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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

SAYNAB ABDULLAHI JAMA,

Defendant and Appellant.

D059604

(Super. Ct. No. SCD222706)

In re SAYNAB JAMA on Habeas Corpus.

D062197

CONSOLIDATED APPEAL and petition for writ of habeas corpus following a judgment of the Superior Court of San Diego County, Joseph P. Brannigan, Judge. Petition denied; judgment affirmed.

INTRODUCTION

This criminal prosecution arose out of an August 2009 shooting from a car allegedly driven by appellant and petitioner Saynab Abdullahi Jama in the parking lot of a Denny's restaurant in the City of San Diego. An amended information (the

information) charged both Jama and her codefendant Abdikidir Abdillahi Guled, the alleged shooter, with one count of attempted murder in violation of Penal Code sections 187, subdivision (a), and 664 (count 1) (undesigned statutory references will be to the Penal Code unless otherwise specified); discharge of a firearm from a motor vehicle (count 2: § 12034, subd. (c)); and assault with a firearm (count 3: § 245, subd. (a)(2)).¹ As to count 1, the information charged that the attempted murder was willful, deliberate, and premeditated within the meaning of section 189.

As to counts 1 and 2, the information also alleged that Guled personally and intentionally discharged a firearm (a handgun), proximately causing great bodily injury to a person other than an accomplice, within the meaning of section 12022.53, subdivision (d) (hereafter section 12022.53(d)); and that Jama, although not personally armed with a handgun, was vicariously liable as a principal within the meaning of section 12022, subdivision (a)(1) (hereafter section 12022(a)(1)).

The information also charged Guled, but not Jama, with assault by means of force likely to cause great bodily injury (count 4: § 245, subd. (a)(1)), and with felony vandalism (count 5: § 594, subd. (a), (b)(1)). As to all five counts, the information further alleged that Guled was out on bail at the time he committed the charged offenses within the meaning of section 12022.1, subdivision (b) (hereafter section 12022.1(b)).

¹ Jama and Guled were jointly tried on the charges alleged in counts 1 through 3. Guled is not a party to either Jama's appeal or her habeas corpus petition. The additional counts charged against Guled are discussed here because Jama challenges the trial court's denial of her motion to sever her case from his.

Before trial, the court denied Jama's motions to sever her case from Guled's case and for dual juries. However, the court granted Jama's in limine motion to sever counts 4 and 5, which were only alleged against Guled. The court also granted the People's motion to bifurcate the allegations in counts 1 through 5 that Guled was out on bail at the time he committed the charged offenses within the meaning of section 12022.1(b).

The jury found Jama guilty of counts 1 through 3 and found true the count 1 allegation that the attempted murder was willful, deliberate, and premeditated.² The jury also found true the allegations in counts 1 and 2 that Jama was vicariously liable as a principal (§ 12022(a)(1)).

Contentions

Jama appeals, contending (1) the court erred in denying her request for a midtrial continuance based on "newly discovered evidence"; (2) the evidence is insufficient to support her attempted murder conviction and the jury's true finding on the related allegation that the attempted murder was willful, deliberate, and premeditated; (3) the court erred in allowing an investigator with the San Diego County District Attorney's Office, to give unqualified expert opinion testimony "concerning ballistics"; (4) the court erred when it denied her motion to sever her trial from Guled's trial; (5) the court erred during the cross-examination of Sergeant Patti Clayton, a supervisor with the San Diego

² The jury also found Guled guilty of counts 1 through 3 and found true the count 1 allegation that the attempted murder was willful, deliberate, and premeditated. The jury also found true the allegations in counts 1 and 2 that Guled personally and intentionally discharged a handgun, proximately causing great bodily injury to a person other than an accomplice, within the meaning of section 12022.53(d).

Police Department Multicultural Community Relations Office, by denying Jama's request for the identification of members of the community who, according to Sergeant Clayton, had provided information that Jama and Guled were involved in criminal activity; and (6) this court should review the sealed transcript of an in camera proceeding conducted on August 3, 2010, at which Sergeant Clayton testified about this latter matter, in order to permit this court to determine whether the trial court correctly denied Jama's request for the identification of those community members. The Attorney General does not object to this court's review of the sealed transcript of the August 3, 2010 in camera proceeding.³

In her habeas corpus petition,⁴ Jama contends her trial counsel provided ineffective assistance in violation of her rights under the Sixth and Fourteenth Amendments to the federal Constitution by (1) failing to hire an independent investigator; (2) failing to "competently and completely investigate the August 17, 2009 shooting, failing in particular to interview percipient witnesses"; (3) failing to hire a ballistics expert; and (4) failing to hire a cultural expert.

For reasons we shall explain, we deny Jama's habeas corpus petition and affirm the judgment.

³ By order dated October 2, 2012, this court on its own motion ordered the augmentation of the record on appeal to include a confidential reporter's transcript of the August 3, 2010 in camera proceeding, subject to the conditions set forth in California Rules of Court rule 8.328(c).

⁴ On July 19, 2012, this court ordered that Jama's habeas corpus petition be considered concurrently with the appeal. For purposes of disposition, these cases are now consolidated by separate order dated January 17, 2012.

FACTUAL BACKGROUND

A. The People's Case

On August 17, 2009, at around 2:00 a.m., Abdiwali Hassan and his friend Ahmed Ismail, the shooting victim in this case, went to a Denny's restaurant in the City Heights area of San Diego after they attended a traditional Somali wedding earlier that night. There, Hassan and Ismail met up with Ismail Mire, who had driven his black Toyota 4Runner and had parked in the Denny's parking lot. Because the line of waiting customers in the restaurant was long, the three men stood outside in the parking lot, talking to each other and to other people who had attended the wedding.

Hassan, Ismail, and Mire saw Guled standing alone in the parking lot next to a silver Toyota Camry, smoking a cigarette. According to Ismail and Mire, the Camry had a dent in the left rear bumper. Mire had seen a silver Camry like that in the Somali community and recognized it as the car that Guled's sister—Suhur Guled, who had flown to Germany four days earlier—used to drive. Mire saw Jama sitting in the front passenger seat of the Camry.

Ismail walked past Guled, who nodded at him. Ismail ignored Guled because he did not know him. Guled walked up to Mire and demanded a cigarette. Mire testified that he smelled alcohol on Guled's breath. Mire found Guled's attitude offensive and told him he did not have any cigarettes. Guled walked back to the Camry and drove it slowly around the parking lot.

Mire and three of his friends approached the open driver's side window of the Camry. Leaning forward with his arms crossed, Mire asked Guled, "What is going on?"

Is there any problem?" Guled replied, "No, I'm cool," and drove away. Mire looked at Jama.

As Hassan, Ismail, and Mire were walking toward Mire's 4Runner, the Camry returned to the parking lot. Guled parked the Camry and got out, and Jama exited the passenger's side. Mire watched as Guled and Jama went to the trunk of the Camry, and he saw Jama hand Guled a dark-colored object. Guled and Jama then got back inside the Camry. Jama got into the driver's seat, and Guled got into the front passenger's seat. Jama then drove forward and stopped.

Guled then leaned out of the passenger's side window and sat on the window frame, holding a gun. He fired the gun at the three men. Mire testified he was able to see Guled's face as he fired three or four shots while holding the gun with both hands. When Guled stopped shooting, Mire heard him yell, "You're going to get it," as Jama drove the Camry away, speeding.

Hassan testified he heard three shots and saw two gun flashes as the shooter fired from the top of the Camry while hanging out of the passenger's side window. Hassan ran over to Ismail when he heard Ismail screaming that he had been shot. Hassan saw that Ismail had been shot in the leg.

Ismail testified that he saw Jama in the driver's seat of the Camry and saw Guled stick half of his body out of the passenger's side of the car. Ismail then saw Guled fire a gun. Guled fired again, and the bullet hit Ismail in the leg. Ismail testified that a third bullet hit the ground about three feet to the right of him. He also testified that he heard Jama and Guled laughing after Guled fired the third shot. Jama was speeding as she

drove away. Ismail underwent two surgeries and spent five days in the hospital. At trial, he stated he still had difficulty walking.

Michael Patton, who was driving in the parking lot at the time of the shooting, saw the "gray sedan" with two Blacks sitting in the front. As soon as Patton passed that car, he heard the first gunshot. Immediately thereafter, while looking in his rearview mirror, Patton saw an arm stretched across the roof line of the sedan, and saw the muzzle flash as the shooter, who was sitting on the front passenger's side window sill with his upper body outside the car, fired the second shot. Patton, who did not see the details of the shooter's face, drove to a safe place and called 911.

Ghassan Estephan, an officer with the San Diego Police Department, responded to the scene, secured it, and looked for evidence. He found a bullet, which he impounded.

John Durina, a criminalist with the San Diego Police Department, analyzed two bullets connected to this crime. One was collected at the scene, and the other was removed from Ismail's leg. Durina determined that both bullets were fired from the same gun.

Sergeant Clayton, a supervisor with the San Diego Police Department Multicultural Community Relations Office, met Jama when Jama was a teenager. Sergeant Clayton was a mentor or "big sister" to Jama. In March 2009 Jama informed Sergeant Clayton that she was dating Guled, and Jama introduced him to Sergeant Clayton at Guled's apartment. Sergeant Clayton thereafter saw Jama and Guled together several times driving around in various vehicles.

On August 18, 2009, the day after the shooting, Sergeant Clayton learned about the shooting at a morning briefing and heard the descriptions of the Somali male and female suspects and the small silver compact car they were seen driving. Sergeant Clayton advised the case detective that the descriptions matched Jama and Guled.

Detective Greg Myers prepared two photographic lineups, one containing a photograph of Guled and the other containing a photograph of Jama. On August 20, 2009, Detective Myers went to the hospital and showed Ismail the lineup containing the photo of Guled after reading to Ismail an admonishment about the photo lineup procedure. Ismail identified Guled. Thereafter, on September 16, Ismail identified Jama from the photo lineup that contained a photograph of her. On August 25, Mire, when shown photo lineups at the police station, identified both Guled and Jama. Hassan tentatively identified Guled from a photo lineup, but told Detective Myers he was not sure about the identification; he could not identify Jama. At trial, Hassan explained that although he was sure about his identification of Guled during the photo lineup, he was scared because when a Somali witness identifies another Somali "they might come after you." Both Mire and Ismail identified Guled and Jama in court during the trial.

Sergeant Clayton learned that a car matching the description of the small, silver compact car used in the shooting was registered to one of Guled's sisters. Michael Massey, an investigator working for the district attorney's office, tried to locate the car using a possible license plate number that Sergeant Clayton provided. He determined from records of the Department of Motor Vehicles that the silver Camry was registered to Suhur Guled and Rahma Guled. Massey looked for Guled's sisters but could not find

them. Massey prepared a search warrant for the Camry, entered it in the police data base, looked for the car at various addresses in San Diego, and contacted people in Minnesota where members of Guled's family resided. At trial, Massey indicated he still had not located the Camry.

An Immigration and Customs Enforcement special agent testified that he checked overseas shipping records and determined that the Camry had not left the country through any legitimate means.

B. The Defense Cases

Jama presented an alibi defense. Jama and her sister Amal Jama (Amal)—both of whom lived with their parents, another sister, a niece, and a cousin at the time of the shooting—testified that they stayed home while some of the other members of their family attended the wedding. According to both Jama and Amal, Jama went to bed at around midnight on August 17, 2009, and she did not leave the house that night.

Although Guled did not testify, he essentially presented an alibi defense. Guled's sister Fadumo Guled testified that she and Guled arrived at her niece's traditional Somali wedding between 9:00 p.m. and 10:00 p.m. on August 16, 2009. Fadumo testified that she and Guled stayed at the wedding for about two and a half hours and from there they went to a Denny's restaurant. Guled went inside, brought back some food, and from there they went directly to Fadumo's home where they arrived between 3:40 a.m. and 4:00 a.m. According to Fadumo, Guled did not leave and spent the night there.

Abdul Ibrahim, who had attended the wedding, testified on behalf of Guled that he was in the Denny's parking lot on August 17, 2009, when he heard two gunshots. He had

seen Guled and Jama in the Somali community but did not personally know them. Ibrahim testified he saw four people in a black four-door SUV, two in front and two in back, and the one in the back on the right side—an African-American man—came out of the window and started shooting. Ibrahim stated he did not see a silver Camry that night.

Nur Hassan, an elder in the San Diego Somali community, testified that he spoke to Ismail and asked him who shot him. Ismail said he did not know.

DISCUSSION

I. APPEAL

A. *Denial of Midtrial Request for a Two-Hour Continuance*

In her appeal, Jama first contends the court erred in denying her request for a two-hour midtrial continuance based on newly discovered evidence. We reject this contention.

1. *Procedural background*

Thursday, August 5, 2010

The People's first witness testified on July 29, 2010,⁵ and the prosecution rested its case-in-chief on Thursday, August 5. Guled's counsel presented his defense witnesses immediately thereafter, and the court then ordered that the trial would resume the following day at 1:45 p.m.

⁵ All further dates will be to calendar year 2010 unless otherwise specified.

Friday afternoon, August 6

When the trial resumed at 1:56 p.m. on Friday, August 6, Guled rested his case without calling any additional witnesses. Jama's trial counsel, Pamela Lacher, then gave her opening statement and began presenting Jama's defense by calling several witnesses. The court admonished and excused the jurors at 4:25 p.m., instructing them to return at 8:45 a.m. on Monday.

Monday morning, August 9

When the trial proceedings resumed a little after 9:00 a.m. on Monday, August 9, Lacher told the court outside of the presence of the jury that she had expected to receive information from one of her potential witnesses by the afternoon on Friday, August 6, but she had just received the information at 8:50 a.m. that morning (August 9). Lacher asked the court for an in camera hearing, stating she could not tell the court why she wanted such a hearing "until we get in camera." She added that the information was attorney-client privilege and work product material, indicating she could disclose it to the court only in confidence.

The prosecutor objected to Lacher's request for an in camera hearing, but indicated he believed the information in question had something to do with the vehicle.

Lacher then requested, in addition to her request for an in camera hearing, that the court grant a continuance of the trial for a couple of hours only. The court then asked Lacher, "Do you have any witnesses available, ma'am?" When Lacher replied that she did not have any available witnesses, the court reminded her that she had agreed to have her witnesses ready by that morning, given that the Friday trial proceedings had started

late because she did not have a witness. The court expressed concern about the pace of the trial, noting that almost half an hour had passed since the jury was told to come back, and it appeared Lacher did not have a witness.

Lacher responded by informing the court that the information in question, if it bore out the way she thought it might, concerned the whereabouts of the vehicle allegedly used in the shooting. Significantly, she added that the problem with the information was that it might lead to something that might be harmful to her client, Jama.

Acknowledging that cases evolve and both sides can continue their investigations while the trial is going on, the court noted that the jury was waiting outside, the defendants had a right to a speedy trial, and at some point the trial must go on. The court told Lacher it was very reluctant to meet in camera only with her. The court explained it was not proper for the court to get involved in defense counsel's decision about whether to present the newly discovered evidence.

Lacher responded that she could not present that evidence until she found out the last piece of the puzzle and whether that last piece was favorable to Jama. Lacher reiterated that the information could harm Jama and Guled. The court observed that Lacher was asking the court to stop the trial to wait for [her] to get the last piece of the puzzle. Lacher agreed and again requested a short continuance of a couple of hours. The court added, "[T]he last piece might hurt your client in which case you'd come back and say I rest."

Guled's counsel asked for a short recess to speak with Jama's attorney to attempt to resolve the problem, and the court granted the request. Following their unrecorded

discussion, Lacher told the court she had an ethical dilemma in that she could present a witness but, with the information she had, she knew that "that is not the full story so I can't do that ethically." She stated that she needed to talk to the court about her ethical dilemma. The court replied, "I'm not sure I'm your ethic[us] adviser, ma'am." Stating again that it was concerned about moving the trial forward because the jury was waiting, the court told Lacher that "[n]ewly discovered evidence is evidence nonetheless. If it is relevant then you can present it. If you're unable to present it I don't think I should stop the trial for you to continue your investigation."

Lacher replied that this problem could have been avoided if the People had done the rest of the analysis. She said it was unfair that she was having to go through this process because the prosecution could make a phone call and obtain insurance records regarding the car in question.

Ruling

The court again told Jama's counsel it would not meet with her alone, noting that the jury had been waiting for 45 minutes and it was time to move on. However, the court indicated it would order another recess, which would last about 15 minutes, to allow Lacher to take a phone call that she said might solve the problem. The court told Lacher, "At this point I'm inclined to move forward with the trial so, you're going to get a short continuance, you've already gotten 45 minutes and probably . . . another 15, there is an hour, that you've gotten."

According to the court's August 9 minutes, the court was in recess for 18 minutes from 9:31 a.m. to 9:49 a.m., at which time the court advised counsel that it would next

conduct the jury instruction conference. The court told Jama's counsel that, "by doing this jury instruction conference now, along with the fact that it's already an hour and five minutes since the jury arrived," she would receive the two-hour continuance she requested.

The court's minutes show that the recorded jury instruction conference lasted 46 minutes. The court was again in recess for 22 minutes from 10:49 a.m. to 11:11 a.m., and the trial resumed at 11:24 a.m.

2. *Applicable legal principles*

The decision to grant or deny a continuance of a criminal trial is guided by section 1050, subdivision (e), which requires a showing of good cause to justify such continuance.⁶ "[A] trial court has broad discretion to determine whether good cause exists to grant a continuance of the trial." (*People v. Jenkins* (2000) 22 Cal.4th 900, 1037; see also *People v. Sakarias* (2000) 22 Cal.4th 596, 646 ["The determination of whether a continuance should be granted rests within the sound discretion of the trial court, although that discretion may not be exercised so as to deprive the defendant or his attorney of a reasonable opportunity to prepare."].) "A showing of good cause requires a demonstration that counsel and the defendant have prepared for trial with due diligence." (*People v. Jenkins, supra*, at p. 1037.)

⁶ Section 1050, subdivision (e), provides: "Continuances shall be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause."

In exercising its broad discretion in determining whether to grant or deny a motion for continuance in the midst of a trial, the trial court " ' "must consider not only the benefit which the moving party anticipates but also the likelihood that such benefit will result, the burden on witnesses, jurors and the court and, above all, whether substantial justice will be [achieved] or defeated by a granting of the motion." ' " (*People v. Samayoa* (1997) 15 Cal.4th 795, 840.)

A trial court's decision to deny a defendant's motion for a continuance in the midst of a trial requires a reversal of a judgment of conviction only when the record on appeal demonstrates both an abuse of discretion and prejudice to the defendant. (*People v. Samayoa, supra*, 15 Cal.4th at p. 840 ["In the absence of a showing of an abuse of discretion and prejudice to the defendant, a denial of his or her motion for a continuance does not require reversal of a conviction."].)

"To establish prejudice, a defendant must show affirmatively that in the absence of the claimed [erroneous denial of his or her motion to continue the trial], a result more favorable to the defendant probably would have ensued." (*People v. Gonzalez* (2005) 126 Cal.App.4th 1539, 1549, quoting *People v. Watson* (1956) 46 Cal.2d 818, 836.)

3. *Analysis*

Jama has failed to meet her burden of showing the court abused its broad discretion by denying her motion for a two-hour midtrial continuance during the presentation of her defense. On appeal, she claims that if the court had granted her request for a continuance, she would have produced evidence she later submitted in support of her new trial motion—in a declaration submitted by Guled's sister Rahma

Guled—that the Toyota Camry at issue in this case was in Minnesota at Rahma's home; and, thus (Jama asserts), the Camry "could not have been involved in the shooting."

However, the record shows Jama did not present this information to the court at the time she requested the midtrial continuance, and she does not challenge the court's denial of her counsel's midtrial request to speak alone to the court in camera. On this record, which shows it was not likely that a continuance of the trial would benefit Jama and the information her counsel intended to develop might actually hurt Jama's defense, we conclude the court acted well within its broad discretion when it denied her request for a two-hour continuance.

Even if we were to assume the court abused its discretion, we would conclude Jama has failed to demonstrate any such assumed error was prejudicial. As detailed, *ante*, the court essentially granted Jama's defense team the two-hour continuance her counsel requested by granting short recesses and conducting the jury instruction conference. In addition, the trial evidence (discussed, *ante*), viewed in the light most favorable to the judgment, shows that the identification of Jama as the driver of the car from which Guled fired the shots primarily hinged on eyewitness testimony provided by Ismail, who was the victim of the shooting, and Mire, not on evidence about the make and model of the car used during the shooting. Jama has failed to meet her burden of showing that but for the court's assumed error in denying her request for a continuance, she would have obtained a more favorable outcome.

B. *Sufficiency of the Evidence (Premeditation and Deliberation)*

Jama next claims the evidence is insufficient to support both her attempted murder conviction and the jury's true finding on the related allegation that the attempted murder was willful, deliberate, and premeditated. We conclude Jama has forfeited this claim.

1. *Applicable legal principles*

An unlawful killing of a human being with malice aforethought is murder and is of the first degree if it is willful, premeditated, and deliberate. (§§ 187, subd. (a), 189.) "To prove the killing was 'deliberate and premeditated,' it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act."

(§ 189.)

The California Supreme Court recently explained that, "[i]n the context of first degree murder, 'premeditated' means 'considered beforehand,' and 'deliberate' means 'formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action.' [Citation.] [Citation.] 'The process of premeditation and deliberation does not require any extended period of time. 'The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly'" (*People v. Lee* (2011) 51 Cal.4th 620, 636.)

In *People v. Anderson* (1968) 70 Cal.2d 15, the California Supreme Court "distilled certain guidelines to aid reviewing courts in analyzing the sufficiency of the evidence to sustain findings of premeditation and deliberation. The *Anderson* analysis was intended only as a framework to aid in appellate review; it did not propose to define

the elements of first degree murder or alter the substantive law of murder in any way. [Citation.] . . . The *Anderson* guidelines are descriptive, not normative. [Citation.] The goal of *Anderson* was to aid reviewing courts in assessing whether the evidence is supportive of an inference that the killing was the result of preexisting reflection and weighing of considerations rather than mere unconsidered or rash impulse." (*People v. Perez* (1992) 2 Cal.4th 1117, 1125.)

"[T]he *Anderson* court identified three categories of evidence pertinent to the determination of premeditation and deliberation: (1) planning activity, (2) motive, and (3) manner of killing. . . . The *Anderson* factors, while helpful for purposes of review, are not a sine qua non to finding first degree premeditated murder, nor are they exclusive." (*People v. Perez, supra*, 2 Cal.4th at p. 1125.)

a. *Standard of review*

In assessing Jama's challenge to the sufficiency of the evidence regarding the elements of premeditation and deliberation, we apply the substantial evidence standard of review. (See *People v. Perez, supra*, 2 Cal.4th at pp. 1123-1124.) Under that standard of review, we view the evidence "in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578; *Jackson v. Virginia* (1979) 443 U.S. 307, 319.)

The Court of Appeal recently explained that "when a criminal defendant claims insufficiency of the evidence on a particular element of the crime of which he was

convicted, we presume the evidence of that element was sufficient, and the defendant bears the burden of convincing us otherwise. To do so, the defendant . . . must set forth in his opening brief all of the material evidence on the disputed element in the light most favorable to the prosecution, and then must persuade us that that evidence cannot reasonably support the jury's verdict." (*People v. Battle* (2011) 198 Cal.App.4th 50, 62; see also *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1574 ["If the defendant fails to present us with all the relevant evidence, or fails to present that evidence in the light most favorable to the People, then he cannot carry his burden of showing the evidence was insufficient because support for the jury's verdict may lie in the evidence he ignores."].)

The uncorroborated testimony of a single witness is sufficient to sustain a conviction or true finding on an enhancement allegation, "unless the testimony is physically impossible or inherently improbable." (*People v. Scott* (1978) 21 Cal.3d 284, 296.) We do not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Jones* (1990) 51 Cal.3d 294, 314.) "Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact." (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

3. *Analysis*

The Attorney General argues that Jama has forfeited her claim that the evidence is insufficient to support her attempted murder conviction and the related true finding that the murder was willful, deliberate, and premeditated because Jama "does not explain how

the evidence was allegedly lacking," and she "does[not] set forth the facts in the light most favorable to the judgment." We agree.

A defendant claiming insufficiency of the evidence forfeits the claim on appeal when he or she "restricts his analysis to the evidence most favorable to himself." (*People v. Battle, supra*, 198 Cal.App.4th at p. 62; see also *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282.) The defendant must "'state fully, with transcript references, the evidence which is claimed to be insufficient to support the findings'" (*People v. Dougherty*, at p. 282), and the reviewing court is not required to "'comb the record on [defendant's] behalf.'" (*Ibid.*)

Here, Jama has forfeited her claim of insufficient evidence because she has failed to present in her opening brief the relevant evidence in the light most favorable to the judgment, and she fails to fully state, with trial transcript references, the evidence she claims is insufficient. Instead, without any transcript references, she states in the most conclusory fashion that (1) "[t]here was a paucity of evidence concerning any aiding and abetting by [her] in any attempted murder"; (2) "[t]he government relied on sketchy identifications of [her]"; and (3) "there was no evidence of her involved [*sic*] in the actual shooting of any weapon." Such conclusory arguments are patently insufficient because support for the jury's verdict may lie in the evidence Jama ignores, and (as noted) this court is not required to "comb the record on [her] behalf." (*People v. Dougherty*, 138 Cal.App.3d at p. 282.)

Citing page 572 in volume 7 of the reporter's transcript, Jama also asserts that "murky testimony concerning the exchange of 'something dark' . . . should not reasonably

be considered evidence of anything." The record shows Jama is referring to Mire's testimony that, after Guled and Jama got out of the Camry and went to the trunk, he saw Jama hand Guled "something dark." However, she disregards Mire's testimony that he saw Guled and Jama get back inside the Camry, Jama get into the driver's seat, and Guled get into the front passenger's seat, Jama then drive forward and stop, Guled lean out of the passenger's side window and sit on the window frame, holding a gun, and Guled's face as Guled fired three or four shots while holding the gun with both hands.

For all of the foregoing reasons, we conclude Jama has forfeited her claim of insufficient evidence. (*People v. Battle, supra*, 198 Cal.4th at p. 62; *People v. Dougherty, supra*, 138 Cal.App.3d at p. 282.) Were it necessary for this court to reach the merits of Jama's claim of insufficient evidence, we would conclude she has failed to meet her burden of showing the evidence is insufficient to support her count 1 attempted murder conviction and the jury's true finding on the related count 1 allegation that the attempted murder was willful, deliberate, and premeditated.

C. Admission of Investigator Massey's "Ballistics" Opinion Testimony

Jama also claims the court erred in allowing Investigator Massey to give unqualified expert opinion testimony concerning ballistics of a bullet found lodged in a wall pillar at the scene of the shooting. We conclude Jama has forfeited this claim and, even if she had not forfeited it, she has failed to meet her burden of demonstrating that the claimed evidentiary error was prejudicial.

1. *Legal principles governing admissibility of expert opinion testimony*

A person may testify as an expert "if he [or she] has special knowledge, skill, experience, training, or education sufficient to qualify him [or her] as an expert on the subject to which his [or her] testimony relates." (Evid. Code, § 720, subd. (a).) Evidence Code section 801, subdivision (a) "permits the introduction of testimony by a qualified expert when that testimony may 'assist the trier of fact.' " (*People v. Brown* (2004) 33 Cal.4th 892, 900.)

A trial court has broad discretion in deciding whether a witness is qualified as an expert to testify on a particular issue. The California Supreme Court has explained that "[t]he trial court is given considerable latitude in determining the qualifications of an expert and its ruling will not be disturbed on appeal unless a manifest abuse of discretion is shown. [Citations.] [¶] However, whether a person qualifies as an expert in a particular case depends upon the facts of that case and the witness' qualifications." (*People v. Kelly* (1976) 17 Cal.3d 24, 39.)

Once the trial court determines a witness has sufficient knowledge of the subject matter to entitle the opinion to go to the jury, the question of the degree of the expert's knowledge goes to the weight of the evidence, not its admissibility. (*People v. Bolin* (1998) 18 Cal.4th 297, 321-322.) A trial court's determination of whether a witness qualifies as an expert will not be disturbed on appeal absent a manifest abuse of discretion. (*Ibid.*)

3. *Analysis*

We first conclude Jama has forfeited her claim that the court erred in allowing Massey to give unqualified expert opinion testimony. As the Attorney General correctly points out, Jama does not specify in her opening brief argument which specific opinions she is challenging. In the factual background section of her opening brief, Jama summarized, with references to numerous pages of volume 5 of the reporter's transcript, various testimonial statements Massey made in response to questions by the prosecutor during direct examination. However, in her brief two-page argument in her opening brief, she cites to page 123 of volume 5 of the reporter's transcript as support for her assertion that Massey "testified, over objection, to expert ballistics opinions," but she does not specify to which opinions she is referring. A review of that page of the trial transcript shows the prosecutor asked Massey, "Can you explain based on your training and experience whether it is common for a bullet that strikes a wall to later be found a few feet in front of it?" The court summarily overruled the following objection by Guled's counsel, which Jama's attorney joined: "Lacks foundation as to expertise for this forensic type of opinion, Your Honor." As shown at page 124 of the transcript, Massey responded to the prosecutor's rephrased question by stating: "Bullets have sometimes what is referred to as a mind of their own. But there is a . . . principle of ballistics known as ricochet that . . . states that on an angle of impact or an angle of what they refer to as angle of incidents [*sic*], bullets will ricochet at certain degrees depending on the make-up of the bullet, depending on the strength and density of the surface that they strike and depending on the velocity of the bullet."

Because we are essentially asked to divine which specific opinions Jama is challenging, we deem her claim of evidentiary error to be forfeited. Were it necessary to reach the merits of that claim, we would reject it because Jama has failed to meet her burden of demonstrating the claimed error was prejudicial. Jama asserts in the most conclusory fashion that "[t]his testimony was crucial to the prosecution's case," and, "[a]s the facts detailed, *supra*, show[,] had that evidence been disallowed it is probable the outcome of the case would have been difference [*sic*] especially as to the attempted murder charges." Jama makes no effort to explain in what manner this testimony was crucial to the People's case, and she does not explain how the facts demonstrate that, in the absence of the claimed error, she would have obtained a more favorable outcome. As the Attorney General argues, the disputed issue in this case was identification, and Massey's testimony "had no bearing on this question." In her reply brief, Jama does not claim that Massey's testimony had any bearing on this issue. She merely asserts, again in conclusory fashion and without any reference to the record, that "the error was not harmless, as previously stated, the extensive testimony was relied upon by the prosecution in their case against [her]." As discussed, *ante*, both Ismail and Mire positively identified Jama as the driver of the car from which Guled shot Ismail. As noted, "[t]he uncorroborated testimony of a single witness is sufficient to sustain a conviction, unless the testimony is physically impossible or inherently improbable." (*People v. Scott, supra*, 21 Cal.3d at p. 296.) Jama has not shown that the testimony given by Ismail and Mire physically impossible or inherently improbable.

D. Denial of Jama's In Limine Severance Motion

Jama also contends the court erred when it denied her motion to sever her trial from Guled's trial. We reject this contention.

1. Background

In a motion in limine, Jama requested an order severing her trial from Guled's. She argued that if she and Guled were jointly tried, the jury would infer she was guilty by association, and Guled might testify and exonerate her if she were separately tried.

The prosecution opposed the severance motion, arguing that there was "no evidence of sharply antagonistic defenses" because identity was the defense in both cases, neither defendant had made incriminating extrajudicial statements that would prejudice the other, confusion was unlikely because the nature of the charges was straightforward, and there was no indication that either defendant would give exonerating testimony at a separate trial.

At the hearing on the motion, Jama's counsel orally amended her request to add that she was seeking an order severing counts 4 and 5, which charged only Guled with assault by means of force likely to cause great bodily injury and felony vandalism, respectively.

Following oral arguments, the court denied Jama's motion to sever her trial from Guled's, finding that this case was a classic case for joint trial because it involved defendants charged with common crimes, as well as common victims. There was no evidence of sharply antagonistic defenses because the defense in each case was misidentification, neither defendant had made incriminating extrajudicial statements that

would prejudice the other, and the crimes were connected in their commission and involved "mutual action, common facts, and common evidence." The court, however, granted Jama's motion to sever counts 4 and 5.

2. *Applicable legal principles*

The law prefers consolidation (or joinder) of related charged offenses for trial because joinder, " 'whether in a single accusatory pleading or by consolidation of several accusatory pleadings, ordinarily avoids needless harassment of the defendant and the waste of public funds which may result if the same general facts were to be tried in two or more separate trials [citation], and in several respects separate trials would result in the same factual issues being presented in both trials.' " (*People v. Ochoa* (1998) 19 Cal.4th 353, 409; see also *Alcala v. Superior Court* (2008) 43 Cal.4th 1205, 1220 (*Alcala*) ["[B]ecause consolidation or joinder of charged offenses ordinarily promotes efficiency, that is the course of action preferred by the law."].)

Section 954 provides that "[a]n accusatory pleading may charge two or more different offenses connected together in their commission . . . or two or more different offenses of the same class of crimes or offenses, under separate counts, . . . provided, that the court in which a case is triable, in the interests of justice and for good cause shown, may in its discretion order that the different offenses or counts set forth in the accusatory pleading be tried separately" Offenses committed at different times and places are " 'connected together in their commission' [within the meaning of section 954] when there is a 'common element of substantial importance' among them." (*People v. Matson* (1974) 13 Cal.3d 35, 39.)

If the statutory requirements under section 954 for joinder of charged offenses are met, a defendant claiming the trial court erred by denying his motion to sever the joined charges has the burden to clearly establish that joinder poses a substantial danger of prejudice. (*People v. Soper* (2009) 45 Cal.4th 759, 773.) A defendant seeking severance of properly joined charges " ' "must make a *stronger* showing of potential prejudice than would be necessary to exclude other-crimes evidence in a severed trial." ' " (*Id.* at p. 774, quoting *Alcala, supra*, 43 Cal.4th at p. 1222, fn. 11.)

a. *Standard of review*

The denial of a motion to sever charged offenses which are properly joined under section 954 is reviewed for abuse of discretion, and the ruling will be reversed only if the court has abused its discretion. (*People v. Osband* (1996) 13 Cal.4th 622, 666.) Such an abuse of discretion may be found when the court's ruling " 'falls outside the bounds of reason.' " (*Ibid.*)

3. *Analysis*

We conclude Jama has failed to meet her heavy burden of demonstrating the court prejudicially abused its discretion by denying her severance motion. (See *People v. Soper, supra*, 45 Cal.4th at p. 773.) In support of her claim, Jama merely asserts in conclusory fashion in her opening brief that she and Guled "had inconsistent, irreconcilable defenses" because her defense "was that she wasn't at the scene, while [Guled] claimed he was framed."

However, the record shows that their defenses were neither "antagonistic" nor "inconsistent [and] irreconcilable." As the Attorney General correctly points out, Jama

and Guled each presented an alibi defense. Specifically, as discussed in greater detail, *ante*, Fadumo Guled, Guled's sister, testified on his behalf that she and Guled stayed at the wedding for about two and a half hours; from there they went to a Denny's restaurant; Guled went inside and brought back some food. From there they went directly to Fadumo's home, and Guled spent the entire night there.

Jama also presented an alibi defense. She and her sister Amal testified that they stayed home while some of the other members of their family attended the wedding, and Jama went to bed at around midnight on August 17, 2009, and did not leave the house that night.

Even if Jama had met her burden of showing the court abused its discretion, she has not met her burden of showing she suffered prejudice as a result of the joint trial. In this regard, we note the court eliminated the potential for prejudice by severing counts 4 and 5, which were charged only against Guled.

Because Jama has failed to meet her burden of demonstrating either an abuse of the court's discretion or prejudice, we affirm the court's order denying her severance motion.

E. Official Information Privilege and Jama's Request for Review of Sealed In Camera Proceeding Transcript

Jama also asserts the court erred during the cross-examination of Sergeant Clayton by denying Jama's request for the identification of members of the community who, according to Sergeant Clayton, had provided information that Jama and Guled were involved in criminal activity. Jama requests that this court review the sealed transcript of

an in camera proceeding conducted on August 3, 2010, under Evidence Code section 1042, subdivision (d) (hereafter Evidence Code section 1042(d)), at which Sergeant Clayton testified about this matter, in order (Jama asserts) to permit this court "to determine whether the trial court made a correct ruling" in denying her request for the identification of those Somali community informants. The Attorney General does not object to this court's review of that sealed transcript.

1. *Procedural background*

During cross-examination of Sergeant Clayton by Guled's trial counsel, Sergeant Clayton testified she had received information from anonymous members of the Somali community that led her to suspect that Jama and Guled together were involved in criminal activity. When Guled's counsel asked Sergeant Clayton for the names of her sources in the Somali community, Sergeant Clayton asserted the official information privilege set forth in Evidence Code section 1040.

Guled's counsel requested a hearing and, at the request of the prosecutor, the court ordered an in camera hearing under Evidence Code section 1042(d). During the in camera hearing, Sergeant Clayton gave testimony disclosing the identities of her confidential informants and showing that none of the information they provided to her was exculpatory with respect to the offenses charged in this case. The court ordered that the transcription of the proceeding be sealed.

a. *Ruling*

Following additional arguments by both defense counsel and the prosecutor outside the presence of the jury, the court sustained the official information privilege,

finding that (1) the confidential Somali community informants gave "other crime" information to Sergeant Clayton, (2) the prosecution was not relying on that information to prove this case, (3) the informants were not material witnesses on the issue of whether Jama and Guled were guilty of the offenses charged in this case, and (4) the identity of the informants "[did] not need to be disclosed to the defense."

2. *Applicable legal principles*

Evidence Code section 1040 provides a privilege for nonpublic official information that is "'acquired in confidence by a public employee in the course of his or her duty,' the disclosure of which would be 'against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice . . .'" (*People v. Lewis* (2009) 172 Cal.App.4th 1426, 1431.) Specifically, Evidence Code section 1040, subdivision (b)(2) provides:

"A public entity has a privilege to refuse to disclose *official information*, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and: [¶] . . . [¶] (2) Disclosure of the information is *against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice*; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding." (Italics added.)

Subdivision (a) of Evidence Code section 1040 defines "official information" as "information acquired in confidence by a public employee in the course of his or her duty

and not open, or officially disclosed, to the public prior to the time the claim of privilege is made."

In reviewing a claim of privilege under Evidence Code section 1040, the trial court may conduct an in camera hearing as authorized by Evidence Code section 915, subdivision (b), which provides:

"When a court is ruling on a claim of privilege under Article 9 (commencing with Section 1040) of Chapter 4 (official information and identity of informer) . . . and is unable to do so without requiring disclosure of the information claimed to be privileged, the court may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and any other persons as the person authorized to claim the privilege is willing to have present. If the judge determines that the information is privileged, neither the judge nor any other person may ever disclose, without the consent of a person authorized to permit disclosure, what was disclosed in the course of the proceedings in chambers."

"The standard which the trial court must apply when the defendant in a criminal proceeding demands disclosure of the source of the official information is provided by [Evidence Code] section 1042." (*People v. Garza* (1995) 32 Cal.App.4th 148, 153.) Evidence Code section 1042(d) provides that when a party to a criminal proceeding demands disclosure of the identity of a confidential informant who has provided information to a peace officer, on the ground the informant is "a material witness on the issue of guilt," the trial court "shall conduct a hearing at which all parties may present evidence on the issue of disclosure." That subdivision also provides:

"[T]he prosecuting attorney may request that the court hold an in camera hearing. If such a request is made, the court shall hold . . . a hearing outside the presence of the defendant and his counsel. At

the in camera hearing, the prosecution may offer evidence which would tend to disclose or which discloses the identity of the informant to aid the court in its determination whether there is a reasonable possibility that nondisclosure might deprive the defendant of a fair trial." (*Ibid.*)

In addition, Evidence Code section 1042(d) provides that "[a]ny transcription of the proceedings at the in camera hearing, as well as any physical evidence presented at the hearing, shall be ordered sealed by the court, and only a court may have access to its contents. The court shall not order disclosure, nor strike the testimony of the witness who invokes the privilege, nor dismiss the criminal proceeding, if the party offering the witness refuses to disclose the identity of the informant, unless, based upon the evidence presented at the hearing held in the presence of the defendant and his counsel and the evidence presented at the in camera hearing, the court concludes that there is a reasonable possibility that nondisclosure might deprive the defendant of a fair trial."

"[T]he test of materiality is not simple relevance; it is whether the nondisclosure might deprive the defendant of his or her due process right to a fair trial." (*People v. Garza, supra*, 32 Cal.App.4th at p. 153; *People v. Lewis, supra*, 172 Cal.App.4th at p. 1441.)

As a general proposition, the use of the in camera hearing process can be made only where the nature of the issue to be examined has been made clear in open court and the defense has been given the opportunity to express a position on the need for the information and propose questions for the court to ask, if appropriate. (*Torres v. Superior Court* (2000) 80 Cal.App.4th 867, 873-874.) An adversary hearing may be necessary following the completion of an in camera review by the court. (*Id.* at p. 874.)

3. *Analysis*

Having reviewed the entire record pertaining to Sergeant Clayton's Evidence Code section 1040 claim of official information privilege, including the sealed transcript of the August 3, 2010 in camera proceeding, we are satisfied the trial court properly sustained Sergeant Clayton's claim of official information privilege. The record shows Sergeant Clayton acquired the confidential other crimes evidence in the course of her official duties as a peace officer, the information is not exculpatory, the informants are not material witnesses on the issue of Jama's and Guled's guilt or innocence with respect to the offenses charged in this case, and disclosure of the identities of the informants is against the public interest because there is a necessity for preserving the confidentiality of this information that outweighs the necessity for disclosure in the interest of justice. (See Evid. Code, §§ 1040, subds. (a)-(b)(2), 1042(d).)

II. *HABEAS CORPUS PETITION*

In her habeas corpus petition, Jama contends her trial counsel provided ineffective assistance in violation of her rights under the Sixth and Fourteenth Amendments to the federal Constitution by (1) failing to hire an independent investigator; (2) failing to "competently and completely investigate the August 17, 2009 shooting, failing in particular to interview percipient witnesses"; (3) failing to hire a ballistics expert; and (4) failing to hire a cultural expert. We conclude Jama has failed to meet her heavy initial burden of presenting a prima facie case for relief.

A. *Applicable Legal Principles*

1. *Summary of habeas corpus procedure*

"When presented with a petition for a writ of habeas corpus, a court must first determine whether the petition states a prima facie case for relief—that is, whether it states facts that, if true, entitle the petitioner to relief—and also whether the stated claims are for any reason procedurally barred." (*People v. Romero* (1994) 8 Cal.4th 728, 737.)

"Because a petition for a writ of habeas corpus seeks to collaterally attack a presumptively final criminal judgment, the petitioner bears a heavy burden initially to *plead* sufficient grounds for relief 'For purposes of collateral attack, all presumptions favor the truth, accuracy, and fairness of the conviction and sentence; *defendant* thus must undertake the burden of overturning them. Society's interest in the finality of criminal proceedings so demands, and due process is not thereby offended.'" (*People v. Duvall* (1995) 9 Cal.4th 464, 474, quoting *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1260.)

To satisfy this heavy initial burden of pleading adequate grounds for relief, the habeas corpus petition must plead the facts with particularity and should "include copies of reasonably available documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or declarations." (*People v. Duvall, supra*, 9 Cal.4th at p. 474.) "Conclusory allegations made without any explanation of the basis for the allegations do not warrant relief, let alone an evidentiary hearing." (*Ibid.*, quoting *People v. Karis* (1988) 46 Cal.3d 612, 656.) "If . . . the court finds the factual allegations, taken as true, establish a prima facie case for relief, the court will issue an [order to show

cause]." (*People v. Duvall, supra*, 9 Cal.4th at p. 475.) However, a habeas petition may be resolved by a summary denial of the petition when the court determines the petitioner has not presented a prima facie case for relief. (*Id.* at p. 475; *Younan v. Caruso* (1996) 51 Cal.App.4th 401, 407-408.)

2. *Ineffective assistance of counsel*

A criminal defendant is constitutionally entitled to effective assistance of counsel. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15; *Strickland v. Washington* (1984) 466 U.S. 668, 684-685; *People v. Pope* (1979) 23 Cal.3d 412, 422, disapproved on another ground by *People v. Berryman* (1993) 6 Cal.4th 1048, 1081, fn. 10.) To show denial of the right to effective assistance of counsel, a defendant must show (1) his counsel's performance was below an objective standard of reasonableness under prevailing professional norms, and (2) the deficient performance prejudiced the defendant. (*Strickland*, at pp. 687, 691-692; *People v. Ledesma* (1987) 43 Cal.3d 171, 216-217; *Pope*, at p. 425.) To show prejudice, a defendant must show a reasonable probability that he would have received a more favorable result had his counsel's performance not been deficient. (*Strickland*, at pp. 693-694; *Ledesma*, at pp. 217-218.)

B. *Analysis*

We have read and considered Jama's habeas corpus petition, including exhibits A through H attached thereto.⁷ We have also read and considered Jama's supplement to her

⁷ Exhibit A is a declaration by George Michael Newman, a licensed private investigator. Exhibit B is a declaration by Dr. Edward Reynolds, a college professor who specializes in East African studies and a purported cultural expert regarding Somali clan

habeas corpus petition, filed on October 18, 2012, which consists of a declaration by Lance Thomas Martini, a purported forensic firearms expert, in which he opines (among other things) that (1) although prosecution witness Michael Massey "has sufficient training in shooting principles and techniques, tactics, and forearm maintenance and repair," it "does not appear that he has formal or other training in crime scene/shooting reconstruction as it relates to firearms evidence"; and (2) Massey "made inappropriate assumptions based on witness statements."

We conclude Jama has failed to meet her initial burden to plead sufficient grounds for relief. All presumptions favor the truth, accuracy, and fairness of his conviction and sentence. (See *People v. Duvall*, *supra*, 9 Cal.4th at p. 474.) Regarding her first and fourth alleged grounds for relief based on her claim of ineffective assistance of counsel—that is, her trial counsel's alleged failures to hire an independent investigator and a cultural expert—Jama offers no argument in her points and authorities to support her claim, and thus she has forfeited her claim as to these grounds.

Regarding her second alleged ground for relief—that is, her trial counsel's alleged failure to "competently and completely investigate the August 17, 2009 shooting, failing in particular to interview percipient witnesses"—Jama complains in conclusory fashion that (1) "the prosecution called [13] witnesses in it's [*sic*] case in chief," but her

structure. Exhibits C through G are copies of five reports purportedly prepared by Private Investigator Dennis Bammann based on his interviews of (1) Guled's niece Asha Gass, (2) Guled's older sister Fadumo Guled, (3) Abdul Ibrahim, (4) Abdifatah Arab, and (5) Nur Ali Hassan. Exhibit H is a declaration of attorney Emily Crowley recounting her efforts to obtain the entire case file from Jama's trial counsel and stating that she learned from Jama's family that they are members of the Hawiya clan.

investigator "interviewed none of them"; (2) her investigator's "scant investigation revealed that there were 50-75 witnesses," but he "interviewed two of them"; and (3) her investigator did not interview Jama's own alibi witness, her sister Amal Jama. Such conclusory arguments are insufficient. Jama has failed to meet her burden of pleading with particularity facts which, if found true, would establish a reasonable probability she would have received a more favorable result had her counsel's performance not been deficient. (See *Strickland v. Washington*, *supra*, 466 U.S. at pp. 693-694; *People v. Ledesma*, *supra*, 43 Cal.3d at pp. 217-218.) We note that Jama's alibi witness, Amal Jama, *did* testify on Jama's behalf, and Jama makes no attempt to show how her investigator's failure to interview Amal was prejudicial in any way.

Last, regarding Jama's third alleged ground for relief, we conclude her claim that her trial counsel provided ineffective assistance by failing to hire a ballistics expert is also unavailing. As she did in support of her appeal, Jama complains that Massey testified, over objection, regarding ballistics of a bullet found at the scene of the shooting. She speculates in conclusory fashion that, "[h]ad trial counsel consulted and retained a qualified ballistics expert, he or she *may* have been able to refute Mr. Massey's testimony which corroborated witness testimony." This, she maintains, would have served to undermine the truthfulness of the witnesses who identified her. Such conclusory arguments are insufficient. Jama has failed to make a prima facie showing of any prejudicial ineffective assistance of counsel and has thus failed to state a prima facie case for relief.

DISPOSITION

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

NARES, J.

WE CONCUR:

HUFFMAN, Acting P. J.

McINTYRE, J.