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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.

ADEAJAI JOHNSON,

Defendant and Appellant.

A139112

(Contra Costa County  
Super. Ct. No. 1006790)

Adeajai Johnson was convicted of second degree murder with an enhancement for personal use of a firearm. He contends the court committed prejudicial error when it allowed a detective to testify about his opinion of a witness's truthfulness, misinstructed the jury on unreasonable self-defense, denied a motion for a new trial based on ineffective assistance of trial counsel, and denied a motion for mistrial based on jurors inadvertently seeing him in handcuffs. None of these contentions have merit, so we affirm the judgment.

## **BACKGROUND**

### **Eyewitness Testimony**

Eduardo Flores was shot to death in front of a 7-11 market in the early morning hours of January 31, 2010, after he and his brother Ismael Flores stopped to eat after a night of bowling and drinking beer.<sup>1</sup>

Ismael testified that the brothers were concerned they could be stopped for driving under the influence, so they decided to eat and share a cigarette in the parking lot before they drove home. An older-model van was parked near their car, across an empty parking stall. The brothers were smoking by the side of their car when a dark Lexus pulled up behind it. The passenger was a black male in his twenties with dreadlocks, later identified as co-defendant Taekwondo Maxwell. Maxwell “look[ed] at us like he had a problem,” got out of the Lexus and asked what the brothers were doing next to his van.

A fistfight ensued. Maxwell started throwing punches at Eduardo. Eduardo “wanted to get at him and stuff,” but Maxwell grabbed a pistol from his waistband, cocked it and pointed it at the ground.

Meanwhile, the driver of the Lexus, a black male dressed in black and wearing a hoodie, backed up and parked next to the van. Maxwell backed up toward the Lexus and talked to defendant as Ismael tried to pull his brother behind their car. Maxwell walked back toward the brothers, now looking scared and like he knew “something was gonna happen.” He said they could “still do this one-on-one,” but instead of approaching he turned back and retreated to the van.

That was when the driver of the Lexus came from behind the van and started firing. Ismael testified the gun looked like an M-1 or M-16 assault rifle. He did not see

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<sup>1</sup> Because the brothers share a common surname, we will refer to them as Eduardo and Ismael for clarity. We intend no disrespect by using their given names.

the shooter's face, but could see the tip of the gun sticking out from behind the van. He testified: "I couldn't, you know, I seen something sticking out, and then this reflection or whatever in front of the . . . on the glass[], you know, from the barbershop, and—but I never seen no—I never seen his face or where he at." Eduardo ran toward the 7-Eleven. Ismael tried to grab him but Eduardo fell as he ran. The driver fired between 17 and 30 rounds before he drove off in the Lexus, with Maxwell following in the van.

Ismael identified Maxwell's picture from a photo lineup. He was 75 or 80 percent sure of his identification. He also identified a photograph of a Lexus that looked like the one the shooter drove. A few days later police showed him a car that he identified as the shooter's Lexus.

Johnson Inthavong was about to walk into the 7-Eleven shortly after 2:00 a.m. on January 31, 2010, when he saw five men arguing near a van. Two of them were together behind the van and the other three were by its side. One of the men said something about fighting "one on one." Inthavong was inside making a purchase when he heard gunshots and saw Eduardo go by the window and fall to the ground. The van left after the shots were fired. Inthavong's girlfriend called the police and they tried to assist Eduardo and Ismael until the police arrived.

### **The Investigation**

Eduardo was pronounced dead at the scene. There were multiple gunshot wounds to his hands, feet, limbs, groin and genitals, but the cause of death was four shots to his back that perforated his right lung, heart and aorta and left a large gaping exit wound to his abdomen. 25 spent rifle cartridges were recovered from the scene.

San Pablo Police Detective Bradley Lindblom interviewed Ismael early the morning of January 31 and again on February 1, February 5 and February 17. Ismael appeared to be intoxicated, but he was able to understand and answer questions. He said there was a van parked in the 7-Eleven lot. A black or dark green Lexus entered and parked almost behind his car. Its front passenger "was looking at them weird" and Ismael believed he thought that he and his brother were going to break into the van. The

passenger got out of the car and started a fist fight, then backed away, pulled a handgun from his waistband and cocked it. Then the driver of the Lexus came around the corner of the van and began shooting at Ismael and his brother. Ismael ducked to the back of his car and tried to grab his brother, but Eduardo took off running and was shot. The shooter continued to shoot at Eduardo as he lay on the ground. Ismael described the gun as an M-1 type of rifle or an AK. When the shooting stopped, the shooter got back into the Lexus and the passenger got into the van. Both vehicles fled southbound on San Pablo Avenue, with the Lexus in the lead.

Ismael described the passenger as a black male, 24 to 26 years old, with six-inch dreadlocks, approximately 5'7" and 180 pounds. He said the shooter was a black male in his twenties wearing a black hoodie. Ismael said he would not be able to identify the shooter, but he identified Maxwell as the passenger from a photo lineup. He said he was 75 to 80 percent sure of his identification. Detective Lindblom ascertained that a 90's Chevy motor home was registered to Maxwell.

Surveillance tapes from the 7-Eleven showed the van arrive at 10:13 p.m. on January 30, followed by a black Lexus. The van backed into a parking space and did not leave until after the shooting. The driver, a black male wearing a white t-shirt under a black shirt with large gold buttons on the shoulder, arms and chest, got out of the Lexus and went into the 7-Eleven. He returned to the car at 10:15 and then reentered the 7-Eleven at 10:18 p.m. The videotape shows a passenger wearing a light-colored shirt in the front passenger seat. At 10:19 the driver got back in the car and drove away, leaving the van in the parking lot.

At 2:02 a.m. the Flores's car pulled into the parking lot. At 2:22 a.m. the brothers were standing near the back right of their car across an empty parking space from the van when the Lexus pulled up and blocked their car. The passenger got out and the Lexus backed into a parking spot out of view of the cameras. At that point the video skipped forward to 2:23, showing Eduardo lying on the ground after being shot. The van and Lexus were both gone.

Surveillance tapes from the Carquinez Bridge showed a van resembling the van in the 7-Eleven surveillance video cross the bridge at 2:37 a.m., driven by a black male wearing a light shirt with darker stripes. The van was registered to Maxwell.

Bridge video surveillance also showed a dark Lexus driving northbound at 3:49 a.m. The driver was a black male wearing a white t-shirt but otherwise dressed in black with a gold button on the left breast or shoulder of his shirt or jacket. The Lexus was registered to defendant, but on February 3 he sold it to Trisha Faria. About two weeks earlier Faria had attempted to buy the car from defendant, but she thought the \$2,500 he was asking for it was too much. On February 3 defendant called Faria's boyfriend and offered to sell it for \$2,200. Faria offered \$2,100 for the car, and defendant agreed.

### **Bridget Warren's Testimony**

Bridget Warren was defendant's girlfriend. She had been living with defendant since September 2009 and was pregnant with his child. She reluctantly testified at trial and was impeached with a taped statement she gave to police 10 days after the murder.

On January 30, 2010, Warren's sister threw a party at a club in Oakland. (RT 807-808)~ Warren drove to the party with her cousin. Defendant drove his Lexus to the party, and arrived with Maxwell around 10:00 or 10:30 p.m.. Pictures Warren took at the party showed defendant wearing a black button-up shirt and blue jeans. Maxwell had dreadlocks and was wearing a long sleeved white and light brown shirt. Warren left the party around 1:30 a.m.. (RT 819-822, 855)~ She initially testified defendant left the party first, but she admitted telling police that he was still there when she left.

Defendant called Warren several times the morning of January 31, starting at 2:24 a.m.<sup>2</sup> He said that Maxwell got into a fight with a "Mexican" in a parking lot and that Maxwell "was winning." Then he said the "Mexican" was "going to the trunk," and "then the other one ran to the trunk" and they "popped the trunk." Defendant told

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<sup>2</sup> The calls were corroborated by cell phone records.

Warren that he got out of his car and “knocked him down” because “they were getting on his cousin.”<sup>3</sup> Warren told police she thought “knocked them down” meant defendant murdered someone, but she did not remember saying so when she testified and said that it was not true. She told police defendant said he did it because the men were “gonna kill my cousin” and he “ ‘couldn’t let ’em kill my cousin,’ ” that he “ ‘had to do it,’ ” that nobody shot at him, and that defendant got home a little after 4:00 a.m., but at trial she did not remember making any of those statements. Warren described defendant’s shirt to the police as black with a round silver button on the side.

Warren did not want to testify against defendant. When she spoke with police she was hurt and angry because she had recently found out his other girlfriend was also pregnant. She later wrote defendant three letters apologizing for lying to the police because she was angry about his other relationship. Warren’s taped police interview was played for the jury.

The principal defense theory was that Maxwell or a third party, not defendant, was the shooter. The jury was also instructed on reasonable and unreasonable self-defense.

The jury acquitted defendant of first degree murder, found him guilty of second degree murder and found true three special firearms allegations. He was sentenced to a term of forty years to life in prison. This appeal timely followed.

## **DISCUSSION**

### **I. Detective Lindblom’s Testimony**

Defendant contends the trial court prejudicially erred when it permitted Detective Lindblom to testify that he believed Ismael was telling the truth during his police interview. The claim is one of erroneous admission of evidence, subject to the *Watson* standard of review for claims of state law error. (*People v. Coffman* (2004) 34 Cal.4th 1,

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<sup>3</sup> Warren testified on cross-examination that defendant said “Tae knocked ‘em down,” not “I knocked ‘em down.”

76; *People v. Watson* (1956) 46 Cal.2d 818, 836.) While such lay opinion testimony is generally inadmissible, it was properly admitted under these circumstances and, in any event, its admission was harmless.<sup>4</sup>

### **A. Background**

Detective Lindblom interviewed Ismael several times. During cross-examination, defense counsel questioned Lindblom as follows: “Q: Is it fair to say that during your interview with Mr. Flores it became a little frustrating for you at points? [¶] A. Because it was moving along slowly, yes. [¶] Q: According to you, you thought he wasn’t being totally up front and forthright about everything. [¶] A. Initially. [¶] Q: Okay. You had certain concerns that maybe he was gonna take care of business himself. [¶] A. I told him that I didn’t want him doing anything like that, yes.”

Defense counsel concluded the cross-examination after just three more questions. The prosecutor immediately followed up on redirect examination: “Q. During your interview and subsequent interviews, did you believe that [Ismael] was being forthright with you? [¶] A. Yes. [¶] [Defense Counsel]: Objection. It’s irrelevant what this detective thought about his credibility. [¶] [Prosecutor]: Counsel hasn’t asked the question about the initial interview. [¶] The Court: Yeah. Overruled. [¶] [Prosecutor]: I’m sorry. Your answer was? [¶] A. After multiple interviews and speaking with him, I do believe that he was telling me the truth.”

### **B. Analysis**

A lay witness’s opinion about another witness’s truthfulness is generally inadmissible on that issue. “[T]he reasons are several. With limited exceptions, the fact

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<sup>4</sup> The People’s contention that defendant waived this claim because his trial counsel did not object a *second* time after the court overruled his objection is meritless. Once the objection was resolved against him, defense counsel was not required to repeat it when the prosecutor reasked the question. (*People v. Antick* (1975) 15 Cal.3d 79, 95, disapproved on other grounds in *People v. McCoy* (2001) 25 Cal.4th 1111, 1123.)

finder, not the witnesses, must draw the ultimate inferences from the evidence. Qualified experts may express opinions on issues beyond common understanding [citations], but lay views on veracity do not meet the standards for admission of expert testimony. A lay witness is occasionally permitted to express an ultimate opinion based on his perception, but only where ‘helpful to a clear understanding of his testimony’ [citation], i.e., where the concrete observations on which the opinion is based cannot otherwise be conveyed. [Citations.] Finally, a lay opinion about the veracity of particular statements does not constitute properly founded character or reputation evidence [citation], nor does it bear on any of the other matters listed by statute as most commonly affecting credibility [citation]. Thus, such an opinion has no ‘tendency in reason’ to disprove the veracity of the statements.” (*People v. Melton* (1988) 44 Cal.3d 713, 744 (*Melton*); see *People v. Sergill* (1982) 138 Cal.App.3d 34, 39–40 [where credibility was critical, admission of police officer’s opinion of child victim’s truthfulness was prejudicial error]; but see *People v. Padilla* (1995) 11 Cal.4th 891, 946–947 [declining to decide whether this aspect of *Melton* survived Proposition 8].)

On the other hand, “[t]he extent of the redirect examination of a witness is largely within the discretion of the trial court. . . . It is well settled that when a witness is questioned on cross-examination as to matters relevant to the subject of the direct examination but not elicited on that examination, he may be examined on redirect as to such new matter.” (*People v. Steele* (2002) 27 Cal. 4th 1230, 1247–1248.) Here, at the end of his cross-examination defense counsel asked Lindblom if he thought defendant “wasn’t being totally up front and forthright about everything.” The prosecutor immediately followed up on defense counsel’s question by asking on redirect examination “did you believe that he was being forthright with you?”

We see no abuse of discretion in permitting this limited redirect examination after defense counsel cross-examined Detective Lindblom on this same point. In any event, any error would have been harmless in light of the considerable evidence that defendant, not Maxwell, was the shooter. That evidence includes video surveillance tapes from the

7-Eleven and the Carquinez bridge; Warren’s incriminating police statement and testimony about her calls with defendant after the shooting, corroborated by defendant’s phone records; and defendant’s sale of the Lexus after the murder. There is no reasonable probability on this record that the jury would have reached a different verdict if Detective Lindblom’s opinion that Ismael was forthright during his interview had been excluded. (See *People v. Coffman*, *supra*, 34 Cal.4th at p. 76; *People v. Watson*, *supra*, 46 Cal.2d at p. 836.)

## **II. Jury Instructions**

Defendant contends the court erred when it gave a pinpoint instruction on imperfect self-defense requested by the prosecution. Not so. The instruction did not misstate the law and defendant raised no objection that it was cumulative or repetitive.

### **A. Background**

Defendant asked the court to instruct the jury with CALCRIM No. 505 on self-defense and CALCRIM No. 571 on imperfect self-defense. During a jury instruction conference, defense counsel requested a special instruction on third-party culpability. The prosecutor then asked that the following language be given following CALCRIM No. 505: “In order to justify an intentional killing: the danger must be apparent, present, immediate, and instantly dealt with and the killing must be done under a well-founded belief that it is necessary to save one’s self from death or great bodily injury. The immediate danger of death or great bodily injury must exist at the very time the fatal shot was fired.” Similarly, the prosecutor asked for the following special instruction after CALCRIM No. 571: “For both perfect and imperfect self defense the immediate danger of death or great bodily injury must exist at the very time the fatal shot was fired.”

The following discussion took place. “The Court: A little bit of an overlap, but – Mr. Cooper, your feeling? [¶] [Defense Counsel]: My gut feeling is that they both are an accurate statement of the law. My issue is whether or not we need it, though, despite that, and I was just gonna take a look and compare to the CALCRIM instruction. [¶] The Court: Right. So here’s the thing. They’re both technically covered. All your

instructions are technically covered by other instructions. They just don't say the things the way that you guys want to argue them or say them. [¶] So my feeling is, with the changes to Mr. Cooper's, it's—I don't see anything wrong with his instructions now that we've made those changes, which I agree.

[¶] . . . [¶]

“And, Ms. Yancey, for yours, they're just a more pointed way of saying what it is you want to say, even though it's already covered in the instruction itself. [¶] So my feeling is to allow them all.” [¶] [Prosecutor]: Okay. [¶] The Court: So that each of you can argue your points of what you want to say in the language you're more comfortable with in addition to the CALCRIMs. None of them are incorrect, now that we've fixed yours, Mr. Cooper. [¶] And, Ms. Yancey, yours are somewhat repetitive, but again, they say it a little differently, and that's probably how you want to blow it up on a chart and say it. And legally they're correct, so I kind of feel that it's you know, fair for both of you to be able to have what it is you want.” There were no objections.

The court instructed on self-defense that “In order to justify an[] intentional killing the danger must be apparent, present, immediate, and instantly dealt with. The killing must be done under a well-founded belief that it is necessary to save one's self from death or great bodily injury. The immediate danger of death or great bodily injury must exist at the very time the fatal shot was fired.” The jury was also instructed that “For both perfect and imperfect self-defense the immediate danger of death or great bodily injury must exist at the very time the fatal shot was fired.”

## **B. Analysis**

Defendant argues it was error to instruct the jury that the danger had to be apparent at the moment the fatal shot was fired, and, implicitly, that such error was not waived by his attorney's acquiescence to the instruction because the court has a sua sponte duty to instruct on the relevant general principles of law. Neither point has merit. As the court observed, the special instructions merely repeated or elaborated on other correct instructions given to the jury, so defendant at least very arguably forfeited his

objection for appeal when he failed to raise it at trial. (See *People v. Coffman, supra*, 34 Cal. 4th at p. 99; *People v. Middleton* (1997) 52 Cal.App.4th 19, 30.)

In any event, the instruction did nothing more than accurately relate the element of imminence required for either theory of self-defense to the specific facts of the case. “ ‘Fear of future harm-no matter how great the fear and no matter how great the likelihood of the harm-will not suffice. The defendant’s fear must be of *imminent* danger to life or great bodily injury. ‘ “[T]he peril must appear to the defendant as immediate and present and not prospective or even in the near future. *An imminent peril is one that, from appearances, must be instantly dealt with.*” . . . [¶] This definition of imminence reflects the great value our society places on human life.’ ” (*In re Christian S.* (1994) 7 Cal.4th 768, 783; *People v. Aris* (1989) 215 Cal.App.3d 1178, 1187, disapproved on another point in *People v. Humphrey* (1996) 13 Cal.4th 1073, 1086.) Defendant’s claims that he could only have known in hindsight whether the purported danger was imminent does not render the pinpoint instruction an inaccurate statement of the law.

### **III. New Trial Motion**

Defendant contends the court erred when it denied his motion for a new trial brought on the ground that his trial counsel rendered ineffective representation. We disagree. Defendant failed to show his counsel’s alleged inactions were anything other than a reasonable tactical decision.

#### **A. Background**

Following the verdict defendant, represented by new counsel, filed a motion for a new trial. The motion asserted defendant received ineffective assistance of counsel because trial counsel failed to investigate and/or present alibi testimony from Paris Scott, defendant’s other girlfriend at the time of the murder and the mother of one of his children. Scott stated in a declaration that on the night of the shooting she left the party with defendant and Melvin Victoriano, whom they dropped off in San Pablo, and that defendant was with her continuously until she dropped him off in Vallejo around 4:00

a.m. She told defendant's trial counsel, Kellin Cooper, that she was willing to testify, but he never asked what she knew or interviewed her about defendant's whereabouts that night.

Cooper submitted a declaration in reply. He stated he spent "hundreds and hundreds of hours" preparing defendant's case for trial and that he "thoroughly considered and evaluated any and all potential defenses," including an alibi defense. After consulting with his law partners, Cooper decided that "the best strategy for Mr. Johnson, and the best chance for Mr. Johnson to prevail at trial, was not to assert an alibi defense. I made that decision after considering a number of facts that if believed by a jury would undermine and totally discredit an alibi defense. In short, I did not believe that a jury would ultimately believe any alibi witness. . . . [¶] Accordingly, I did not interview, nor did I call as a witness, Paris Scott."

Defendant presented expert testimony from seasoned criminal defense attorney Michael Markowitz that, in essence, it was unreasonable under the circumstances for Cooper to reject an alibi defense based on Scott's proposed testimony without first interviewing her or otherwise investigating her story. The prosecution presented testimony from Vallejo Police Detective Jim Melville who testified that in 2008 Scott falsely reported to police that her car had been stolen after it was used in a robbery and lied about when she had last seen the suspected perpetrators. During that same incident Scott also lied to Detective Melville that she had seen one of the individuals detained for the robbery. Melvin Victoriano testified that he was not with Scott and defendant the night of the murder. Scott's mother testified that she did not see defendant's car parked at her house that night and did not remember if she saw Scott pick him up there the next morning. Detective Daniel Wieggers testified that defendant's and Maxwell's cell phone records placed them near the 7-Eleven at the time of the shooting.

Defense counsel Cooper testified that he investigated defendant's claim that Scott would be an alibi witness. He investigated whether her proposed testimony was consistent with the other testimony and physical evidence, and concluded it conflicted

with the physical evidence and the jury would not believe it. After consulting with his law partners, Cooper made the strategic choice to present evidence that defendant was present but was not the shooter. He did not interview Scott because he knew generally what she would say, that it conflicted with all of the physical evidence including cell phone records, surveillance videos and witness statements, and he thought her alibi was not the best defense.

The trial court denied the new trial motion. It found the evidence supporting the purported alibi was questionable. Specifically, Victoriano credibly contradicted Scott's statement that he was in the car with her and defendant the night of the murder. The court admitted Scott's declaration for the truth of the matter asserted but gave it little weight in light of her relationship with defendant, Victoriano's testimony, and Scott's refusal to make herself available to testify at the hearing. The court also considered that Scott lied to the police in 2008 and that her testimony did not match up with other evidence including the cell phone records, Warren's police statement and testimony, and the surveillance tapes.

The court concluded that Cooper made a reasonable decision based on sufficient investigation to forego the alibi defense premised on Scott's testimony. "So the strategic choices made by counsel after thorough investigation of the law and the facts here were done and applying the governing principles to this case, it's clear to me that the conduct of defendant's counsel cannot be found to be unreasonable. Even assuming the challenged conduct was unreasonable, the defendant suffered insufficient prejudice to warrant a new trial, and it would be highly . . . unlikely that there would be a reasonable probability that he would obtain a different result had he gone with this alibi defense."

## **B. Analysis**

We employ a two-step process to review the denial of a motion for new trial based on purported ineffective assistance of counsel. (*People v. Taylor* (1984) 162 Cal.App.3d 720, 724–725.) We review the trial court's express or implied factual findings for substantial evidence, applying all presumptions in favor of the trial court's exercise of its

power to judge witness credibility, resolve conflicts in testimony, weigh the evidence, and draw factual inferences. (*Id.* at p. 724.) We review its determination whether, on the facts as found, the defendant has shown his or her trial counsel was ineffective or to show he suffered prejudice as a result of counsel’s alleged failings. (*Id.* at pp. 724–725.) “To the extent that these are questions of law, the appellate court is not bound by the substantial evidence rule, but has ‘the ultimate responsibility . . . to measure the facts, as found by the trier, against the constitutional standard . . .’ [Citation.] On that issue, in short, the appellate court exercises its independent judgment.’ ” (*Id.* at p. 725.)

Defendant maintains his attorney unreasonably failed to interview Scott or otherwise investigate her proposed alibi testimony before he decided in light of the “damning” (in the trial court’s assessment) evidence putting him at the scene of the murder that the jury would reject the defense. We disagree. Defendant claims there was a paucity of evidence showing he was present at the scene, but the testimony and physical evidence discussed in the background section of this opinion supports the court’s contrary determination. On this record, it was not unreasonable for defense counsel to decide against putting on an alibi defense without first interviewing Ms. Scott or conducting additional investigation. “ ‘[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.’ ” (*In re Cudjo* (1999) 20 Cal.4th 673, 692, quoting *Strickland v. Washington* (1984) 466 U.S. 668, 690–691; *In re Richardson* (2011) 196 Cal.App.4th 647, 661.) Cooper’s decision not to call Scott to testify was based on his considered assessment that her testimony

conflicted with the physical evidence and the jury would not believe it. That was a reasonable strategic determination. The trial court properly denied the new trial motion.

#### **IV. Motion for Mistrial**

Defendant contends reversal is required because the jury saw him in handcuffs in a courthouse hallway during voir dire. This contention, too, is meritless.

##### **A. Background**

Defense counsel moved for mistrial during jury selection because, due to a problem with the courthouse's design, jurors had seen defendant being escorted in handcuffs outside of the courtroom. The court denied the motion. It explained: "[W]e talked about this early on, you know . . . that the defendant would have to be transported across the hall, and I couldn't guarantee that jurors were not going to see him. It's not shocking that somebody faced with this charge would be held in custody and would be transported to and from the courtroom in handcuffs, so I don't think that the prejudice amounts to a mistrial here." The court offered to admonish the jurors and instruct them not to consider the fact that defendant was in custody, but defense counsel did not request the admonishment.

##### **B. Analysis**

The Supreme Court has repeatedly rejected the claim that prejudicial error occurred "simply because the defendant 'was seen in shackles for only a brief period either inside or outside the courtroom by one or more jurors or veniremen.'" (*People v. Tuilaepa* (1992) 4 Cal.4th 569, 584, *aff'd sub nom. Tuilaepa v. California* (1994) 512 U.S. 967; *People v. Cunningham* (2001) 25 Cal.4th 926, 988–989; *People v. Ochoa* (1998) 19 Cal.4th 353, 416–417; *People v. Duran* (1976) 16 Cal.3d 282, 287, fn. 2 ["Such brief observations have generally been recognized as not constituting prejudicial error"]; see *People v. Cecil* (1982) 127 Cal.App.3d 769, 778–779.) That is exactly what happened here. As explained in *People v. Jacobs* (1989) 210 Cal.App.3d 1135, 1141, "[t]he customary practice of utilizing physical restraints while transporting a prisoner from place to place, e.g., from jail to courtroom and back, is a matter of common

knowledge and generally acknowledged as acceptable for the protection of both the public and defendant.” Defendant relies heavily on *People v. Duran* but the court there reversed due to multiple errors in a close case, and specifically commented that the jurors’ view of the defendant in shackles was not independently prejudicial. (*People v. Duran, supra*, 16 Cal.3d at p. 287, fn. 2.)

Nothing in this record suggests reason to believe the jurors’ brief view of defendant being transported in handcuffs caused undue prejudice under any standard. Accordingly, the court correctly denied the motion for mistrial.

**DISPOSITION**

The judgment is affirmed.

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Siggins, J.

We concur:

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McGuinness, P.J.

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Jenkins, J.