**Name: KENT TAYLORStreet address: 265 CAMBRIDGE AVE. P.O. BOX 6115 PARO AVE, CA. 94306  
Street City State ZipMailing address (if different): SAME AS ABOVE  
Street City State ZipPhone: (415) 573-6636 E-mail (optional): NO E-MAIL**b. Appellant's lawyer (skip this if the appellant is filling out this form):**

The lawyer filling out this form (check (1) or (2)):

(1) ☐ was the appellant's lawyer in the trial court. (2) ☐ is the appellant's lawyer for this appeal.Name: N/A State Bar number: N/AStreet address: N/A  
Street City State ZipMailing address (if different): N/A  
Street City State ZipPhone: ( ) E-mail (optional): N/AFax (optional): ( )

Clerk stamps date here when form is filed.

**FILED**

SEP 21 2017

Clerk of the Court

Superior Court of CA County of Santa Clara

BY Tran Tran DEPUTY

You fill in the name and street address of the court that issued the judgment or order you are appealing:

Superior Court of California, County of  
SANTA CLARA HALL OF JUSTICE  
190-200 WEST HEDDING STREET  
SAN JOSE, CA. 95110.

You fill in the number and name of the trial court case in which you are appealing the judgment or order:

Trial Court Case Number: 6151785Trial Court Case Name:  
The People of the State of Californiav. KENT TAYLOR

The clerk will fill in the number below:

Appellate Division Case Number: TBD  
**17A P002265**

THE PEOPLE OF THE STATE OF CALIFORNIA  
 Trial Court Case Name: V. KENT TAYLOR

Trial Court Case Number: 4922785

**2 Judgment or Order You Are Appealing**

I am/My client is appealing (check one):

- a. ☐ the final judgment of conviction in this case (Penal Code section 1466(2)(A)).  
 The trial court issued (rendered) this judgment on (fill in the date): \_\_\_\_\_
- b. ☒ an order that denied a motion to suppress evidence in this case (Penal Code section 1538.5(j)).  
 The trial court issued this order on (fill in the date): MOTION IN LIMINE, 8/21/2017. (APPENDIX)
- c. ☐ an order made after judgment in this case that affects an important right of mine/my client (for example, an order after a probation violation) (Penal Code section 1466(2)(B)).  
 The trial court issued this order on (fill in the date): \_\_\_\_\_
- d. ☒ other action (describe the action you are appealing and give the date the trial court took the action):  
THE FINAL JUDGMENT AND THE SENTENCE OR THE PUNISHMENT THAT THE COURT IMPOSED, AND ALSO OTHER RULINGS MADE BY THE TRIAL COURT BEFORE FINAL JUDGMENT.

**3 Record of the Oral Proceedings**

(See form CR-131-INFO for information about the record of the oral proceedings.)

(Check a or b):

- a. ☐ I have attached a completed Notice Regarding Record of Oral Proceedings (Misdemeanor) (form CR-134).
- b. ☒ I have not attached a Notice Regarding Record of Oral Proceedings (Misdemeanor) (form CR-134). I understand that I must file this notice in the trial court within either: (1) 20 days after I file this notice of appeal; or, if it is later, (2) 10 days after the court decides whether to appoint a lawyer for me (if I file a request for a court-appointed lawyer within 20 days after I file my notice of appeal). I also understand that if I do not file the notice on time, the court will not be able to consider what was said in the trial court in deciding whether an error was made in the trial court proceedings.

**4 Court-Appointed Lawyer**

- a. I/My client ☒ was ☐ was not represented by the public defender or another court-appointed lawyer in the trial court. NIKITA SAUNI, ATTORNEY AT LAW, DEPUTY PUBLIC DEFENDER.
- b. I am/My client is (check (1) or (2)):
- (1) ☒ asking the court to appoint a lawyer to represent me/my client in this appeal. I have completed Request for Court-Appointed Lawyer in Misdemeanor Appeal (form CR-133), and attached it to this notice of appeal.
- (2) ☐ not asking the court to appoint a lawyer to represent me/my client in this appeal.

**REMINDER**—Except in the very limited circumstances listed in rule 8.853(b), you must file this form no later than 30 days after the trial court issued the judgment or order you are appealing in your case. If your notice of appeal is late, the court will not take your appeal.

Date: SEPTEMBER 21, 2017

KENT TAYLOR

Type or print your name

[Signature]  
 Signature of appellant or attorney

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

PLAINTIFF: THE PEOPLE OF THE STATE OF CALIFORNIA

DEFENDANT: KENT TAYLOR

MISDEMEANOR

NOTICE OF FILING NOTICE OF APPEAL  
(APPELLATE DIVISION)

**FILED**

SEP 27 2017

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY B. Yolles DEPUTY

CASE NUMBER: C1522785

**17AP002265**

PLEASE TAKE NOTICE THAT A NOTICE OF APPEAL FROM THE 08/22/2017  
IN THE ABOVE-ENTITLED ACTION WAS FILED IN THIS OFFICE ON SEPTEMBER 21, 2017  
THE DEFENDANT WAS REPRESENTED BY APPOINTED COUNSEL: ☒ Yes ☐ No

**CLERK'S CERTIFICATE OF MAILING**

I CERTIFY THAT I AM NOT A PARTY TO THIS CAUSE AND THAT A TRUE COPY  
OF THIS DOCUMENT WAS MAILED FIRST CLASS POSTAGE FULLY PREPAID  
IN A SEALED ENVELOPE ADDRESSED AS SHOWN BELOW AND THE  
DOCUMENT WAS MAILED AT

SEP 27 2017

REBECCA FLEMING, COURT CLERK

BY: B. Yolles  
B. YOLLES DEPUTY CLERK

SAN JOSE, CALIFORNIA ON \_\_\_\_\_

APPELLATE DIVISION  
SUPERIOR COURT OF CALIFORNIA  
191 N. FIRST STREET  
SAN JOSE, CA 9513

KENT TAYLOR  
265 CAMBRIDGE AVE  
P.O. BOX 61165  
PALO ALTO, CA 94306

D.D.A.  
70 W. HEDDING ST.  
W. WING, 6TH FLOOR  
SAN JOSE, CA 95110

**FILED**  
JAN 17 2020

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY R. ARAGON DEPUTY

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA  
APPELLATE DIVISION**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

KENT TAYLOR,

Defendant and Appellant.

No. 1-17-AP-002265

Trial Ct. No. C1522785

OPINION

Appellant Kent Taylor was convicted by his no contest plea of one count of brandishing a deadly weapon, a misdemeanor. The trial court suspended imposition of sentence and placed Taylor on one year of court probation with a 30-day county jail term, converted to 240 hours in the Sentencing Alternative Program. Taylor filed a timely notice of appeal.

Taylor's appointed counsel on appeal filed an opening brief that stated the case and asked this court to conduct an independent review of the record to determine whether there are any arguable issues, as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Taylor filed a timely supplemental brief, which will be discussed in further detail below. He also filed a later "amendment" to his supplemental brief, which was done without leave of court but which we

1 have also considered. After reviewing the entire record, we find no reasonably arguable issues  
2 on appeal. Accordingly, we affirm.

3 STATEMENT OF THE CASE

4 I. *Factual Background*<sup>1</sup>

5 On September 9, 2015, M.B. boarded an Amtrak train at the San Jose station for a trip  
6 to Sacramento. She saw Taylor board the same train and sit about two rows in front of her.  
7 After the train began moving. Taylor stood up and looked at M.B. with "an 'angry look on his  
8 face[.]'" Taylor pointed a large pair of scissors at M.B. and "violently" clipped the air with  
9 them three to four times while making eye contact with M.B. M.B. informed the conductor of  
10 Taylor's behavior and the conductor ordered Taylor off of the train. Officers detained Taylor  
11 and recovered a pair of scissors from a pat-down search. Taylor was cited and released at the  
12 scene.

13 II. *Procedural Background*

14 Taylor was charged via misdemeanor complaint with one count of brandishing a deadly  
15 weapon, in violation of Penal Code section 417, subdivision (a)(1).<sup>2</sup> The Office of the Public  
16 Defender was appointed to represent him.

17 On July 7, 2016, Taylor moved to represent himself and the court granted Taylor's  
18 request and relieved the Public Defender. Taylor also requested standby counsel, which  
19 request was denied. While representing himself, Taylor made a multitude of motions, nearly  
20 all of which were denied except a motion to compel discovery, which was granted. And the  
21 court on its own motion appointed an investigator to assist Taylor in the preparation of his  
22 case. On July 24, 2017, Taylor informed the court that he wished to again be represented by  
23 counsel and the court re-appointed the Public Defender's Office.

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27 <sup>1</sup> As no trial or evidentiary hearings were held in the instant case, the facts are taken as  
28 background and for context from the police report.

<sup>2</sup> All further undesignated statutory references are to the Penal Code.

1 On August 22, 2017, at his jury trial, and against the advice of counsel, Taylor  
2 expressed that he wanted to resolve the case. He completed a General Waiver and Plea Form,  
3 which included advisements about the waiver of specific constitutional rights by the entry of a  
4 no contest plea. Taylor initialed each box indicating that he understood his rights and was  
5 waiving them. The court engaged Taylor in voir dire concerning waiver of his rights and the  
6 indicated sentence and Taylor confirmed his understanding of both. He pleaded no contest as  
7 charged based on the indicated sentence from the court. The court suspended imposition of  
8 sentence and placed Taylor on one year of court probation, converted to 240 hours in the  
9 Sentencing Alternative Program. Defense counsel objected a search and seizure condition, and  
10 the court did not impose that.

11 Taylor filed a timely notice of appeal. His appointed counsel filed an opening brief  
12 under *Wende, supra*, 25 Cal.3d 436. Taylor was notified of his right to submit written  
13 argument on his own behalf, and he timely submitted a supplemental brief. His counsel  
14 waived oral argument in advance and accordingly did not appear for the scheduled oral  
15 argument. Taylor appeared but only after the case had been called and submitted on the  
16 record. As Taylor is represented by counsel on appeal, he was not permitted to orally argue  
17 his case. After the case was submitted, Taylor filed an "amendment" to his supplemental brief  
18 in which he requested that we review the trial court's denial of one of his motions made  
19 below. We have considered both of Taylor's supplemental briefs in the course of our review.

#### 20 DISCUSSION

21 In his first supplemental brief, Taylor claims that an unnamed witness who was sitting  
22 near him on the Amtrak train did not see the incident reported that was reported to the police.  
23 He also argues that the police failed to collect this evidence and that the prosecution  
24 suppressed it with the meaning of *Brady v. Maryland* (1963) 373 U.S. 83. He asks this court  
25 to dismiss this case under Penal Code section 995.<sup>3</sup> We reject these contentions for a variety  
26 of reasons. First, there is no mention on the record of a person who observed the incident and  
27

28 <sup>3</sup> Section 995 provides for dismissal of an indictment or information under certain  
circumstances. Neither pleading was filed in this case, which is a misdemeanor case.

1 provided a statement that conflicted with that of the complaining witness. Our review is  
2 confined to the record on appeal. (*People v. Collie* (1981) 30 Cal.3d 43, 57 [scope of appellate  
3 review limited to “matters either preserved in the record or properly subject to judicial  
4 notice”].)

5 Second, as explained in *People v. Cisneros-Ramirez* (2018) 29 Cal.App.5th 393, 405,  
6 “ ‘a guilty plea constitutes an admission of every element of the offense charged and  
7 constitutes a conclusive admission of guilt. [Citation.] It waives a trial and obviates the need  
8 for the prosecution to come forward with any evidence. [Citations.] A guilty plea thus  
9 concedes that the prosecution possesses legally admissible evidence sufficient to prove  
10 defendant’s guilt beyond a reasonable doubt. Accordingly, a plea of guilty waives any right to  
11 raise questions regarding the evidence, including its sufficiency or admissibility, and this is  
12 true whether or not the subsequent claim of evidentiary error is founded on constitutional  
13 violations. [Citation.] By pleading guilty a defendant “waive[s] any right to question how  
14 evidence had been obtained just as fully and effectively as he waive[s] any right to have his  
15 conviction reviewed on the merits.” [Citation.]’ [Citation.]” (Italics added.) “A plea of no  
16 contest has the same legal effect as a guilty plea. [Citation.]” (*People v. Robinson* (1997) 56  
17 Cal.App.4th 363, 368; see also § 1016, subd. (3).)

18 Further, “[i]ssues concerning the defendant’s guilt or innocence are not cognizable on  
19 appeal from a guilty [or not contest] plea. [Citation.]” (*People v. Voit* (2011) 200 Cal.App.4th  
20 1353, 1364.) And, the essence of Taylor’s claims is “the unfair impact of suppressed or lost  
21 evidence on [his] opportunity to establish his innocence.” (*People v. Halstead* (1985) 175  
22 Cal.App.3d 772, 780.) Accordingly, Taylor’s no contest plea precludes an appeal based on the  
23 alleged errors he asserts. (*Id.* at p. 782.) This principle further applies to the issue raised in  
24 Taylor’s “amendment” to his supplemental brief.

25 We have independently reviewed the entire record, as required by *Wende, supra*, 25  
26 Cal.3d 436, and have found no reasonably arguable issues on appeal. Accordingly, we affirm.



DISPOSITION

The judgment is affirmed.

Williams, P.J.

WE CONCUR:

Nishigaya, J.

Colin, J.



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

DOWNTOWN COURTHOUSE  
191 NORTH FIRST STREET  
SAN JOSE, CALIFORNIA 95113  
CIVIL DIVISION

**FILED**  
JAN 17 2020

FILE COPY

RE: **People vs Kent Taylor**  
Case Number: **17AP002265 / C1522785**

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY R. ARAGON DEPUTY  
*[Signature]*

**PROOF OF SERVICE**

**Opinion After Oral Argument** was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

**DECLARATION OF SERVICE BY MAIL:** I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on January 17, 2020. CLERK OF THE COURT, by Rachel Aragon, Deputy.

cc: San Jose Facility - Criminal Santa Clara County Superior Court 191 N First Street San Jose CA 95113  
Anna L Stuart Sixth District Appellate Program 95 S Market St Suite 570 San Jose CA 95113  
Kaci R Lopez District Attorneys Office 70 W Hedding St West Wing 6th Floor San Jose CA 95110

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**FILED**  
FEB 28 2020

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY R. ARAGON DEPUTY

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA  
APPELLATE DIVISION**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

KENT TAYLOR,

Defendant and Appellant.

No. 2017-AP-002265

Trial Ct. No. C1522785

**ORDER DENYING ALL RELIEF**

Appellant Kent Taylor, through appointed counsel, appealed from the judgment of conviction by plea and filed a brief under *People v. Wende* (1979) 25 Cal.3d 436. Taylor was informed by his counsel of his right to file his own supplemental brief and he did so twice. On January 17, 2020, after having reviewed the entire record, including Taylor's two supplemental briefs, and having found no arguable issues of merit, we affirmed the judgment. After finality of our opinion as defined in rule 8.888(a)(1) of the California Rules of Court, on February 18, 2020, Taylor filed an "amended supplemental brief" and a "motion to set aside default"

1 asking us to accept the late filing of an amended supplemental brief, which is Taylor's third  
2 submission. Also on February 18, 2020, Taylor filed a petition to transfer the appeal to the  
3 Sixth District Court of Appeal. Then, on February 24, 2020, he filed a "motion to set aside  
4 default" asking us to accept the late filing of his petition to transfer the appeal.

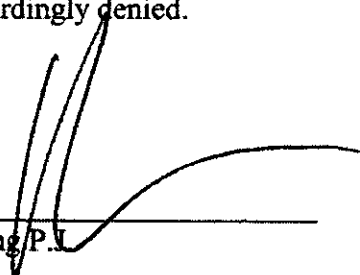
5 As our opinion has now become final (Cal. Rules of Court, rule 8.888(a)(1)), we are  
6 not in a position to either accept any of Taylor's belated requests or to modify our opinion as  
7 issued. Nor would we accept a supplemental brief filed so far after the opinion was issued.  
8 (See Cal. Rules of Court, rule 8.882(a)(4).) Even if we were to treat the supplemental brief as  
9 a request for rehearing under Rules of Court, rule 8.889, it is untimely as rule 8.889(b)(1)(A)  
10 of the California Rules of Court requires the party to serve and file a request for rehearing  
11 within 15 days of the date that the opinion was sent to the parties, which here was January 17,  
12 2020. And, as the opinion affirming the judgment is now final, we are without jurisdiction to  
13 consider a petition for rehearing. (Cal. Rules of Court, rule 8.889(c) ["The time for granting or  
14 denying a petition for rehearing in the appellate division may not be extended. If the court  
15 does not rule on the petition before the decision is final, the petition is deemed denied"].)

16 Taylor also requests that we transfer the appeal to the Sixth District Court of Appeal  
17 under Rules of Court, rule 8.1005.<sup>1</sup> But this application is also untimely as rule  
18 8.1005(b)(1)(A) requires an application for certification to transfer to be filed within 15 days  
19 of the date the opinion was sent to the parties. Again, we are without jurisdiction to consider  
20 the application to certify the appeal because the opinion affirming the judgment is final. (Cal.  
21 Rules of Court, rule 8.1005(c) ["The appellate division may certify a case for transfer at any  
22 time after the record on appeal is filed in the appellate division and before the appellate  
23 division decision is final in that court"].)

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28 <sup>1</sup> In the caption of the request, Taylor appears to refer to Rules of Court, rule  
8.1006(a), which applies to the Court of Appeal. Later, he cites rule 8.1005(b)(3), which  
applies to the Appellate Division.

1 As our opinion in this case has become final, we are without authority to consider any  
2 of Taylor's requested relief. All such relief is accordingly denied.

3  
4  
5 DATED: 2/27/20

  
Williams, Acting P.I.

6  
7  
8  
9 DATED: 2/27/2020

  
Nishigaya, J.

10  
11  
12  
13 DATED: 2.27.20

  
Colin, J.



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**  
DOWNTOWN COURTHOUSE  
191 NORTH FIRST STREET  
SAN JOSE, CALIFORNIA 95113  
CIVIL DIVISION

**FILED**  
FEB 28 2020

FILE COPY

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY \_\_\_\_\_ DEPUTY

RE: **People vs Kent Taylor**  
Case Number: **17AP002265 / C1522785**

**R. ARAGON**

**PROOF OF SERVICE**

**Order Denying All Relief** was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

**DECLARATION OF SERVICE BY MAIL:** I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on February 28, 2020. CLERK OF THE COURT, by Rachel Aragon, Deputy.

cc: Kent Taylor PO Box 61165 Palo Alto CA 94306  
San Jose Facility - Criminal Santa Clara County Superior Court 191 N First Street San Jose CA 95113  
Anna L Stuart Sixth District Appellate Program 95 S Market St Suite 570 San Jose CA 95113  
Kaci R Lopez District Attorneys Office 70 W Hedding St West Wing 6th Floor San Jose CA 95110

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
KENT TAYLOR,  
Defendant and Appellant.

H047974  
Santa Clara County Super. Ct. Nos. AP002265, C1522785

BY THE COURT:

The petition for transfer is denied.

(Bamattre-Manoukian, Acting P.J., Mihara, J., and Danner, J.  
participated in this decision.)

Date: 07/17/2020

Patricia Bamattre Manoukian Acting P.J.

APRIL BOELK  
AUTOMATIC APPEALS SUPERVISOR



EARL WARREN BUILDING  
350 McALLISTER STREET  
SAN FRANCISCO, CA 94102  
(415) 865-7000

*Supreme Court of California*

JORGE E. NAVARRETE  
CLERK AND EXECUTIVE OFFICER  
OF THE SUPREME COURT

August 14, 2020

Mr. Kent Taylor  
P.O. Box 61165  
Palo Alto, CA 94306

Re: H047974 — People v. Kent Taylor

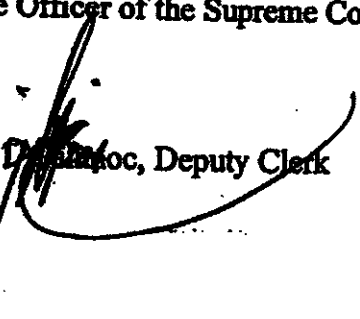
Dear Mr. Taylor:

Pursuant to California Rules of Court, rule 8.500(a), a party may file a petition in the Supreme Court for review of any decision of the Court of Appeal, including any interlocutory order, except the denial of a transfer of a case within the appellate jurisdiction of the superior court.

We hereby return your documents unfiled.

Very truly yours,

JORGE E. NAVARRETE  
Clerk and  
Executive Officer of the Supreme Court

By:  , Deputy Clerk

Enclosure



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KENT TAYLOR,  
Petitioner,

v.

PEOPLE OF THE STATE OF  
CALIFORNIA,  
Respondent.

Case No. 20-cv-06319-VC (PR)

**ORDER OF DISMISSAL WITH  
PREJUDICE; DENYING  
CERTIFICATE OF APPEALABILITY**

Kent Taylor filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his conviction in the Santa Clara County superior court. On November 4, 2020, the court issued an order of dismissal with leave to amend. In the order, the court noted that Taylor's petition indicated he was sentenced in August 2017 for approximately one year and his federal petition was filed on September 4, 2020. Under 28 U.S.C. § 2254(a), the federal writ of habeas corpus is only available to people "in custody" at the time the petition is filed (that is, incarcerated or under some other court-ordered restriction on freedom of movement). Because it appeared that Taylor was not in custody when he filed his petition, the court dismissed the petition with leave to amend.

Instead of filing an amended petition addressing the custody issue, Taylor filed several unresponsive motions. On January 12, 2021, the court issued an order denying the motions and allowing Taylor another opportunity to explain how he was in custody at the time he filed his petition. The order stated that Taylor did not have to amend his petition, but only to file a declaration explaining how he was in custody.

On March 9, 2021, Taylor filed a letter explaining the circumstances causing his late filing. Taylor states that, on August 17, 2017, he was convicted and sentenced to one year of probation, which ended on August 17, 2018. On June 18, 2018, while Taylor was on probation, he was injured in an automobile collision. This caused a delay in filing his petition. On December 20, 2018, Taylor was re-injured in another automobile collision, which caused another delay. Taylor has a history of lower back problems and pain. Then, starting in March 2019, the Covid-19 pandemic caused more delays. Taylor argues these “extrinsic” circumstances made it impossible for him “to file his petition within the required guidelines.”

28 U.S.C. § 2254(a) states:

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

Section 2254’s requirement that a petitioner must be in custody when he files a federal habeas petition is jurisdictional and, thus, cannot be waived. *See e.g., Maleng v. Cook*, 490 U.S. 488, 490-91 (1989) (“in custody” requirement not satisfied if sentence has already been served; petitioner must be in custody at time petition is filed); *Bailey v. Hill*, 599 F.3d 976, 978 (9th Cir. 2010) (“Section 2254(a)’s ‘in custody’ requirement is jurisdictional and therefore ‘it is the first question we must consider.’”). Taylor’s custody ended on August 17, 2018 and he filed his petition on September 4, 2020, over two years after his custody terminated. The fact that Taylor was in an automobile accident in June 2018 and in another accident in December 2018 cannot overcome the “in custody” requirement. The court knows of no case where the “in custody” requirement was waived because of such circumstances.

Taylor argues that 28 U.S.C. § 2254(b)(1)(B)(i) and (ii) gives the court jurisdiction over his petition even though he was not in custody when he filed it.

Section 2254(b)(1) states:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B) (i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

Taylor argues that because his state appeals process was procedurally unsuccessful, there is an absence of State corrective process for him and, thus, sections 2254(b)(1)(B)(i) and (ii) allow him to file his petition. Taylor misunderstands the purpose of section 2254(b). It applies to the requirement that a petitioner must first exhaust all of his habeas claims in state court before he files a federal petition. It does not address the "in custody" requirement at all and so does not supersede the "in custody" requirement.

Because Taylor was not in custody when he filed his petition, the court lacks jurisdiction over it. Therefore, the petition is dismissed. Dismissal is with prejudice because amendment would be futile.

A certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c). This is not a case in which "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel* 529 U.S. 472, 484 (2000). The Clerk shall terminate all pending motions, enter a separate judgment and close the file.

**IT IS SO ORDERED.**

Dated: June 30, 2021

  
\_\_\_\_\_  
VINCE CHHABRIA  
United States District Judge

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

APR 02 2021

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

KENT TAYLOR,

Petitioner - Appellant,

v.

PEOPLE OF THE STATE OF  
CALIFORNIA,

Respondent - Appellee.

No. 21-15231

D.C. No. 3:20-cv-06319-VC

U.S. District Court for Northern  
California, San Francisco

**MANDATE**

The judgment of this Court, entered March 11, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule  
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Rhonda Roberts  
Deputy Clerk  
Ninth Circuit Rule 27-7

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

DEC 19 2022

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

KENT TAYLOR,

Petitioner-Appellant,

v.

PEOPLE OF THE STATE OF  
CALIFORNIA,

Respondent-Appellee.

No. 21-16164

D.C. No. 3:20-cv-06319-VC  
Northern District of California,  
San Francisco

ORDER

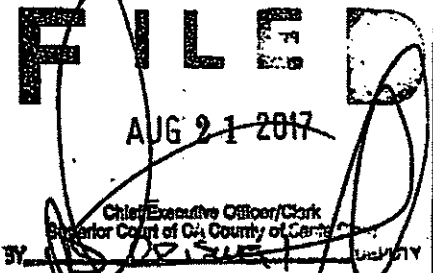
Before: SILVERMAN and BADE, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 5) is denied. *See*  
9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

1 LAW OFFICES OF THE PUBLIC DEFENDER  
2 MOLLY O'NEAL #150944  
3 NIKITA SAINI, #313538  
4 County of Santa Clara  
5 120 West Mission Street  
6 San Jose, CA 95110  
7 Telephone: (408) 299-7781  
8 nikita.saini@pdo.sccgov.org

9 *Attorneys for Kent Taylor*



10  
11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **IN AND FOR THE COUNTY OF SANTA CLARA**

13 PEOPLE OF THE STATE OF CALIFORNIA

NO: C1522785

14 Plaintiff,

DEFENDANT'S MOTIONS IN  
LIMINE

15 vs.

16 KENT TAYLOR ,

17 Defendant.

18 TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO THE DISTRICT  
19 ATTORNEY FOR SANTA CLARA COUNTY:

20 **DEFENSE WITNESS LIST:**

21 The defense reserve the right to call:

22 (1) All witnesses on the prosecution's witness list;

23 (2) Any witnesses required for impeachment of a prosecution witness

24 //

## MOTIONS IN LIMINE

Counsel may, through a motion in limine, seek an advance court ruling excluding certain evidence and a ruling forbidding any mention of or reference to certain evidence. (*Charbonneau v. Superior Court* (1974) 42 Cal.App.3d 505-507.) The subject matter of the motion in limine may relate to any matter which the court has the authority to exclude under the Evidence Code. (*Hinjak v. Gaymar* (1971) 4 Cal.3d 725; *C.E.B. California Civil Procedure During Trial*, section 6.47.) This motion may also be used to require the opponent to establish foundational facts in advance for admissibility. (*Hyatt v. Sierra Boat Company* (1978) 79 Cal.App.3d 325.)

Accordingly, the Defendant, Kent Taylor, moves the Court to issue the following evidentiary orders:

### I. ADVANCE RULINGS PERMITTED

Counsel may, through a motion in limine, seek an advance court ruling excluding certain evidence and a ruling forbidding any mention of or reference to certain evidence. (*Charbonneau v. Superior Court* (1974) 42 Cal.App.3d 505-507.)

### II. SUBJECT MATTER

The subject matter of the motion in limine may relate to any matter that the court has the authority to exclude under the Evidence Code. (*Hrnjak v. Gaymar* (1971) 4 Cal.3d 725; *C.E.B. California Civil Procedure During Trial*, section 6.47.) This motion may also be used to require the opponent to establish foundational facts in advance for admissibility. (*Hyatt v. Sierra Boat Company* (1978) 79 Cal.App.3d 325.)

### III. DEFENSE MOVES TO COMPEL THE PROSECUTION TO DISCLOSE ITS WITNESS LIST WITNESS STATEMENTS, AND BRADY MATERIAL. DISCOVERY REQUEST.

Pursuant to Penal Code section 1054.1, the prosecution is required to disclose names, addresses, and statements of witnesses it intends to on calling at trial. Such disclosure must occur 30 days before

1 trial unless good cause is shown. (Pen. Code., § 1054.7.) Pursuant to penal Code section 1054.5, the  
2 trial court has the authority to compel compliance of the discovery rules. The defense requests the  
3 following discovery pursuant to the agreement between counsel:

- 4 1) A stipulation of compliance with the standing discovery agreement between the District  
5 Attorney and the Public Defender Officers;
- 6 2) A witness list, as well as all *Brady* material;
- 7 3) Disclosure of all potentially exculpatory evidence favorable to the defendant, regardless of  
8 whether it relates directly to the issue of guilt, innocence, or matters relevant to punishment.  
9 (*People v. Rutherford* (1977) 14 Cal.3d 399.);
- 10 4) Disclosure of evidence relating to the witnesses to be called by the prosecution, which  
11 related to their credibility, veracity or character, to include prior convictions and past  
12 uncharged misdemeanor conduct. (*Ibid.*);
- 13 5) Review of all physical evidence;
- 14 6) Disclosure of any evidence of acts of misconduct committed by the defendant, which the  
15 prosecutor intends to offer into evidence;
- 16 7) Any other evidence, inculpatory or exculpatory, that the prosecution intends to admit into  
17 evidence in its case-in-chief or rebuttal.
- 18 8) Any impeachment information the prosecution intends to admit to use against Mr. Taylor,  
19 such that the defense may have an opportunity to be heard with respect to such evidence.  
20 (Evidence Code §402; *People v. Castro* (1985) 38 Cal.3d 301; *People v. Wheeler* (1992) 4  
21 Cal.4th 284; *People v. Beagle* (1972) 6 Cal. 3d 441, 453.)

22 GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_ MODIFIED \_\_\_\_\_

23 **IV. THE DEFENSE REQUESTS THAT THE COURT EXCLUDE THE**  
24 **TESTIMONY OF ANY WITNESSES THE PROSECUTION INTENDS TO**  
25 **CALL THAT WAS NOT PREVIOUSLY DISCLOSED TO THE DEFENSE**

26 Because the defense relies on the prosecution's witness list in formulating and preparing a defense,  
27 the court should exclude the testimony of witnesses not previously disclosed to the defense as late  
28 discovery. The defense has not had an opportunity to conduct its own investigation of those witnesses  
and has not had time to prepare given the late notice. As such, the defense requests the court deny the



1 prosecution from bringing forward witnesses not previously disclosed to the defense. If the court is  
2 inclined to allow the testimony of such witnesses, the defense requests a hearing outside of the jury  
3 under Evidence Code section 402.

4 GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_ MODIFIED \_\_\_\_\_  
5

6  
7 **V. DEFENSE REQUESTS DISCLOSURE OF ALL POTENTIALLY**  
8 **EXCULPATORY EVIDENCE TO THE DEFENSE, INCLUDING POLICE**  
9 **REPORTS AND OTHER DOCUMENTS PERTAINING TO ANY**  
10 **PROSECUTION WITNESS**

11 The prosecution has a duty to disclosure all evidence that is favorable to the defense that is  
12 material to guilt or punishment (*Brady v. Maryland* (1963) 373 U.S. 83.) This obligation includes all  
13 evidence that is exculpatory, mitigating, would reduce a penalty, or might be used to impeach a  
14 prosecution witness. (*Id.* at p. 88.) It covers all evidence that reasonably may help the defense, not just  
15 evidence that is likely to affect a verdict. (*People v. Morris* (1988) 46 Cal.3d 1, 30.) This requirement  
16 includes all records of any misdemeanor conduct by prosecution witnesses. (*People v. Santos* (1994)  
17 30 Cal.App.4<sup>th</sup> 169.)

18 The defense requests any and all police reports pertaining to convictions for crimes of moral  
19 turpitude the district attorneys' witnesses may have suffered. To date, the defense has not received  
20 such reports. The defense requests that such reports be provided immediately to the defense in  
21 compliance with *Brady* and Penal Code section 1054.1.  
22

23 GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_ MODIFIED \_\_\_\_\_  
24

25 **VI. THE DEFENSE MOVES TO EXCLUDE REFERENCE TO ANY PRIOR**  
26 **CONVICTION WHICH THE DEFENDANT HAS SUFFERED**

27 The defense requests that this court exercise its discretion pursuant to Evidence Code § 352 and  
28 exclude reference to any prior conviction suffered by Mr. Taylor. The trial court must weigh the

1 probative value of a prior conviction against its prejudicial impact and preclude its use to impeach the  
2 defendant if the risk of prejudice outweighs any probative value. (Evid. Code. § 352; *People v. Collins*  
3 (1986) 42 Cal.3d 378, 389; *People v. Castro* (1985) 38 Cal.3d 301, 306.) In determining the  
4 admissibility of the evidence, the court should consider (1) whether the prior conduct reflects on  
5 honesty; (2) whether it is near or remote in time; (3) whether it involved the same or substantially  
6 similar conduct for which the accused is on trial; and, (4) what effect admission would have on the  
7 defendant's decision to testify. (*People v. Beagle* (1972) 6 Cal.3d 441; *People v. Castro* (1985) 38  
8 Cal.3d 301; *People v. Collins* (1986) 42 Cal.3d 378.)

9 The defense anticipates the prosecution will seek to admit evidence of Mr. Taylor's prior  
10 convictions for a violation of:

- 11 - Penal Code Section 12021(a)(1), Felon with a Firearm in 1995
- 12 - Penal Code Section 242/243, Assault and Battery in 1994
- 13 - Penal Code Section 417(a)(1), Brandishing a Weapon in 1994
- 14 - Penal Code Section 245(a)(2), Assault with a Firearm in 1988

15 An analysis of the *Beagle* factors leads to the conclusion that these prior convictions should be  
16 excluded. First, none of these prior offenses reflect on honesty. Second, all of these offenses are over  
17 twenty years old making them remote in time. These prior offenses are similar to the offense Mr. Taylor  
18 is currently charged with and would affect Mr. Taylor's decision to testify due to their unduly  
19 prejudicial effect. In regards to Mr. Taylor's conviction for a violation of Penal Code Section 417(a)(1)  
20 in 1994, the defense believes that the jury would impermissibly use evidence this to lead to the  
21 conclusion that Mr. Taylor has a propensity for this type of conduct. The risk that the jury would  
22 erroneously use the evidence as propensity evidence is far too high and should be excluded. Therefore,  
23 the defendant respectfully requests the court exclude any mention of Mr. Taylor's prior convictions.

24 If the court allows these prior convictions, the defense requests that the court prevent the  
25 prosecution from using them in his opening or case in chief as they would only become admissible  
26 should Mr. Taylor testify. In addition, the defense requests the court only permit the prosecution to  
27 admit the fact of conviction itself and not the facts underlying the charge. (See, Cal.Evid. Code § 788;  
28 *People v. Wheeler* (1992) 4 Cal.4th 284)

1  
2 GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_ MODIFIED \_\_\_\_\_  
3

4 **VII. THE DEFENSE MOVES TO EXCLUDE ANY ADDITIONAL INFORMATION**  
5 **REGARDING BAD ACTS AS LATE DISCOVERY. IN THE ALTERNATIVE,**  
6 **DEFENSE REQUESTS A COURT ORDER THAT THE PROSECUTION BE**  
7 **REQUIRED TO DISCLOSE ALL INFORMATION IT INTENDS TO USE TO**  
8 **IMPEACH THE DEFENDANT.**

9 The court should not permit any admission of any additional convictions or bad acts as it would  
10 be late discovery. However, in the alternative, should the prosecution know of additional charged or  
11 uncharged misconduct not listed above, the defense hereby moves this Court for an order requiring the  
12 prosecution to disclose any impeachment evidence bearing on defendant's credibility and involving  
13 moral turpitude (i.e., felony convictions or the underlying conduct of misdemeanor convictions) that it  
14 intends to use against the defendant if the defendant elects to testify, such that the defense may have an  
15 opportunity to be heard with respect to such evidence. (Evid. Code § 402; *People v. Castro* (1985) 38  
16 Cal.3d 301; *People v. Wheeler* (1992) 4 Cal.4th 284; *People v. Beagle* (1972) 6 Cal.3d 441, 453.)

17 GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_ MODIFIED \_\_\_\_\_  
18

19 **VIII. DEFENSE MOVES TO EXCLUDE EVIDENCE OF ANY PRIOR BAD ACTS**  
20 **PURSUANT TO EVIDENCE CODE SECTIONS 1101 AND 352.**

21 Evidence code section 1101(a) prohibits the admission of "evidence of a person's character,"  
22 whether by opinion or reputation evidence, or evidence of specific instances of conduct to prove his or  
23 her conduct on a specified occasion. The rule exists to avoid placing the accused in a position of  
24 having to defend against acts or crimes for which he has not been charged and to guard against the high  
25 probability that evidence of other acts, having little bearing on the charges the accused currently faces,  
26 would unduly prejudice the defendant in the minds of the jury. (*People v. Nottingham* (1985) 172  
27 Cal.App.3d 484,495; *People v. Kelly* (1967) 66 Cal.2d 232, 239; *People v. Haston* (1968) 69 Cal.2d  
28 233, 244.)

The inherent danger in admitting such evidence to prove the defendant's conduct in the  
currently charged offense is that "[i]nvariably, it tempts the tribunal...to give excessive weight to the

1 vicious record of crime thus exhibited, and either to allow it to bear too strongly on the present charge,  
2 or to take the proof of it as justifying a condemnation irrespective of guilt of the present charge."  
3 (*People v. Alcala* (1984) 36 Cal.3d 604, 631; *People v. Guerrero* (1976) 16 Cal.3d 719, 724.)

4 While Evidence Code section 1101(a) provides a proscription against introducing evidence of  
5 other acts, Section 1101(b) makes admissible evidence of acts other than the crime charged that are  
6 relevant to prove some fact expressly at issue in the charged offense. The statute sets out the types of  
7 facts that may be in issue, and may be proven by evidence of other acts, including motive, opportunity,  
8 intent, preparation, plan knowledge, identity, or absence of mistake or identity.

9 Due to its high degree of inherent prejudice, evidence of other crimes must be examined with  
10 care. It should be received with extreme caution, and all doubts as to its connection with the crime  
11 charged must be resolved in favor of the accused. Moreover, because of its inflammatory impact, such  
12 evidence must be excluded (1) if it is not relevant to an issue expressly in dispute, (2) if it is merely  
13 cumulative with respect to other available evidence, or (3) it is more prejudicial than probative under all  
14 the circumstances. (Evid. Code § 352; *People v. Anderson* (1986) 43 Cal.3d 1104, 1136; *People v.*  
15 *Miranda* (1987) 44 Cal.3d 57, 82.)

16 Finally, it is well established that evidence of mere arrests is inadmissible because it is more  
17 prejudicial than probative pursuant to Evidence Code section 352. (*People v. Anderson* (1978) 20  
18 Cal.3d 647, 650-51; *People v. Lopez* (2005) 129 Cal.App.4<sup>th</sup> 1508, 1523; *People v. Gutierrez* (1957)  
19 152 Cal.App.2d 115,120; *Gruft v. City of Los Angeles* (1970) 2 Cal.3d 575, 590-92 [improper  
20 impeachment of a witness]; *People v. Blalock* (1965) 238 Cal.App2d 209, 224 [improper impeachment  
21 of a witness].)

22 Therefore, the defense moves to exclude any reference to Mr. Taylor's prior bad acts or prior  
23 arrest record pursuant to Evidence Code sections 1101(a) and 3502. Allowing such evidence to come in  
24 would be improper propensity evidence under Evidence Code section 1101(b). There is no indication  
25 any previous arrests or convictions would be admissible under Evidence Code section 1101(b).  
26 However, should the court rule that any prior offenses are admissible, the defense requests a hearing  
27 outside the presence of the jury under Evidence Code section 403 to determine the preliminary fact.

28 GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_ MODIFIED \_\_\_\_\_

884

1  
2 **IX. INTRODUCTION OF EVIDENCE PURSUANT TO EVIDENCE CODE**  
3 **SECTION 1101(B) WOULD VIOLATE DEFENDANT'S DUE PROCESS**  
4 **RIGHTS**

5 The Due Process Clause of the United States Constitution prohibits state procedures which  
6 "offend some principle of justice so rooted in the traditions and conscience of our people as to be  
7 ranked as fundamental." (*Snyder v. Massachusetts* (1933) 291 U.S. 97, 105, *Spieser v. Randall* (1958)  
8 357 U.S. 513, 523, *United States v. Salerno* (1987) 481 U.S. 739, 751, *Reno v. Flores* (1993) 507 U.S.  
9 292.) The requirement that guilt in a criminal trial be proved beyond a reasonable doubt is one of those  
10 fundamental principles of justice in the criminal system. (*Brinegar v. United States* (1949) 338 U.S.  
11 160, 174.)

12 The admission of prior acts to show a defendant's propensity to commit crime and to allow a  
13 jury to convict upon such evidence would amount to a denial of a criminal defendant's right to due  
14 process of law and to a fair trial. As Chief Justice Warren stated in *Spencer v. Texas* (1967) 385 U.S.  
15 554, 574-575, "evidence of prior crimes introduced for no other purpose than to show criminal  
16 disposition would violate the Due Process Clause." California courts have upheld this principle  
17 throughout the judicial history of this state: "It is well established that evidence of other crimes is  
18 inadmissible to prove the accused had the propensity or disposition to commit the crime charged."  
19 (*People v. Guerrero* (1976) 16 Cal.3d 719, 724, see also *People v. Fair* (1872) 43 Cal. 137, 149.)

20 Allowing evidence of a prior charge similar to the current charge violates the principles of due  
21 process and the defendant's right to a fair trial. The admission of evidence of a prior crime to attempt to  
22 demonstrate propensity to commit the charged crime dilutes the prosecution's burden of proof beyond a  
23 reasonable doubt, as it encourages juries to find a defendant guilty of the charged offense even where  
24 the evidence is insufficient.

25 GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_ MODIFIED \_\_\_\_\_

26 **X. DEFENSE MOVES TO EXCLUDE THE SCISSORS FOUND ON MR. TAYLOR**  
27 **AS FRUITS OF STATEMENTS MADE IN VIOLATION OF MIRANDA**  
28

1 Statements obtained by law enforcement in the course of custodial interrogations are not  
2 admissible unless the suspect was given his or her Miranda rights. (*Miranda v. Arizona* (1966) 384  
3 U.S. 436) The prosecution has to prove by a preponderance of evidence that defendant knowingly  
4 and voluntarily waived his Miranda rights. (*People v. Whitson* (1998) 17 Cal.4th 229, 248; see  
5 *Colorado v. Connelly* (1986) 479 U.S. 157; *People v. Sims* (1993) 5 Cal.4th 405, 440.) In  
6 determining whether a defendant waived his rights, the court must consider "the totality of the  
7 circumstances surrounding the interrogation." (*Fare v. Michael C.* (1979) 442 U.S. 707, 724 725.)

8 In *Moran v. Burbine* (1986) 475 U.S. 412, the court identified two distinct components of the  
9 inquiry:

10 First, the relinquishment of the right must have been voluntary in the sense that it was  
11 the product of a free and deliberate choice rather than intimidation, coercion, or  
12 deception. Second, the waiver must have been made with a full awareness of both the  
13 nature of the right being abandoned and the consequences of the decision to abandon it.  
14 Only if the "totality of the circumstances surrounding the interrogation" reveals both an  
15 uncoerced choice and the requisite level of comprehension may a court properly  
16 conclude that the Miranda rights have been waived. [ Citations.] [¶] . . . [¶] . . . Once it is  
17 determined that a suspect's decision not to rely on his rights was uncoerced, that he at all  
18 times knew he could stand mute and request a lawyer, and that he was aware of the  
19 State's intention to use his statements to secure a conviction, the analysis is complete and  
20 the waiver is valid as a matter of law.'

21 (475 U.S. at pp. 421, 422 423, fn. omitted.) As there is a general presumption against waivers, the  
22 prosecutor bears the burden of proving by a preponderance of the evidence that a defendant  
23 knowingly and intelligently waived his Miranda rights. (*North Carolina v. Butler* (1966) 441 U.S.  
24 369, 373.) "The government's burden to make such a showing 'is great,' and the court will 'indulge  
25 every reasonable presumption against waiver of fundamental constitutional rights.'" (*United States*  
26 *v. Garibay*, supra, at p. 536, citing *Johnson v. Zerbst* (1938) 304 U.S. 458, 464.)

27 In the present case, the police obtained statements from Mr. Taylor during a custodial interrogation  
28 in which there was no proper waiver of his Miranda rights. Officer Cusimano detained Mr. Taylor  
following a dispatch regarding a suspect brandishing a pair of scissors. Upon detaining Mr. Taylor,  
Officer Cusimano pat searched Mr. Taylor which did not reveal anything. Officer Cusimano then  
interrogated Mr. Taylor regarding the location of the scissors. Mr. Taylor was never advised of his  
Miranda rights and was not free to leave. During the course of this custodial interrogation, Mr.  
Taylor indicated that the scissors were inside of his book bag. Officer Cusimano then searched Mr.  
Taylor's bag, and located a pair of scissors. Mr. Taylor was then placed under arrest.

1 Because the statement was obtained after a *Miranda* violation, it should be suppressed. When a  
2 statement is suppressed on due process grounds, the fruits of that confession are also to be  
3 suppressed. Therefore, the scissors found in Mr. Taylor's book bag should also be suppressed.

4 If the court is inclined to admit Mr. Taylor's statements, the defense requests that the court conduct  
5 a hearing outside of the presence of the jury under Evidence Code section 402. Evidence Code  
6 section 402 states:

7 (a) When the existence of a preliminary fact is disputed, its existence or non-existence  
8 shall be determined as provided in this article.

9 (b) The court may hear and determine the question of the admissibility out of the  
10 presence of the jury; but in a criminal action, the court shall hear and determine the  
question of the admissibility of a confession or admission of the defendant out of the  
presence of the jury if any party so requests.

11 The defense asserts that the statement was taken in violation of *Miranda* and would ask the court for  
12 a 402 hearing.

13 GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_ MODIFIED \_\_\_\_\_

14 **XI. DEFENSE MOVES TO EXCLUDE NON-TESTIFYING WITNESSES FROM**  
15 **THE COURT ROOM**

16 Pursuant to Evidence Code § 777, the defense moves to exclude all witnesses not presently  
17 testifying from the court room with an admonishment from the Court that witness are not to confer with  
18 other witnesses regarding the subject of their testimony. (Evid. Code § 777; Pen. Code § 867.)

19 GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_ MODIFIED \_\_\_\_\_

20 **XII. PROSECUTION TO PROVIDE DEFENSE WITH COPIES OF ANY PHOTOS,**  
21 **EXHIBITS, OR REAL EVIDENCE IT INTENDS TO UTILIZE**

22 The defense hereby moves for an order that the prosecution be required to provide the defense  
23 with copies of, any photographic, demonstrative or real evidence it intends to present to the jury prior  
24 to opening statements so the defense may review and be heard on such evidence, outside the presence  
of the jury.

25 GRANTED \_\_\_\_\_ DENIED \_\_\_\_\_ MODIFIED \_\_\_\_\_

26 **XIII. MOTION TO EXCLUDE HEARSAY TESTIMONY FROM OFFICER**  
27 **CUSIMANO TO OFFICER SELBERG ABOUT LOCATION OF FINDING**  
28 **THE PAIR OF SCISSORS.**

1 Should the prosecution rely on Officer Selberg in testifying where the scissors were found, the  
2 defense requests that any testimony regarding the location of the scissors be excluded as that evidence  
3 is based on inadmissible hearsay and not Officer Selberg's personal knowledge. The defense asks that  
4 any such evidence be excluded.

5 GRANTED \_\_\_\_ DENIED \_\_\_\_ MODIFIED \_\_\_\_  
6

7 **XIV. THE DEFENSE MOVES TO REQUIRE THAT THE PROSECUTION**  
8 **REFRAIN FROM REFERRING TO MAUREEN BARSHAHAR AS VICTIM**

9 The defense moves to exclude the prosecution from referring to the complaining witness in this  
10 case as the "victim" under Evidence Code Section 352. The defense believes that referring to the  
11 complaining witness in this manner would be unduly prejudicial and therefore requests such terms be  
12 excluded.

13 GRANTED \_\_\_\_ DENIED \_\_\_\_ MODIFIED \_\_\_\_  
14

15 **XV. THE DEFENSE MOVES TO REQUIRE THE PROSECUTION ADVISE ITS**  
16 **WITNESSES OF THE COURT'S IN LIMINE RULINGS.**

17 GRANTED \_\_\_\_ DENIED \_\_\_\_ MODIFIED \_\_\_\_  
18

19 **XVI. THE DEFENSE MOVES TO REQUIRE THE PROSECUTION**  
20 **INSTRUCT ANY WITNESSES IT INTENDS TO CALL TO NOT DISCUSS**  
21 **THE CASE OR THEIR TESTIMONY IN THE PRESENCE OF JURORS**  
22 **WHILE OUTSIDE THE COURTROOM OR WITH OTHER WITNESSES**

23 GRANTED \_\_\_\_ DENIED \_\_\_\_ MODIFIED \_\_\_\_  
24

25 **XVII. THE DEFENSE REQUESTS AN ORDER PREVENTING THE**  
26 **PROSECUTION FROM ARGUING THAT THE PRESUMPTION OF**  
27 **INNOCENCE ENDS PRIOR TO RECEIVING A VERDICT**

28 The presumption of innocence continues not only during the taking of testimony, but during the  
deliberations of the jury until they reach a verdict. (*People v. Arlington* (1900) 131 Cal. 231, 235.) The  
Sixth District Court of Appeal reached an identical conclusion in reversing due to prosecutorial  
misconduct in *People v. Cowan* (2017); B258587C/A/2nd, Div. 6.