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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,  Plaintiff and Respondent,  v.  KHALED HAMOUI,  Defendant and Appellant.	A136518  (San Mateo County Super. Ct. No. SC074690A)
In re KHALED HAMOUI  on Habeas Corpus.	A141632

Defendant Khaled Hamoui appeals his conviction and five-year eight-month prison sentence for kidnapping, making a criminal threat, misdemeanor theft, and assault. All charges arise out of a single incident between defendant, a town car driver, and Julia Solomon, a passenger in his town car. On appeal, defendant contends the trial court erred in allowing the prosecution to introduce evidence of two prior uncharged acts to prove his identity and in imposing consecutive sentences on the kidnapping and threat counts. He also disputes the amount of the \$240 restitution fine. Defendant has filed a petition for a writ of habeas corpus, based on newly discovered evidence, which has been consolidated with the appeal. We find no merit in defendant's challenges to the conviction or sentence and shall affirm the judgment and deny the writ petition.

**Background**

At trial, there was substantial evidence of the following facts. On September 11, 2011, at approximately 1:00 a.m., a black Lincoln town car stopped at Turk and Van Ness Streets in San Francisco, where Julia Solomon, her boyfriend, and two roommates

had been waiting for a cab. The town car driver, later identified as defendant, offered the group a ride to their Burlingame apartment for \$42. The group agreed and accepted the ride, but a fee dispute arose when the group arrived near the apartment and defendant claimed they had driven “further than he thought.”

After all but Solomon had left the car, Solomon handed defendant a \$100 bill and received \$40 in change. Claiming this amount was insufficient, she requested more. In response, and with Solomon still in the back seat of the car with her legs hanging outside the open door, defendant suddenly backed up his car at a high rate of speed. The force of the car’s acceleration knocked Solomon back into car and caused the rear car door to slam shut.

Defendant eventually parked the car on a side street and walked toward the rear passenger door closest to Solomon. When Solomon opened the door and got out of the car, defendant grabbed her purse and threw it across the street. He then grabbed her arms and threw her to the ground. As she lay on her stomach, defendant kicked her repeatedly. When the screams of one of the friends were heard, defendant returned to his car and said to Solomon, “I’m going to run you over now, bitch.” Solomon took the threat seriously and ran to the curb. Defendant then drove away. During the confrontation, Solomon memorized the town car’s license plate information. Following a police investigation, all four members of the group separately identified defendant as the driver of the Lincoln town car through a photo line-up.

At trial, over defendant’s objection, the prosecution, introduced evidence of two prior incidents in which defendant was cited for unlawfully picking up passengers in his Lincoln town car. San Francisco Police Department Sergeant Brian Devlin, a supervisor of the city’s taxi and limousine enforcement program, testified that he encountered defendant during both incidents while posing as an individual “out . . . on the town, attempting to hail . . . a taxi cab.” On January 22, 2010, at 7:30 p.m. near Howard Street, defendant approached Devlin in his Lincoln town car and asked if he needed a taxi. On March 6, 2010, Devlin was again working undercover in a similar operation. On that day, around 10:40 p.m., defendant approached him in his Lincoln town car and offered

transportation. In both instances, Devlin agreed on a price and entered defendant's vehicle. A uniformed officer then stopped defendant and cited him for unlawfully soliciting transportation and for not having a proper waybill for prearranged transportation.

In defense, defendant argued that the eyewitness testimony was inconsistent and contradicted by his appearance during the relevant period. Defendant presented evidence that on September 10, 2011, he attended an Islamic Society event in San Francisco. The event was publicized and open to the public. Khaled Olaibah testified that he saw defendant there from noon to approximately 3:30 p.m., and, on that day, he had a shaved head and a well-kept beard and mustache. Olaibah identified videos and pictures taken during the event that showed defendant with a well-trimmed beard and mustache. Defendant also introduced evidence that on September 11, 2011, he was involved in a Golden Gate Bridge walk for the commemoration of the day. Adrienne Fong testified that she was with defendant at the event from 9:30 a.m. to 3:00 p.m. and that defendant had a well trimmed beard and mustache. She identified videos and pictures taken during the event that showed defendant with a well-trimmed beard and mustache. During the initial police investigation, the eyewitnesses did not mention that the perpetrator had a beard or mustache (but the photograph based on which the four witnesses identified defendant does depict facial hair). Professor Geoffrey Loftus, an expert in human perception, memory, and eyewitness identification also testified on defendant's behalf. He detailed the potential problems with percipient witnesses and the various factors that could affect their ability to accurately remember an event. He also testified about the factors that could affect police line-ups.

Defendant was charged with kidnapping (Pen. Code,<sup>1</sup> § 207, subd. (a)—count 1), assault with a deadly weapon—a vehicle (§ 245, subd. (a)(1)—count 2), making a criminal threat (§ 422—count 3), assault likely to produce great bodily injury (§ 245, subd. (a)(1)—count 4), false imprisonment (§ 236—count 5), and misdemeanor theft (§ 484—count 6). It

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise noted.

was further alleged that count 1 was a violent felony within the meaning of section 667.5, and counts 1 through 3 were serious felonies within the meaning of section 1192.7.

The jury found defendant guilty on counts 1, 3, and 6, and of the lesser included offense of assault under count 4. Count 5 was dismissed by the prosecution in the interest of justice and count 2 was dismissed when the jury was unable to reach a verdict on that count. The court found true the enhancements alleged as to counts 1 and 3. The court imposed a prison sentence of five years, the midterm, on the kidnapping conviction (count 1), plus one-third the midterm, an additional eight months, on the criminal threat conviction (count 3), to be served consecutively. The court imposed a concurrent six-month term on count 4 and a stayed sentence on count 6 pursuant to section 654. The court also ordered defendant to pay a \$240 restitution fine, which was stayed pending the successful completion of parole (§ 1202.4), and other fines and victim restitution.

Defendant filed a timely notice of appeal.

## **Discussion**

### **I. Admission of prior offense evidence**

Defendant contends the trial court erred in admitting evidence of his 2010 regulatory offenses. He asserts the uncharged misconduct was inadmissible under Evidence Code section 1101, subdivision (b), because the offenses were insufficiently similar to the charged acts to be probative of identity. He further asserts that the evidence should have been excluded under Evidence Code section 352 as unduly prejudicial, and that the admission of such evidence violated his due process rights. We conclude that the trial court did not abuse its discretion in admitting the evidence of the prior offenses.

The admission of prior-offense evidence is “a matter within the sound discretion of the trial court.” (*People v. Haston* (1968) 69 Cal.2d 233, 246.) That discretion must “be exercised within the context of the fundamental rule that relevant evidence whose probative value is outweighed by its prejudicial effect should not be admitted.” (*Ibid.*) Evidence Code section 1101, subdivision (b) permits “evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact” at issue such as “motive, opportunity, intent, preparation, plan, knowledge, identity, [or] absence of

mistake or accident . . . .” Evidence of uncharged acts is admissible to provide identity “ ‘only if the charged and uncharged crimes are sufficiently similar to support a rational inference of identity . . . .’ ” (*People v. Foster* (2010) 50 Cal.4th 1301, 1328.) To establish identity, the highest degree of similarity between the charged and uncharged acts is required. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 403.) “[T]he uncharged misconduct and the charged offense must share common features that are sufficiently distinctive so as to support the inference that the same person committed both acts. [Citation.] ‘The pattern and characteristics of the crimes must be so unusual and distinctive as to be like a signature.’ ” (*Ibid.*)

“The strength of the inference in any case depends upon two factors: (1) the *degree of distinctiveness* of individual shared marks, and (2) the *number* of minimally distinctive shared marks.” (*People v. Thornton* (1974) 11 Cal.3d 738, 756 disapproved on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668.) “The inference of identity, however, ‘need not depend on one or more unique or nearly unique common features; features of substantial but less distinctiveness may yield a distinctive combination when considered together.’ ” (*People v. Lynch* (2010) 50 Cal.4th 693, 736, overruled on other grounds in *People v. McKinnon* (2011) 52 Cal.4th 610.) Accordingly, “the inference of identity arises when the marks common to the charged and uncharged offenses, considered singly or in combination, logically operate to set the charged and uncharged offenses apart from other crimes in the same general variety and, in so doing, tend to suggest that the perpetrator of the uncharged offenses was the perpetrator of the charged offenses.” (*People v. Haston, supra*, 69 Cal.2d at p. 246.)

The People contend that the evidence “supports a conclusion that [defendant] actively sought out partygoers and others searching for a ride, behavior that sets apart the offenses from other crimes of the same general variety.” The trial court noted that the offenses exhibit a “similar M.O. in terms of the nature in which [defendant] first came in contact with the victims.” In each case, defendant, alone, sought out individuals attempting to hail a taxi. None of the pickups were prearranged. While there were no peculiarities in the speech or appearance of the driver in the uncharged offenses that tend

to identify defendant as the driver in the charged offense, defendant's use of the Lincoln town car in the manner described is distinctive. The town car involved in the prior offenses was the same as the town car involved in the charged offenses, and—because of the unique vehicle identification number associated with the license plate that Solomon noted at the time of the offense—there is only one such car. Defendant was the driver during both previous incidents which, in the absence of any contrary evidence, supports a rational inference that defendant was the driver during the charged offense. Although there was no violence involved in the prior offenses, defendant's use of the uniquely identified Lincoln town car to solicit and transport passengers without the proper licensing are sufficiently distinctive to identify defendant as the driver who transported Solomon and her friends on the occasion in question. When evidence "is introduced for the purpose of proving the identity of the perpetrator of the charged offense, it has probative value only to the extent that distinctive 'common marks' give logical force to the inference of identity." (*People v. Haston, supra*, 69 Cal.2d at p. 247.)

Moreover, the trial court did not abuse its discretion in refusing to exclude defendant's prior violations under Evidence Code section 352. "If evidence of prior conduct is sufficiently similar to the charged crimes to be relevant to prove the defendant's . . . identity, the trial court then must consider whether the probative value of the evidence 'is "substantially outweighed by the probability that its admission [would] . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.'" (Evid. Code, § 352.)' (*People v. Ewoldt, supra*, 7 Cal.4th at p. 404.) 'Rulings made under [sections 1101 and 352] are reviewed for an abuse of discretion.' [Citation.]' [Citation.] 'Under the abuse of discretion standard, "a trial court's ruling will not be disturbed, and reversal . . . is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.'" ' (*People v. Foster* (2010) 50 Cal.4th 1301, 1328-1329.)

In the instant case, defendant denied being the driver of the town car in question so that the relevance and probative value of the uncharged offenses was considerable. Further, "[t]he probative value of evidence of uncharged misconduct" is enhanced when

“its source is independent of the evidence of the charged offense.” (*People v. Ewoldt*, *supra*, 7 Cal.4th at p. 404.) The source of the past crimes evidence was independent from the crimes charged and included Sergeant Devlin’s testimony along with documents relating to the citations. Any prejudicial effect of this evidence was negligible because the prior offenses were far less serious than the charged offenses, did not involve violence, and were not likely to inflame the jury. In fact, Sergeant Devlin explained that such regulatory violations were not unusual. In addition, the jury was instructed to use the evidence for the limited purpose of deciding whether defendant was the person who committed the offenses. There is no reason to question the normal presumption that the jury understood and followed that instruction. (*People v. Wilson* (2008) 44 Cal.4th 758, 803.) Because the evidence was properly admitted under Evidence Code section 1101, subdivision (b), there is no basis for the contention that admission of the evidence violated defendant’s due process rights and rendered his trial fundamentally unfair. (*People v. Rogers* (2013) 57 Cal.4th 296, 331 [no due process violations when evidence was material, probative, and properly admitted].)

## **II. The consecutive sentences**

Defendant argues that the consecutive sentences for kidnapping and making a criminal threat violate section 654 because his “acts were part of an indivisible course of conduct and incident to one objective.” The contention lacks merit.

Section 654, subdivision (a) precludes multiple punishment for a single act or omission.<sup>2</sup> The provision also precludes multiple punishment where the “course of conduct . . . comprises an indivisible transaction punishable under more than one statute.” (*People v. Bauer* (1969) 1 Cal. 3d 368, 376.) “The divisibility of a course of conduct” depends on “the intent and objective of the actor, and if all . . . offenses are incident to one objective, the defendant may be punished for any one of them but not for more than

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<sup>2</sup> Section 654 provides in pertinent part that “[a]n act or omission which is made punishable in different ways by different provisions of this code may be punished under either of such provisions, but in no case shall the act or omission be punished under more than one provision.”

one.” (*Ibid.*) On the other hand, if defendant’s objectives in committing separate crimes were “independent of and not merely incidental to each other,” section 654 does not ban multiple punishment. (*People v. Beamon* (1973) 8 Cal.3d 625, 639.)

The court explicitly determined defendant’s criminal threat conviction was divisible from the kidnapping. “The question whether section 654 is factually applicable to a given series of offenses is for the trial court, and the law gives the trial court broad latitude in making this determination. Its findings on this question must be upheld on appeal if there is any substantial evidence to support them.” (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.)

Defendant claims that “moving Ms. Solomon in the vehicle and threatening her was part of the single intent and objective of scaring her and forcing her to give him the money.” The claim is belied by the record. Before defendant made the criminal threat, he drove Solomon to a secluded area, tossed her belongings, pushed her to the ground, assaulted her repeatedly, and started back toward his car. The kidnapping was complete and no further threat was needed to retain the fare defendant had already pocketed. Even if the initial kidnapping resulted from “a moment of rage” and the intent to instill fear in Solomon, defendant’s gratuitous threat to “run [her] over” intensified the situation and made her fear for her life. “[A]t some point the means to achieve an objective may become so extreme they can no longer be termed ‘incidental’ [to the original crime] and must be considered to express a different and a more sinister goal.” (*People v. Nguyen* (1988) 204 Cal.App.3d 181, 191.) Section 654 “cannot, and should not, be stretched to cover gratuitous violence or other criminal acts far beyond those reasonably necessary to accomplish the original offense.” (*Nguyen*, p. 191.) The trial court was within its discretion to consider defendant’s additional threat beyond the realm of incidental.

### **III. The restitution fine**

Defendant contends the trial court violated ex post facto provisions when it imposed a \$240 restitution fine pursuant to section 1202.4, subdivision (a). Defendant was convicted of crimes occurring on September 11, 2011. The statute effective at that time provided that a “restitution fine shall be set at the discretion of the court and

commensurate with the seriousness of the offense, but shall not be less than two hundred dollars (\$200), and not more than ten thousand dollars (\$10,000), if the person is convicted of a felony . . . .” (Former § 1202.4, subd. (b)(1), as amended by Stats. 2009, ch. 454, § 1.) The statute was amended four months later to provide for a minimum restitution fine of \$240. (Former § 1202.4, subd. (b)(1), as amended by Stats. 2011, ch. 358, § 1, effective Jan. 1, 2012.)

“The prohibition against ex post facto laws applies to restitution fines.” (*People v. Valenzuela* (2009) 172 Cal.App.4th 1246, 1248.) Defendant, however, waived this issue by failing to object during the sentencing hearing. (*People v. Nelson* (2011) 51 Cal.4th 198, 227; see also *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1469 [defendant’s failure to object to restitution fine constitutes waiver in the interests of fairness to sentencing court, opposing party, judicial economy, and the needs for orderly and efficient administration of law].) Defendant acknowledges this failure but argues that the assessment of the fine resulted in the imposition of an unauthorized sentence for which an objection was unnecessary. We disagree. “[T]he ‘unauthorized sentence’ concept constitutes a narrow exception to the general requirement” that parties properly raise their claims in the trial court to preserve the issue for appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 354.) Generally, a sentence is unauthorized “where it could not lawfully be imposed under any circumstance in the particular case.” (*Ibid.*) These cases generally involve pure questions of law that can be resolved without reference to the particular sentencing record developed in the trial court. (*Ibid.*)

Here, the \$240 fine imposed was authorized by the statute in effect at the time of defendant’s crime, and the trial court was free to set the fine “commensurate with the seriousness of the offense” (Former § 1202.4, subd. (b)(1), as amended by Stats. 2009, ch. 454, § 1.) Because the record is silent as to the trial court’s reasoning, defendant argues that “the most logical interpretation of the trial court’s action is that it imposed the minimum restitution” based on the 2012 amendment. As defendant acknowledges, however, the \$240 fine was within the trial court’s discretion and, thus, was not an “unauthorized sentence.” On appeal, we presume the trial court properly performed its

official functions in the absence of evidence to the contrary. (Evid. Code, § 664; *Ross v. Superior Court* (1977) 19 Cal.3d 899, 913.) We find no error.

#### **IV. Writ of Habeas Corpus**

Defendant's habeas corpus petition is based on two grounds: (1) newly discovered evidence establishes that the defendant is factually innocent and (2) the newly discovered evidence establishes that Solomon and her three companions provided false evidence in indentifying defendant. When presented with a petition for a writ of habeas corpus, the reviewing court must first determine whether the petition states a prima facie case for relief, assuming the petition's factual allegations are true. (*People v. Duvall* (1995) 9 Cal.4th 464, 474-475.) If the "factual allegations . . . establish a prima facie case for relief, the court will issue an [order to show cause]." (*Id.* at p. 475.) On the other hand, "if no prima facie case is stated, the court will summarily deny the petition." (*Ibid.*)

Defendant's habeas petition is supported by declarations from four individuals—defendant, his trial attorney, his appellate attorney, and one Siaosi Aleamoutua, identified only as an "acquaintance" of defendant. Aleamoutua alleges that he and two others, "Wali" and "Elias," had "agreed to check on [defendant] from time to time" because defendant had "received a telephone threat from Syria" in early September. He provides no further identifying information about "Wali" or "Elias." Aleamoutua states he "kept watch" over defendant during the evening of September 10, 2011, and into the morning of September 11. He states that on that evening defendant slept in a Ford van, parked at Holly Park Circle and Appleton. Aleamoutua "had a perfect view" of defendant's van. At 10:30 p.m. he saw defendant, dressed in a gray sweat suit, lock his Lincoln town car and enter his van. At 11:00 p.m. he observed an individual "wearing a black leather jacket and a golden headdress" enter defendant's Lincoln town car and drive away. He provides no further information about this individual. Aleamoutua then phoned "Wali," who told him not to worry because defendant gave his Lincoln town car to many drivers. "As no one had approached [defendant's van,] and having noticed nothing out of the ordinary," Aleamoutua left Holly Park Circle a few minutes after 2:00 a.m. on September 11, 2011. Aleamoutua claims he was unable to provide information at defendant's trial because he

was arrested in October 2011 and “was never aware” defendant “was arrested or needed any alibi or witnesses.”

Defendant’s declaration states that on September 10, 2011, he attended an event at the Islamic Society in San Francisco that was “open to the public and publicized by a flyer.” On September 11, 2011, he states he was “involved with numerous groups” in a Golden Gate Bridge walk commemorating the day. Defendant also asserts he first learned what Aleamoutua had observed after his conviction, and had he “been aware of a witness who could testify that a different individual drove [his town car] on the date of the incident and/or could provide evidence . . . about [his] whereabouts on that evening, [he] would have provided this information to [his] trial attorneys.” He states that before trial he “had advised [his] attorney and investigator that sometimes other individuals drove [his town car] and picked up fares and that possibly one of these other individuals was the driver at the time of the incident charged in this case.” He attaches images “from the Internet” of an individual he states is named “Elias,”<sup>3</sup> whom he claims matches the description of the person the trial witnesses testified was the driver of the town car. He provides no further information as to the source of these photographs or about Elias’s identity.

The petition also includes a declaration from defendant’s trial counsel. Defendant’s counsel had conducted an investigation before trial, but was unable to find witnesses “who could provide an alibi” or “who could provide evidence that another individual was driving [defendant’s town car] on the night of the incident.” In her declaration, defendant’s appellate counsel states that she found “no reference” to Aleamoutua in trial counsel’s discovery or investigation notes.

Because “[a] conviction obtained after a constitutionally adequate trial is entitled to great weight,” a claim of factual innocence based on newly discovered evidence must “ ‘completely undermine the entire structure of the case upon which the prosecution was

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<sup>3</sup> The declarations are unclear as to whether this “Elias” is the same person as the “Elias” mentioned in Aleamoutua’s declaration. Neither Aleamoutua nor defendant provides Elias’ last name.

based.’ ” (*In re Lawley* (2008) 42 Cal.4th 1231, 1240.) “It must point unerringly to the petitioner’s innocence and must be conclusive; it is not sufficient that the new evidence conflicts with that presented at the trial and would have presented a more difficult question for the trier of fact. [Citations.] Concomitantly, the new evidence must be credible and convincing.” (*In re Wright* (1978) 78 Cal.App.3d 788, 802.)

Accepting defendant’s evidence that he and his attorney were not aware of Aleamoutua’s asserted observations at the time of trial, it is nonetheless doubtful that this evidence that another person drove the town car can be considered “newly discovered.” Evidence is “newly discovered” only if it “ ‘could not have been discovered with reasonable diligence prior to judgment.’ ” (*In re Hardy* (2007) 41 Cal.4th 977, 1016.) Defendant acknowledges that he knew that other individuals had access to and drove his town car. Defendant presumably knows who these individuals are and no reason is apparent why he could not have presented evidence of their use of the town car. No evidence was presented that defendant gave keys to the car to any other person or that the car was stolen. Evidence of another’s use of the car could, with reasonable diligence, have been presented at trial, whether or not defendant was aware of Aleamoutua’s purported observations.

Moreover, defendant’s “newly discovered” evidence does not “ ‘ ‘completely undermine the entire structure’ ” of the prosecution’s case and “point unerringly to innocence.” ’ ” (*In re Hardy, supra*, 41 Cal.4th at p. 1016.) The prosecution’s case included four individuals who separately identified defendant as the driver of the Lincoln town car. These individuals had the opportunity to see and interact with the driver. Their identifications of defendant were not based on fleeting observations. Solomon, the victim, testified that she faced her assailant for about 30 seconds before he drove away with her still in the back seat. She also had the chance to observe her assailant when he threw her purse, assaulted her, and threatened to run her over. All four individuals were confident in their identifications. On the other hand, Aleamoutua’s testimony is inherently questionable. It is far from clear, and certainly unsubstantiated, why he would have been “keeping watch” over defendant, much less doing so without defendant’s knowledge;

there is no meaningful identification of “Wali,” “Elias,” or the man with a golden headdress that supposedly drove off in the town car; there is no substantiation that defendant ever permitted others to drive his town car; and none of the eyewitnesses to the assault mentioned the driver wearing a golden headdress or anything resembling it.

The new evidence is not only implausible but at most merely corroborates defendant’s version of the facts. (See *People v. Egbert* (1941) 43 Cal.App.2d 117, 119 [trial court did not abuse discretion in denying new trial based on newly discovered evidence from alibi witness that merely corroborated defendant’s story].) The evidence lacks the probative force required for habeas relief. (See *In re Lawley, supra*, 42 Cal.4th at p. 1246 [evidence that a reasonable jury could reject does not justify habeas relief]; *In re Weber* (1974) 11 Cal.3d 703, 724 [newly discovered evidence insufficient where it merely raised a credibility issue without providing defendant a complete defense].)

Defendant also argues that the “new evidence” proves that he was not the driver of the Lincoln town car and that the eyewitnesses provided false testimony. Habeas relief is appropriate “[s]o long as some piece of evidence at trial was actually false, and so long as it is reasonably probable that without the evidence the verdict would have been different.” (*In re Richards* (2012) 55 Cal.4th 948, 961.) Here, however, the new evidence is hardly conclusive that the eyewitness testimony was unreliable, much less that it was “false.” Defendant presents “no reason to value” the “new evidence” over the trial testimony of Solomon and her three companions. (See *id.* at p. 963.) Contrary to his claim, “the mere existence of the conflict does not, without more, warrant the granting of relief. In every case where defendant has been convicted and seeks, in a subsequent habeas corpus proceeding, to establish innocence with new evidence, such a conflict will exist because of the evidence of guilt received at trial.” (*In re Branch* (1969) 70 Cal.2d 200, 215.)

Defendant’s showing is insufficient to justify further proceedings on his habeas corpus petition.

### **Disposition**

The judgment is affirmed and the petition for writ of habeas corpus is denied.

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Pollak, J.

We concur:

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McGuinness, P. J.

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Jenkins, J.