**PEOPLE v. TURCIOS**

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2d Crim. No. B222200.

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*THE PEOPLE, Plaintiff and Respondent, v. NELSON TURCIOS, Defendant and Appellant.*

Court of Appeals of California, Second District, Division Six.

Filed March 16, 2011.

***Attorney(s) appearing for the Case***

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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

COFFEE, J.

Nelson Turcios appeals from the judgment following his conviction by jury of first degree murder and possession of a firearm by a felon. (Pen. Code, §§ 187, subd. (a); 12021, subd. (a)(1).)[1](https://www.leagle.com/decision/incaco20110316037#fid1) The jury also found true allegations that appellant personally used a firearm in the murder and that it was committed to benefit a criminal street gang. (§§ 12022.53, subd. (b); 186.22, subd. (b)(1)(C)(4).) The court found true an allegation that appellant had suffered a prior felony strike conviction (§§ 667, subds. (b)-(i); 1170.12, subds. (a)-(d)), and sentenced him to state prison for 60 years to life. Appellant contends, among other things, that there is not sufficient evidence to support his murder conviction; the trial court admitted his statements in violation of *Miranda v. Arizona* (1966) [384 U.S. 436](https://www.leagle.com/cite/384%20U.S.%20436) (*Miranda*); the prosecutor committed misconduct; and the trial court erroneously denied his post-trial petition for juror contact information. We affirm.

**BACKGROUND**

***Prosecution Case***

Appellant belongs to the Al Capone gang (Al Capone) and uses the street name "Malo." Al Capone was a very active gang until the housing project in its East Los Angeles territory was demolished in the late 1990's. Since then, Al Capone members have spread throughout the county, the gang lacks its own territory, and its membership has declined to approximately 35 members. Individual members typically affiliate with a secondary, larger gang, such as the gang that claims the territory in which the Al Capone member lives. The gang's primary activities include murders, assaults, and narcotics offenses.

Unlike Al Capone, the East LA Trece gang (East LA 13) reconfigured in a specific territory after the housing projects were demolished. It claims the territory bound by Cesar Chavez, Michigan Avenue, First Street and North Fickett Street in East Los Angeles. East LA 13 has approximately 165 members and its primary activities include murder, assaults with weapons and narcotic sales. Appellant lived in East LA 13 territory in 2007.

The Breed Street gang (Breed Street) is another East Los Angeles gang. It claims territory on the opposite side of North Fickett Street from rival East LA 13. Primera Flats gang (Primera Flats), another rival of Breed Street, claims territory on the opposite side of Caesar Chavez from Breed Street.

Murder victim Jairo "Stoner" Martinez and his brother, Gerardo "Triste" Martinez belonged to Breed Street. Some time in 2006, Gerardo pointed a gun at appellant and made a comment about East LA 13. Later that year, on December 20, Gerardo shot at appellant and his younger brother. Appellant got a small black gun after the shooting incident.

On January 15, 2007, Jairo and Gerardo painted blue Breed Street graffiti on the sidewalk of the 300 block of North Fickett Street. Officers who arrested them also found older East LA 13 graffiti nearby on North Fickett Street. The older East LA 13 graffiti had been crossed out with red paint sometime before January 15. Jairo and Gerardo were charged, convicted and sentenced for vandalism. After his March 28, 2007, release from prison, Jairo lived at 2414 Michigan Avenue between North Fickett and North Soto Streets in East Los Angeles.

On June 9, Angelica Hernandez hosted a birthday party in the parking area of her apartment building at the corner of Soto Street and Michigan Avenue. Jairo's neighbor, Olga Aladuena, attended the birthday party. Olga saw Jairo stop at the party briefly at approximately 10:30 p.m. Jairo left the party, via an adjacent alley, and headed toward Soto Street after he told Olga that his enemy was there, that he was leaving and that "Nelson" (appellant) was there. Olga did not see appellant at the party that night. She knew him because he and his girlfriend, Ruth Sorchaga, lived with her for about a month when Ruth was pregnant.

About 20 minutes later, Jairo returned to the party and left again. He paced in the alley or walkway adjacent to the party all evening. Jairo told Olga that he was going home, repeated something about his enemy, and left the party via Michigan Avenue, around 11:30 p.m.

Sometime after Jairo last left the party, Olga and other neighbors heard gunshots that sounded like they were on Michigan Avenue. Olga saw Jairo run toward his house and down the alley adjacent to her apartment. She also saw appellant and two other men running along Michigan Avenue. Each of the men was carrying a gun and wearing a black cap and a hooded black sweatshirt. The men ran away together, toward Matthews Street.

Jairo's neighbor, Julio Pena, went outside after the shooting and found Jairo lying in the driveway at 2424 Michigan Avenue. After police officers arrived, they recovered a loaded .357 magnum gun from beneath Jairo's body, with four rounds and two spent casings. They found no other casings or projectiles at the scene. Jairo died of a single gunshot wound to the chest.

On June 12, 2007, detectives searched appellant's apartment. They located a .38 caliber revolver in a bedroom laundry hamper, a tray of .38 caliber ammunition, and two towels. A fingerprint expert recovered appellant's fingerprint from the side of the ammunition tray.

One of the towels recovered from appellant's apartment had writing that said "Nelson Balois Turcios Chavez," followed by the number "1," then "LA 13," with three dots above the 13. East LA 13 members sometimes shorten their gang name to "LA 13." Three dot tattoos are common in the Hispanic culture and do not always signify gang membership.

***Defense case***

Appellant's neighbor, Bessy Gonzalez, knew him for 12 years and loved him like a son. On June 9, 2007, she and her husband hosted a barbeque just outside their apartment at 338 North Fickett Street, on the upstairs balcony, to celebrate the birth of their baby. Appellant, his wife and baby attended the barbeque and appellant stayed there from 7:00 or 7:30 p.m., until 1:00 or 2:00 a.m. He left briefly to escort his family home.

Appellant's uncle, Nelson Santos, testified that he attended the same barbecue, where he said they were celebrating Guatemala's soccer match victory. At trial, Nelson testified that during the evening he accompanied appellant to the parking lot when he left to smoke cigarettes. He conceded that previously he told police officers that he did not know where appellant went on every occasion that he left the barbeque, but said he told them that he was with appellant around midnight.

Bessy said that the barbeque was "more or less" over at 1:00 a.m., but some people, including her husband, were drinking "right outside" their apartment until nearly 4:00 a.m. Bessy left the barbecue grill outside after the party. Nelson stayed after appellant left. They turned down the music at around 1:00 a.m.

Hernandez, the hostess of the June 9, 2007, birthday party, testified that she did not know Jairo or Olga at the time of the party. She learned about them after the shooting. She did not see either of them at the party. Silva Basurto attended the party. She did not know Olga. Silva heard gunshots but did not see anyone enter the party area and run through the walkway toward Soto or the parking lot.

Jairo's neighbor, Pena, testified that Jairo looked paranoid when he saw him on the Thursday morning before the shooting. He asked Pena to see if anyone was there (outside Jairo's house). Jairo told Pena that two Primera Flats members had pointed a gun at him while screaming "Fuck Breed" and throwing gang signs.

***Prosecution Rebuttal***

During the investigation, Pena told Detective Barrientos about Jairo's comments regarding Primera Flats. Pena never told Barrientos that Jairo told him "anything whatsoever about a gun being drawn on him."

Shortly after the June 9 shooting, at about 12:15 a.m. on June 10, Detective Alfaro went to 388 North Fickett Street to look for appellant. He did not see any people drinking or gathered outside the 388 North Fickett Street building or near its staircase. He did not see a barbeque or hear music playing there, either.

After his arrest, appellant told Detective Marin that he was "at his house sleeping with his wife and son" at the time of the shooting. He later said that he was "actually attending a barbeque where he lives," with Nelson Santos, from 6:00 p.m., until 4:00 a.m. the next morning. Appellant first denied that he knew Jairo. He later said that they attended middle school together but that he had not seen him since 2000. Appellant also denied knowing Jairo's brothers.

**DISCUSSION**

***Substantial Evidence***

Appellant contends that there is insufficient evidence to sustain his murder conviction. We disagree.

We review the entire record to determine whether any rational trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Ochoa* (1993) [6 Cal.4th 1199](https://www.leagle.com/cite/6%20Cal.4th%201199), 1206.) The evidence must be viewed in the light most favorable to the judgment, and reversal is unwarranted unless it appears "`that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) [18 Cal.4th 297](https://www.leagle.com/cite/18%20Cal.4th%20297), 331.) "`". . . [I]t is the exclusive province of the . . . jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder." [Citations.]'" (*People v. Smith* (2005) [37 Cal.4th 733](https://www.leagle.com/cite/37%20Cal.4th%20733), 739.)

Several people heard gunshots after Olga saw Jairo leave the party outside Angelica's apartment building at Soto and Michigan Avenue. The gunshots sounded as if they came from Michigan Avenue. Olga, appellant's former roommate, saw appellant run away with two other men on Michigan Avenue, just after she heard the gunshots. Appellant and his companions each carried a gun. Pena went outside after he heard gunshots and found Jairo's body lying in the driveway at 2424 Michigan Avenue. Jairo died of a single gunshot wound to his chest. In 2006, Jairo's brother, Gerardo, pointed a gun at appellant on one occasion, while making a comment about East LA 13. Later that year, Gerardo shot a gun at appellant and his brother. Appellant acquired a small black gun after the latter incident. Officers recovered a gun from appellant's hamper within two days of the shooting.

We reject appellant's claim that the verdict rests on "guilt by association" because of the gang evidence. Appellant's former roommate saw him running away just after the shooting, on the street where the victim lay wounded. Appellant also claims that "Olga was so lacking in credibility and so severely impeached that nothing she said deserved any credence whatsoever." The determination of her credibility lies within the exclusive province of the jury. (*People v. Smith, supra,* 37 Cal.4th at p. 739.) A reasonable jury could have returned a guilty first degree murder verdict. Substantial evidence supports appellant's conviction. (*People v. Elliot* (2005) [37 Cal.4th 453](https://www.leagle.com/cite/37%20Cal.4th%20453), 471.)

***Miranda***

Appellant contends that the court erred by admitting statements that he made to officers who failed to advise him of his rights under *Miranda* during their investigation of crimes that predate the murder in this case. We disagree.

Before interrogation by law enforcement officers of a person who "has been taken into custody or otherwise deprived of his freedom of action in any significant way . . ., the person must [first] be warned [by the officers] that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." (*Miranda, supra,* 384 U.S. at p. 444.) Statements obtained in violation of this rule may not be used to establish guilt. (*Ibid.*)

"In reviewing *Miranda* issues on appeal, we accept the trial court's resolution of disputed facts and inferences as well as its evaluations of credibility if substantially supported, but independently determine from undisputed facts and facts found by the trial court whether the challenged statement was legally obtained. [Citations.]" (*People v. Smith* (2007) 40 Cal.4th 483, 502.) We review the court's findings on whether there was a custodial interrogation for substantial evidence. (*People v. Clair* (1992) [2 Cal.4th 629](https://www.leagle.com/cite/2%20Cal.4th%20629), 679.)

Before trial, defendant moved to exclude statements that appellant made to officers during four investigatory stops that occurred in 2004 and 2005, because the officers did not read any *Miranda* rights to him. The challenged statements were recorded on field identification (FI) cards that police officers complete when detaining and questioning suspects on the street.

On separate dates in October 2005, officers stopped appellant. On October 7, he was riding in a car with a driver who was stopped and arrested for outstanding misdemeanor warrants. On October 26, the officers stopped and cited appellant for jaywalking. The officers neither arrested nor handcuffed appellant on either date. On each occasion, appellant provided information in response to officers' questions, including his gang moniker, Malo. On October 7, he said that he was from "Eastside Al Capone." On October 26, he said that his gang was Al Capone, and he was not free to leave until the officers completed the jaywalking citation and the FI card. The officers released appellant on October 7 after they completed the FI card. The October 7 stop was between 15 and 30 minutes long; the October 26 stop lasted approximately 15 minutes.

On November 16, 2005, Officer Annissa Harsma and her partner stopped appellant after seeing him "crouched down . . . in an attempt to not be seen," in the passenger seat of a car with its door open. They handcuffed and questioned him. After determining that he provided false information about the car's owner, they arrested him for burglary.

Appellant gave the officers information, including the name of his gang, "Capones," and his moniker, Malo. Harsma testified that they asked appellant for his gang information before he was booked and put in jail, "for his own safety." She explained that they "needed to know" if appellant belonged to a gang and "what gang" because if he were "a member of a gang that has a green light on them, it could be dangerous to put him in the general population." Harsma recorded the information on an FI card. She also testified that FI cards have several purposes, including documenting gang membership to use later, and that in some cases, the information is used in future gang crime cases.

Before deciding to admit the statements from the 2005 FI cards, the court made several observations: "All of these incidents . . . are at least two years prior to the [2007] incident involved in the subject case." Regarding the October 7 stop, the court stated "all that happened was a temporary stop . . . in an apparently expeditious manner lasting roughly 15 to 30 minutes. It does not appear that any detention was unduly prolonged to the extent there was any detention at all." It stated that the October 26 stop appeared "to be nothing more than . . . an ordinary traffic stop[], at which . . . a purported jaywalker, is detained [f]or presumptively [a] temporary and brief [period] and it does not appear to be an encounter that lasted any protracted period of time," and "does not appear to raise *Miranda* issues." Counsel noted that the stop was 15 minutes long. (We do not consider the 2004 stop because the court excluded the statements obtained during that stop.)

After independent review, we agree with the trial court that the October 2005 stops did not require *Miranda* warnings because they were only temporary detentions. *Miranda* warnings are required only when a person is subjected to "custodial interrogation." (*Miranda, supra,* 384 U.S. at p. 444; *Berkemer v. McCarty* (1984) [468 U.S. 420](https://www.leagle.com/cite/468%20U.S.%20420), 439, 440; *People v. Clair* (1992) [2 Cal.4th 629](https://www.leagle.com/cite/2%20Cal.4th%20629), 679.) Appellant was not in custody during the October stops.

The parties agreed that the November 2005 burglary stop was custodial. The court concluded that the officers' inquiries regarding appellant's gang information did not appear to be "focused on eliciting an incriminating response, and that [t]hey appear[ed] to be valid pieces of information, . . . to keep . . . [him] safe where he [was] housed." It also noted that nothing suggested that the burglary involved "gang related activity." After independently reviewing the evidence, we conclude that the officers' questions concerning appellant's gang moniker and affiliation were appropriate to keep him safe in custody, and did not violate his *Miranda* rights. (Compare *People v. Morris* (1987) [192 Cal.App.3d 380](https://www.leagle.com/cite/192%20Cal.App.3d%20380), 389-390 [Because of "direct and recognized link between the booking officer's inquiry and the crime for which defendant had been arrested and was in custody," officers violated *Miranda* by asking him who he was "`accused of killing'"].) Moreover, even were the challenged November 2005 questions improper, the responses elicited by them did not expose the jury to any evidence that significantly differs from other admissible evidence that it heard.

***Prosecutorial Misconduct***

Appellant contends that the prosecutor committed prejudicial misconduct. We disagree.

Prosecutorial misconduct involves the use of deceptive or reprehensible methods to persuade the jury or acts so egregious as to create an unfair trial. (*People v. Hill* (1998) [17 Cal.4th 800](https://www.leagle.com/cite/17%20Cal.4th%20800), 819 [misconduct violating state constitution]; *People v. Gionis* (1995) [9 Cal.4th 1196](https://www.leagle.com/cite/9%20Cal.4th%201196), 1214 [misconduct violating federal Constitution].) A prosecutor is guilty of misconduct when he or she intentionally elicits inadmissible testimony (*People v. Chatman* (2006) [38 Cal.4th 344](https://www.leagle.com/cite/38%20Cal.4th%20344), 379-380), or violates the "duty to guard against inadmissible statements from . . . witnesses" (*People v. Cabrellis* (1967) [251 Cal.App.2d 681](https://www.leagle.com/cite/251%20Cal.App.2d%20681), 688).

Appellant challenges questions to Officer Barrientos asked by a prosecutor who was assigned to this case "in the middle of the game," after the court concluded the Evidence Code section 402 hearing concerning the FI cards: "Q In connection with preparation to testify in this case, did you have occasion to research the field identification cards for Nelson Turcios? [¶] "A Yes, I did. [¶]. . .[¶] Q How many field identification cards did you review with respect to Nelson Turcios? [¶] A I believe I reviewed approximately four. And then the defense attorney brought an additional three to my attention."

Following his objection, during the subsequent sidebar conference, appellant's counsel stated: "There was a 402 on this [and] we only were to mention three FI cards that we talked about." The prosecutor explained that he had not participated in the 402 hearings, he had just asked appellant's counsel about 402 hearings, and there were no transcripts of those proceedings. The trial court granted a "defense motion . . . to strike the witness' answer concerning his review of a particular number of field investigation cards," and instructed the jury to "disregard any comments about how many field investigation cards were considered by this witness."

Appellant further claims that the same prosecutor committed misconduct by failing to warn the same witness not to mention appellant's immigration status. Defense counsel asked the gang expert, if he knew "when [appellant] moved into the area." The gang expert responded: "Not exactly. I know he had been deported." Appellant's counsel objected and explained in an ensuing side bar conference that there "was a 402 on this as well and that [the prior prosecutor] indicated he would notify all the witnesses" about immigration. The court admonished the jury "to disregard any statements about immigration status."

Appellant concedes that the prosecutor may not have acted in bad faith with respect to the FI card evidence but argues that the damage from the evidence elicited by the challenged question, with the deportation evidence, was "lethal" to his case. We disagree. In each instance the court quickly admonished the jury to disregard the evidence. The jury is presumed to have followed the admonition, and it was sufficient to cure any potential prejudice. (*People v. Price* (1991) [1 Cal.4th 324](https://www.leagle.com/cite/1%20Cal.4th%20324), 455.) In arguing that the admonition could not have cured potential prejudice, appellant relies on an inapposite case—*Hernandez v. Paicius* (2003) [109 Cal.App.4th 452](https://www.leagle.com/cite/109%20Cal.App.4th%20452), 460 (overruled in part on other grounds in *People v. Freeman* (2010) [47 Cal.4th 993](https://www.leagle.com/cite/47%20Cal.4th%20993), 1006). In *Hernandez,* the trial court committed multiple errors that resulted in reversal of the judgment: it refused to exclude residency status evidence and exacerbated that error by making remarks that gave the appearance that the court held preconceived ideas based on stereotypes of undocumented aliens; it also erred prejudicially in denying a mistrial motion based on counsel's misconduct. (*Id.* at pp. 462-463, 467-468.) Even assuming that the prosecutor below engaged in misconduct as claimed, it was harmless under any standard of review. (Compare *People v. Hill* (1998) [17 Cal.4th 800](https://www.leagle.com/cite/17%20Cal.4th%20800) [involving multiple, egregious acts of prosecutorial misconduct].)

***Breed Street Gang Evidence***

Appellant argues that the court committed prejudicial constitutional error by admitting evidence concerning Breed Street "gang's activity that was totally unrelated to the instant charges." We disagree.

Gang evidence is admissible where it is relevant to establish motive or intent. (*People v. Williams* (1997) [16 Cal.4th 153](https://www.leagle.com/cite/16%20Cal.4th%20153), 193.) Expert testimony concerning the culture, habits, and psychology of gangs as well as motivation for a particular crime and rivalries among gangs is the proper subject of expert testimony. (*People v. Gardeley* (1996) [14 Cal.4th 605](https://www.leagle.com/cite/14%20Cal.4th%20605), 617; *People v. Killebrew* (2002) [103 Cal.App.4th 644](https://www.leagle.com/cite/103%20Cal.App.4th%20644), 656-657.) We review the admission of gang evidence for an abuse of discretion. (*People v. Brown* (2003) [31 Cal.4th 518](https://www.leagle.com/cite/31%20Cal.4th%20518), 547.) No abuse occurred.

Appellant challenges the admission of evidence that Jairo and his brother Gerardo were arrested in January 2007 for tagging a sidewalk in East LA 13 territory with Breed Street graffiti. He claims it was not relevant where the Breed Street members were not on trial and their graffiti crime "had nothing to do with" appellant. The court admitted the evidence on the ground that it was relevant to the gang enhancement.

The Breed Street evidence was relevant to the murder and the gang enhancement. Appellant belonged to Al Capone, a gang with no specific territory. Individual Al Capone members typically claim a secondary affiliation with a larger gang. A towel recovered from appellant's apartment after the shooting bore his name, followed by a number and "LA 13," an abbreviation used by East LA 13 gang members. Appellant lived in East LA 13 territory, on the same block that Gerardo and Jairo tagged with Breed Street graffiti. East LA 13 and Breed Street were rival gangs. While saying something about East LA 13, Gerardo pointed a gun at appellant in 2006.

The gang expert opined that if a Breed Street member shot at an Al Capone member in East LA 13 territory, the targeted Al Capone member would be obligated to respond. If Breed Street members tagged Breed Street graffiti near the home of an Al Capone within East LA 13 territory, the Al Capone resident would be obligated to respond to show his respect for East LA 13, and to elevate his individual reputation, according to the expert. The expert also opined that in either circumstance, a failure to respond would look bad for East LA 13 and Al Capone.

***Jury Instructions***

Appellant contends that the court erred prejudicially by instructing the jurors with CALCRIM Nos. 371 and 362. We disagree. Those instructions told the jury that consciousness of guilt could be inferred from making false or misleading statements and hiding evidence.[2](https://www.leagle.com/decision/incaco20110316037#fid2)

When the trial court and counsel discussed jury instructions, defense counsel objected to CALCRIM No. 362 because he did not "believe there [was] any evidence that [appellant] made any false statements." The prosecutor stated that appellant had presented a false alibi, based on Detective Alfaro's testimony that contradicted appellant's "alibi that he was out having a barbecue until 4 a.m." The trial court noted that appellant gave Detective Marin two different versions of events." The court found substantial evidence to support giving CALCRIM No. 362 "[b]ased on Detective Marin's testimony at the interview of June 12, 2007, [appellant] first told [the detective] he was in his house asleep with his wife and son at the time of the events, and then . . . said that he was actually at a barbecue."

Appellant's counsel raised the same objection to CALCRIM No. 371. While discussing that instruction, the trial court initially expressed concern that there were "two conflicting versions of evidence actually presented [regarding the barbecue and that] at this point, there is no indication that it is false evidence." The court then noted that CALCRIM No. 371 instruction left it "up to the jury to determine if [that] evidence was false."

In this case, appellant gave the detective two different explanations of his whereabouts at the time of the shooting. He first said he was at home sleeping with his wife and baby. Later he said he was at a barbecue. A reasonable juror could draw the inference that at least one of those statements was false and that appellant had a consciousness of guilt and made those false or misleading statements in an attempt to deceive authorities. Therefore, the trial court properly instructed jurors with CALCRIM Nos. 362 and 371. "When testimony is properly admitted from which an inference of a consciousness of guilt may be drawn, the court has a duty to instruct on the proper method to analyze the testimony." (*People v. Atwood* (1963) [223 Cal.App.2d 316](https://www.leagle.com/cite/223%20Cal.App.2d%20316), 333, overruled on other grounds in *People v. Carter* (2003) [30 Cal.4th 1166](https://www.leagle.com/cite/30%20Cal.4th%201166), 1197-1198.) The challenged instructions left it up to the jury to determine whether defendant's statements were false. The court also instructed the jury that some instructions may not apply, and it should not assume that the inclusion of an instruction suggested anything about the facts. (CALCRIM No. 200).

***Cumulative Error***

Appellant contends that the cumulative effect of the errors during trial requires reversal. Having found no significant error, we also reject this contention. (*People v. Seaton* (2001) [26 Cal.4th 598](https://www.leagle.com/cite/26%20Cal.4th%20598), 691-692.)

***Juror Contact Information***

Appellant claims that the trial court committed prejudicial error by denying his post-trial petition for juror contact information. We disagree.

Code of Civil Procedure section 206, subdivision (g) provides: "Pursuant to Section 237, a defendant or defendant's counsel may, following the recording of a jury's verdict in a criminal proceeding, petition the court for access to personal juror identifying information within the court's records necessary for the defendant to communicate with jurors for the purpose of developing a motion for new trial or any other lawful purpose. This information consists of jurors' names, addresses, and telephone numbers. The court shall consider all requests for personal juror identifying information pursuant to Section 237."

Code of Civil Procedure section 237 (section 237) provides in pertinent part as follows: "The petition shall be supported by a declaration that includes facts sufficient to establish good cause for the release of the juror's personal identifying information. The court shall set the matter for hearing if the petition and supporting declaration establish a prima facie showing of good cause for the release of the personal juror identifying information . . . ." (*Id.* subd. (b).) To demonstrate good cause for the release of juror identification information pursuant to section 237, subdivision (b), a defendant must file a petition that sets forth a sufficient showing to support a reasonable belief that jury misconduct occurred. (*People v. Jefflo* (1998) [63 Cal.App.4th 1314](https://www.leagle.com/cite/63%20Cal.App.4th%201314), 1322-1323, fn. 8.)

We review the denial of a motion for disclosure under Code of Civil Procedure section 237 for abuse of discretion. (*People v. Avila* (2006) [38 Cal.4th 491](https://www.leagle.com/cite/38%20Cal.4th%20491), 604.)

In seeking disclosure of juror contact information, appellant presented a declaration from his counsel, who interviewed Juror No. 8, with a copy of a note from Los Angeles County Sheriff Deputy H. Hicks, who was in the jury room after the jurors' discharge. Hicks wrote that "[a]fter the verdict was read, . . . Juror # 8 said, `We all had a problem with Olga Aladuena['s] testimony.' Juror # 2 agreed, by stating verbally, `I had a big problem with it.'"

Counsel's declaration added that on August 14, one day after the jury reached its verdict, Juror No. 8 called the court, spoke to the judicial assistant, stated that she was having trouble sleeping and having nightmares, and wanted to know if the court provided counseling. Counsel also declared that on August 20, 2009, while having dinner with colleagues, he saw Juror No. 8 "at the same establishment." On August 26, counsel and his investigator unsuccessfully attempted to contact Juror No. 8 at home. She called counsel later and said that she was still having a hard time with her decision and that there was a lot of pressure back in the jury room to reach a conclusion. She also told counsel "that she reached a conclusion on the case based on what was presented in court, the law that was given, and that it felt like the right thing to do but she was still not comfortable with it."

The declaration further stated that Juror No. 8 informed counsel that Juror No. 2 "was really having a hard time with the decision," that Juror No. 2 did not think that there was enough evidence there but after a while, she gave in and went along with everyone else but she was not "really comfortable with her decision at all." Juror No. 8 added that Jurors No. 2 and 5 "noticeably hesitated for a bit before answering in the affirmative" when individually polled following the verdict.

Juror No. 8 also advised counsel that Juror No. 5 "had made statements during deliberations that he did not believe the Prosecution's main witness and had some theories that [appellant] was set up [but that] in the end, he went along with the group." Counsel's declaration indicated that "it is unclear whether any juror misconduct . . . occurred regarding the jury during this trial and . . . deliberations," but that that Juror No. 8's statements raised issues that required "follow[]-up and investiga[tion] as to whether Jurors #2 and #5 were pressured by other jurors to change their verdicts." Counsel declared that the juror contact information was necessary to investigate any misconduct "for the purpose of developing a motion for a new trial."

We first reject appellant's claim that by having set the matter for hearing, and thus implicitly having found good cause, the court had no compelling reason to deny the petition. The trial court never set the matter for any kind of hearing or took other action that implied it had found good cause. It simply summarized the parties' pleadings and provided both counsel an opportunity to comment or argue; they declined to do so. The court then ruled as follows: "Jurors are presumed to [hear,] understand and follow the jury instructions, it does appear to the court that juror number eight states that she did what was required of her. Nothing on this record indicates that this or any or [*sic*] [other] juror[] did anything different than struggle with the kinds of decisions that jurors are called on to make. And the court finds that the defense has presented an insufficient basis to unseal the personal identifying information of the jurors in this case. [¶] The[] defense motion is denied."

We note that Juror No. 5 and Juror No. 8 each individually stated that they had a problem with Olga's credibility. Juror No. 8 stated "we all" had problems with it. Further, neither Juror No. 5 nor Juror No. 8 stated at what point they (or other jurors) had problems with Olga's credibility. The jurors did ask for a reading of part of Olga's testimony during deliberations. They then deliberated further and asked for other evidence before reaching a verdict; and each juror answered affirmatively when polled individually regarding that verdict. Although Juror No. 8 did express that her problems with the "decision" were ongoing, she also told counsel that she "reached a conclusion on the case based on what was presented in court, the law that was given, and that it felt like the right thing to do but she was still not comfortable with it." Taken together, the circumstances indicate that the jurors resolved their described problems with Olga's credibility and reached a verdict based on the evidence and the law.

Further, one juror's assumptions that other jurors felt pressured, "gave in" or "went along with the group" despite concerns about the evidence, her perceptions that they hesitated during polling of jurors and/or the significance of that perceived hesitation, do not establish jury misconduct. Such assumptions instead involve the mental processes of jurors. Evidence Code section 1150 precludes the admission of evidence to show "the effect of [a] statement, conduct, condition, or event upon a juror either in influencing him to asset to or dissent from the verdict or concerning the mental processes by which it was determined." (*Ibid.*) Granting a petition for jury contact information to facilitate an investigation regarding Juror No. 8's assumptions would involve consideration of matters barred by Evidence Code section 1150. (*People v. Hedgecock* (1990) [51 Cal.3d 395](https://www.leagle.com/cite/51%20Cal.3d%20395), 419.) The trial court properly denied the petition for juror contact information because it failed to set forth a sufficient showing to support a reasonable belief that jury misconduct occurred. (*People v. Jefflo, supra,* 63 Cal.App.4th at pp. 1322-1323, fn. 8.)

**DISPOSITION**

The judgment is affirmed.

We concur:

GILBERT, P.J.

PERREN, J.

**FootNotes**

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

2. The court instructed as follows with CALCRIM No. 371: "If the defendant tried to create false evidence or obtain false testimony, that conduct may show that (he/she) was aware of (his/her) guilt. If you conclude that the defendant made such an attempt, it is up to you to decide its meaning and importance. However, evidence of such an attempt cannot prove guilt by itself. [¶] If someone other than the defendant tried to create false evidence, provide false testimony, or conceal or destroy evidence, that conduct may show the defendant was aware of (his) guilt, but only if the defendant was present and knew about that conduct, or, if not present, authorized the other person's actions. It is up to you to decide the meaning and importance of this evidence. However, evidence of such conduct cannot prove guilt by itself."

CALCRIM No. 362 instructs the jury about how to evaluate a false statement, as follows: "If [the] defendant made a false or misleading statement before this trial relating to the charged crime, knowing the statement was false or intending to mislead, that conduct may show (he/she) was aware of (his/her) guilt of the crime and you may consider it in determining (his/her) guilt. [You may not consider the statement in deciding any other defendant's guilt.] If you conclude that the defendant made the statement, it is up to you to decide its meaning and importance. However, evidence that the defendant made such a statement cannot prove guilt by itself."