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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

REYNALDO KISHAWN RICHARDS,

Defendant and Appellant.

E052101

(Super.Ct.No. FSB702048)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Bryan Foster,
Judge. Affirmed.

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, and Barry J.T. Carlton and Ronald
A. Jakob, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant and appellant Reynaldo Kishawn Richards was convicted by a jury of first degree murder. (Pen. Code, § 187, subd. (a).)¹ The jury also found true an allegation that defendant personally and intentionally discharged a firearm causing death. (§ 12022.53, subd. (d).) Following the denial of defendant's motion for new trial, he was sentenced to a total indeterminate prison term of 50 years to life.

On appeal, defendant contends: the prosecution gave special treatment and showed leniency toward a key prosecution witness with respect to that witness's pending criminal cases in exchange for that witness's testimony in this case; the prosecution failed to disclose such treatment and other material information in violation of *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*) and statutory discovery obligations; the nondisclosure and other conduct constituted prosecutorial misconduct; and the court erred in refusing to instruct the jury regarding the prosecution's late disclosure of evidence. The nondisclosures, prosecutorial misconduct, and instructional error, he claims, violated his constitutional rights to due process and a fair trial.²

We conclude that the prosecution did not violate its disclosure obligations under *Brady*. To the extent the prosecution violated its statutory disclosure obligations, the

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

² In his opening brief, defendant argues that the abstract of judgment understated defendant's presentence credits by 31 days. The People agree. In his reply brief, defendant states the trial court amended its minute order and the abstract of judgment to properly reflect the correct amount of presentence credit. Therefore, "there is no longer a need for this Court to address the issue of credits." Accordingly, we consider this issue to be moot.

court's remedial orders and its refusal to impose further sanctions or to instruct the jury as to late disclosure were within the court's discretion. Finally, we reject defendant's claim of prosecutorial misconduct.

II. FACTUAL SUMMARY

A. *Confrontation During a Gathering at Rick Rock's House*

Defendant, known as "Soldier Boy," was friends with "Baby Hype." Neither of them were friends of victim Broderick Martin, who was known as "Turtle." Indeed, defendant and Baby Hype did not like Martin and were jealous of him. Approximately one week before Martin was killed, defendant and Baby Hype were standing in front of an apartment building when Martin drove by. Baby Hype was overheard saying, "that's that nigga," and, "we going to get him."

On the night of April 30, 2007, Martin was at Rick Rock's home on Waterman Avenue in San Bernardino. Two witnesses, Cherisse White and Bobby Parram, testified about what happened at the house that night.

White testified that she was at Rock's house babysitting the children of Tyqueisha, Martin's girlfriend at the time. She saw Martin at the house at approximately 11:00 p.m. After Baby Hype arrived, White told Martin he should leave because she did not feel comfortable with him at the house when Tyqueisha was not there. She and Martin walked outside. Martin's car was parked in the driveway behind a Cadillac. Baby Hype came out of the house and confronted Martin. Before Martin said anything, Baby Hype asked Martin, "So are you going to kill me?" Baby Hype then hit Martin in the face. Martin fell and hit his head against the Cadillac. White then went inside the house to call

Tyqueisha to tell her “to hurry up because they were fighting.” By the time White went back outside, Martin was driving away in his car “[t]owards the hospital.” She did not see anyone get into the car with Martin.

Parram testified he was talking with Martin on a couch at Rock’s house that night. He became concerned for Martin when he saw Baby Hype in the house. Baby Hype confronted Martin and accused him of saying that he (Baby Hype) had stolen Martin’s gun. When Rock intervened and took Baby Hype to a back room, Parram told Martin to leave. Martin then left through the front door, but Baby Hype “storm[ed] out” after him. Parram followed.

Once outside in the front yard, Parram saw Baby Hype hit Martin, causing Martin to fall down between his car and the Cadillac. Martin got up and began backing away, telling Baby Hype he did not want to fight. Neither Martin nor Baby Hype had a weapon. Others got in between the two to stop the fight. Baby Hype was led to the backyard.

Martin got in his car and backed out of the driveway. As he started to drive away, defendant walked up to the car and said “can I holler at you for a minute?” Defendant then got into the passenger seat of the car and Martin drove away.

Earlier in the day, Parram had seen defendant with a .40-caliber Glock placed inside a pair of folded up jeans.

B. The Murder of Martin

Bobbie Turner, Linda Smith, and George Gill are public safety officers employed by St. Bernardine’s Medical Center. On April 30, 2007, their shift ended at 11:00 p.m.

When they got off work, they walked to an employee parking lot and talked near Turner's car. They heard a "pop sound," like a gunshot or the blowout of a tire. There was only one moving car in the area and no pedestrians. They watched the car swerve and crash into a parking lot gate. The crash occurred about three and one-half blocks (three-tenths of one mile) away from Rock's house.

A man got out of the passenger side of the car and ran in their direction. They described the man as Black, thin, approximately six feet tall, wearing a do-rag and a white, jersey style shirt with the number 12 on the back. When the man was between five and eight feet away from them, they told him to stop. When he did not stop, they chased him to a nearby pharmacy building where they lost sight of him. Turner called 911.

When they returned to the car that had crashed into the gate, they saw a man in the driver's side of the car, slouched over into the passenger seat, with a bullet wound and bleeding profusely.

When police officers arrived at the scene, Martin's car was in drive and still running. Martin was in the driver's seat, slumped over onto the passenger side. He had been shot in the head on the right side of his face. There was a pool of blood on the passenger side of the seat. A casing from a .40-caliber semiautomatic handgun was found at the scene.

The forensic pathologist who performed an autopsy on Martin opined that the gun that shot the bullet that killed Martin was between one-half inch and one foot away from Martin when it was fired.

C. Defendant's Return to Rock's House

Approximately five minutes after Martin drove away from Rock's house with defendant, defendant returned to the house. White (Tyqueisha's babysitter) saw defendant arrive. She said defendant was breathing heavily, as if he had been running. He was wearing a white baseball jersey. There was blood on the left side of his shirt. White thought defendant was bleeding. Defendant and others went to a room at the back of the house.

Parram testified that after Martin had driven away with defendant, he went to the backyard, where he and others had been trying to calm Baby Hype down. Between five and 10 minutes after watching Martin drive away with defendant, Parram heard screaming from inside the house. He went inside and found defendant lying on a bed in a back room "covered in blood." Defendant was wearing a baseball jersey that was "mainly white" and "filled with blood."³

Parram asked defendant if he had been shot. Defendant said: "I shot that nigga." Parram asked, "who"; defendant responded, "I shot that nigga, Turtle. I killed him."

Parram further testified that defendant was at Rock's house for about 10 minutes following his return. After defendant changed his clothes, he walked out of the house carrying a small grocery store bag.

Sometime after leaving Rock's house, defendant arrived at the home of Winnifur Hernandez, located about two and one-half miles away. According to Hernandez, he was

³ Parram testified that the jersey was for the Atlanta Black Crackers baseball team. White testified that the jersey said "Angels" on the front.

sweaty and his clothes “had blood splatter” on them.⁴ He looked like he was “really upset.”

Hernandez and her goddaughter, Jessica, put defendant’s clothes in a sink with bleach and ammonia. They then put the clothes in a bag and the bag in a Dumpster. Defendant also gave Hernandez a pair of shoes. She saw what she thought was a gun inside a shoe. She gave the shoes to someone known as “Duck.” Hernandez said she hid defendant at her home for a “day or so, could have been longer.” Defendant eventually left by jumping out the kitchen window in the back of the apartment.

D. Subsequent Events

When Rock’s house was searched the morning after Martin was killed, police found a red notebook with documents and paperwork in defendant’s name. Underneath the notebook was a pair of jeans.

Parram was at the house when the police conducted their search. An officer asked Parram what he had seen. Parram told the police he got there late and did not see anything. At trial, Parram said that this was a lie, which he told out of fear for his safety.

On May 11, 2007, sheriff’s deputies approached an apartment where defendant was believed to be staying. When they saw defendant and asked to talk to him, defendant ran away. He was eventually apprehended and arrested.

⁴ Hernandez had previously told a police officer that defendant had “a puddle of blood on his pants.”

In January 2009, Parram was in custody for violating probation in a domestic violence case. At that time, he asked to speak to a homicide detective regarding this case. He told the detectives “the truth,” “[b]ecause it was the right thing to do.”

III. DISCUSSION

A. *Failure to Comply With Disclosure Obligations Under Brady and Section 1054.1*

Defendant contends the prosecution failed to disclose information regarding witnesses in violation of its obligations under *Brady* and section 1054.1. In particular, he contends that Parram received special treatment and leniency in criminal cases pending against him in exchange for his testimony against defendant. As a result, he argues, he was deprived of his constitutional rights to due process and a fair trial.

1. Additional Factual and Procedural Background

Prior to trial, defendant served the prosecutor with a discovery request pursuant to section 1054.1. This request included the following:

“2. A copy of the convictions of any witness the People intend to call at trial, including but not limited to Bobby Parram’s criminal convictions; [¶] . . . [¶]

“4. Any and all information regarding immunity agreements, plea agreements, offers of leniency, filed and or un-filed pending cases, probation violations, offers made on any pending case (i.e., FSB900159), probation violations, and or promises of any kind made to material witness Bobby Parram”

It is not clear from our record how the prosecution responded to this request and what information and documents were produced prior to trial. However, in defendant’s motion for new trial, defense counsel represented that the prosecutor did provide the San

Bernardino Superior Court case numbers for Parram's domestic violence/probation violation case (FSB801134) and a pending "bad check," or forgery, case (FSB900159).⁵

In case No. FSB801134, Parram pled guilty to one count of making criminal threats (§ 422) and was granted probation. He allegedly violated his probation by failing to provide proof of enrollment in a domestic violence program and failing to show up for a weekend work release program. In case No. FSB900159, Parram was charged with forgery (§ 476) in 2009 arising from his purchase of goods with checks drawn on a closed account.

During the prosecution's case-in-chief, defense counsel informed the court that he believed the prosecution had not complied with the discovery request concerning information regarding witnesses, including Parram. Defense counsel stated that Parram was "receiving assistance in maneuvering through the system" and "getting special treatment" with respect to the pending forgery charge against him. He pointed to the following information, which he obtained from the court's computer system regarding Parram: On January 8, 2009, Parram admitted a violation of probation in a domestic violence case, for which he was taken into custody and "received 180 days"; on January 15, 2009, Parram contacted a police officer and indicated he wanted to talk to a

⁵ At the hearing on defendant's motion for new trial, the trial court took judicial notice of these files. On appeal, defendant requested that the record be augmented with the contents of the files. By separate order, we have taken judicial notice of relevant matters within these case files and made copies of the pertinent documents part of the record on appeal.

homicide detective about defendant's murder case;⁶ at some point, he had a conversation with homicide detectives; a probation review hearing that had been set for February 5, 2009, was continued to March 11, 2009; at the hearing on March 11, 2009, Parram was arraigned on a new forgery charge and released on his own recognizance;⁷ his probation case and the forgery case were assigned to the same department; he appeared in court on April 17, 2009, on both cases; nothing was done at that time regarding his probation violation; his case was thereafter continued on several occasions; and on September 23, 2009, his probation was reinstated on the original terms and conditions and placed on the probation review calendar.

Based on these facts, defense counsel argued that Parram is "getting special treatment," and that he learned of these facts by "digging through the computer system to get it." Defense counsel said he is entitled to the police reports regarding the pending forgery case and to ask Parram about those reports. He requested that the case be dismissed for prosecutorial misconduct or, alternatively, that Parram not be allowed to testify. He also requested "at least a continuance to explore this further and be able to flush this out"

The court denied the motions to dismiss and for a continuance. However, the court agreed that the defense was entitled to the police reports, ordered the prosecution to

⁶ Defense counsel stated that he knew of Parram's contact with the police based upon "the police reports that I have in this case."

⁷ Although the court records indicate that Parram was released on his own recognizance, it was subsequently revealed that he was released into a witness protection program following a jailhouse attack against him.

produce the reports, and granted “whatever time you [defense counsel] need to research the issue by allowing you to recall him for the purpose of examining him on that issue.” The court further stated it would keep Parram “under the process of the Court and as such his testimony will not be concluded until counsel had an opportunity to do all the things [counsel] talked about before as far as talk to him or researching the matter further”

Parram testified for the prosecution as summarized above. On cross-examination, defense counsel questioned Parram about his decision to come forward to talk to detectives about the Martin murder. This included the following colloquy:

“Q. . . . about a year and a half [after telling the police you did not know anything] when you’re in jail is when you decided that you wanted to talk to the police?”

“A. Yes.

“Q. Okay. And now, you indicated that that was because you wanted—it was the right thing to do?”

“A. Yes, it was.

“Q. So it didn’t have anything to do with because you wanted to get out of jail?”

“A. At the time, no, because I wasn’t facing a charge so it had nothing to do with that. I was already due to be released.

“Q. Okay. So you weren’t facing a charge when you were in jail?”

“A. No, the charge came afterwards.

“Q. Okay. So it was just a coincidence then you happened to be in jail and that’s when you decided you wanted to do the right thing and talk about something that happened a year and a half before?”

“A. Yes.”

Defense counsel indicated he wanted to cross-examine Parram regarding the pending forgery charge against him. In response, the court obtained counsel for Parram. Out of the presence of the jury, defense counsel questioned Parram. Parram testified that at the time he made contact with the district attorney’s office regarding the Martin murder, he was in custody because of a probation violation. As to questions regarding facts underlying his forgery case, Parram asserted his Fifth Amendment privilege against self-incrimination.

At defense counsel’s request, the court asked Parram’s counsel to review the file regarding Parram’s forgery case to determine whether there is anything in the file that indicates an agreement by the People to provide Parram any special treatment or leniency as a result of his testimony in this case. Parram’s attorney agreed to do so.

Still outside the presence of the jury, the prosecution questioned Parram. Parram testified he never had any discussions with anyone about working out a deal, no one ever told him that a deal was going to be worked out on his pending cases, and no one had implied that continuances in his forgery case were related to his testimony in the present case.

Back before the jury, defense counsel continued his cross-examination of Parram, which included the following:

“Q. [After being arrested for violating probation] you had been told you were going to get 180 days for violating probation; correct?”

“A. Yes.”

“Q. So about a week later you decide I’m going to do the right thing?

“A. Yes.

“Q. And [that] had nothing to do with the fact you were in jail and you wanted to get out of jail sooner?

“A. No. Either way it goes I was getting out.”

Regarding the “new case,” Parram testified he was released on his own recognizance on March 11, 2009. The questioning then proceeded:

“Q. And did that have something to do with your testifying?

“A. No.

“Q. Just coincidence?

“A. I guess. [¶] . . . [¶]

“Q. [So] you were in jail. You go to court. You’ve told them you want to help them out on a case, and then you get out of jail. You didn’t think there was any connection between those two things?

“A. Yes, it was possible.

“Q. It was possible?

“A. Yes.”

Defense counsel asked Parram when he was next scheduled to return to court on the new case. Parram said March 11, which defense counsel pointed out was “in a couple weeks.” Counsel then asked: “But you don’t think it has anything to do with your testimony in this case?” Parram responded, “I don’t know. No one told me my testimony had anything to do with it.”

On redirect, the prosecutor elicited from Parram that when he was released from custody in March 2009, he entered a witness relocation and protection program and has remained in that program since that time.

The following day, Hernandez testified as to how she hid defendant for a day or two after Martin's murder and helped dispose of defendant's clothes and shoes. On cross-examination, Hernandez said she had entered into an agreement to testify in exchange for immunity from prosecution for being an accessory after the fact.

Later that day, defendant moved to strike Parram's testimony. He argued that Martin's placement in the witness relocation program constitutes "special treatment . . . which is discoverable." He also asserted that Parram's invocation of the Fifth Amendment deprived the defense of its right to meaningful cross-examination. The court denied the motion.

Defense counsel then requested discovery of the "financial compensation" Parram had received under the witness relocation program. The prosecutor explained that the program is administered under federal law and the district attorney's office does not "have anything to do with that." She added, however, that she had requested authorization to release the expenditures incurred in connection with Parram's case, but expressed concern that information beyond expenditures was "extremely confidential" and must be viewed in camera. The court then asked that a list of the expenditures be provided to the court and that the People produce a person knowledgeable about the program to advise the court regarding the risk of disclosing information.

The following day, the prosecutor presented to the court a document that set forth the expenditures paid on Parram's behalf under the "CAL WRAP" witness protection program. The prosecutor also produced Kevin Ford, who described himself as an investigator, or "case agent" with the CAL WRAP program, and the "liaison" between Parram and the district attorney's office. He testified that Parram was placed in the program because of suspicion that Parram was harmed while incarcerated due to his involvement in this case. He also said that Parram went directly from jail to being in custody in the program on March 11, 2009. Following Ford's testimony, the list of expenditures related to Parram's participation in the program was turned over to the defense.

Defendant again moved for dismissal of the case based on prosecutorial misconduct or, alternatively, to strike Parram's testimony. In response to defense counsel's argument that Parram had been receiving special treatment, the prosecutor stated there had been no "deal or discussion" regarding Parram's forgery case, and that defense counsel's suggestion otherwise is a "fabrication." Following argument, the court stated it did not find any *Brady* violation because "the People have turned over all the information that they were required to" turn over.

When the trial resumed after a weekend recess, defendant requested a continuance to allow time to arrange for the testimony of a bank manager and the manager of the BevMo store where Parram was allegedly passing bad checks—the acts that underlay the forgery charge against Parram. The court denied the motion because "the issue of the potential criminal activity of Mr. Parram is a collateral issue in the case," and that other

witnesses available to the defense should be sufficient to raise that issue with the jury. The court further explained that additional witnesses would result in undue consumption of time and a risk of confusing the issues in the case.

In the defense case, defendant's counsel called a Redlands police officer, who testified about an incident involving Parram in December 2008. Parram and a woman reportedly used checks backed by insufficient funds to purchase liquor at a BevMo store. The couple was in the BevMo parking lot when the officer approached them. Parram initially gave the officer a false name. When Parram eventually admitted his identity to the officer, he explained that he lied because he had an outstanding felony warrant against him. He also said he was the subject of a restraining order that required he have "no negative contact" with the woman who was in the car with him. Parram was thereafter arrested.

Defense called Parram, who testified as follows. On the day after Martin's death, he told the police he did not know anything. Approximately 11 months later, in March 2008, he pled guilty to a domestic violence charge. As a result, he was sentenced to 90 days in jail (for which he served 30 days) and placed on probation. On December 4, 2008, he was arrested for violating his probation. While he was in custody in January 2009 for violating probation, he decided to talk to police about the Martin murder case. Within two weeks after he was interviewed about that case, he was approached by another jail inmate who told him there was "a problem." The inmate accused Parram of "telling on" "Soldier Boy." Parram was later attacked by four or five inmates for

being a “snitch.”⁸ One of the inmates stabbed him in his face. Following the attack on him, he was placed in a witness relocation program, which provided him with housing for his safety. Ronessa Jones (the woman who obtained the restraining order against Parram) and his children are in the program with him. The program paid for his security deposit, rent, utilities, and food.

Defense counsel asked Parram whether his decision to come forward was due to concern about “the new case that was coming down the pike.” (The “new case” was apparently a reference to the incident involving passing bad checks at BevMo.) Parram said he had no knowledge of the new case. He further stated he has no expectation as to what will happen to him once defendant’s trial is over. On cross-examination, Parram stated there was no case against him pending at the time he “came forward” in January 2009, and that he had “no idea at all” what the district attorney’s office was doing with respect to the BevMo forgery incident.

The defense then called Ford, the CAL WRAP liaison for Parram. Ford testified that approximately \$17,000 had been spent on Parram between March 11, 2009, and

⁸ Over defendant’s objection, the court allowed the prosecution to introduce evidence of the jailhouse attack on Parram because defendant’s assertion that the witness protection program constituted “special treatment” gave the People the “right then to introduce evidence to show the rationale as to why he was given that treatment.”

After Parram testified about the jailhouse attack, the court admonished the jury as follows: “[A]s far as this incident is concerned it’s being introduced only for a limited purpose, and that purpose is only for you to consider whether or not whatever treatment was given to Mr. Parram in reference to his lodging, those type of things. As to what the reason for that was—it is not for purposes of any other reason. I should indicate to you that there is absolutely no evidence that the defendant knew anything about the alleged altercation in the jail or that he in any way directed it or anything of that nature. You’re not to hold it against him in any fashion.”

February 28, 2010. This amount included \$9,630 for rent, \$2,000 for meals and incidentals, \$600 for utilities, \$1,079 for a security deposit, and \$3,650 for hotel expenses for the week following his release from jail. Ford said he never talked to Parram about his testimony and never promised him any kind of preferential treatment.

Defense counsel asked Ford if there were any other prosecution witnesses for this case in the witness protection program. Ford testified that no other witnesses were currently in the program, but added that Hernandez (the woman who hid defendant in her apartment after the murder) was previously in the program. He did not know how much money was spent for Hernandez's participation in the program.

2. Motion for New Trial

After the jury found defendant guilty of murder, defendant filed a motion for new trial. The motion was "based on the prosecutorial misconduct that occurred when the prosecutor failed to disclose [*Brady*] material prior to the trial and thereby deprived the defendant of his right to due process and a fair trial." Defendant reiterated the procedural facts regarding Parram's domestic violence/probation violation case and the forgery case. In addition to the facts presented to the trial court during trial, defendant noted that after Parram testified in this case, he entered into a plea agreement in the forgery case pursuant to which he pled guilty to a misdemeanor and was given credit for time served.

Defendant argued that the facts he outlined were never provided to the defense prior to trial. Although the prosecutor provided the case numbers for Parram's domestic violence case and the forgery case, she "did not reveal that she had engineered Mr. Parram's release from custody[,] . . . helped Mr. Parram circumvent domestic violence court[, or]

. . . that Mr. Parram had been placed in the witness protection program and had received more than seventeen thousand dollars in living assistance as a result of his agreement to testify for the prosecution.”

At the hearing on the motion, Attorney Richard Farquhar testified for defendant. Farquhar represented Parram in connection with defendant’s plea agreement in the forgery case. He testified that prior to defendant’s entry into the plea agreement, he appeared for defendant in connection with a request for a continuance. At that time, he had a discussion with the attorney who was the deputy district attorney in both the forgery case and defendant’s murder case. That deputy district attorney told Farquhar that Parram was a witness in a murder case, that “we’re just continuing until after” he testifies in that case, and that “things would be taken care of . . . after he testified.”

Regarding the plea agreement, Farquhar testified he did nothing to negotiate the deal. He never requested any type of leniency or special treatment in regard to Parram’s testimony in defendant’s case. When he appeared in court on March 11, 2010, in defendant’s forgery case, he received the plea agreement form, which had been filled out by the deputy district attorney. He testified that he had been “hoping for an outright dismissal.”

Following argument, the court denied the motion for new trial.

3. Applicable Legal Principles

An order denying a motion for new trial is generally reviewed under the abuse of discretion standard. (*People v. Thompson* (2010) 49 Cal.4th 79, 140.) We independently review the question whether a *Brady* violation has occurred, while giving great weight to

any trial court findings of fact that are supported by substantial evidence. (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 176; *People v. Salazar* (2005) 35 Cal.4th 1031, 1042.)

In *Brady*, the United States Supreme Court established that due process requires the prosecution to disclose to the defense evidence that is both favorable to the defendant and material on either guilt or punishment. (*Brady, supra*, 373 U.S. at p. 87; see also *In re Sassounian* (1995) 9 Cal.4th 535, 543.) “Evidence is ‘favorable’ if it either helps the defendant or hurts the prosecution, as by impeaching one of its witnesses. [Citation.]” (*In re Sassounian, supra*, at p. 544.) This includes evidence that reflects upon the credibility of material witnesses. (*Giglio v. United States* (1972) 405 U.S. 150, 154-155; *People v. Ruthford* (1975) 14 Cal.3d 399, 408, overruled on another ground in *In re Sassounian, supra*, at pp. 545-546, fn. 7.) In particular, favorable evidence includes evidence that a prosecution witness has been given an inducement to testify, such as a promise or agreement of leniency in a criminal case pending against the witness. (*Giglio v. United States, supra*, at pp. 154-155; *People v. Phillips* (1985) 41 Cal.3d 29, 46.)

Evidence is “material” for purposes of *Brady* “‘only if there is a reasonable probability that, had [it] been disclosed to the defense, the result . . . would have been different.’ [Citations.]” (*In re Sassounian, supra*, 9 Cal.4th at p. 544.) Such a reasonable probability exists where the undisclosed evidence “could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” (*Kyles v. Whitley* (1995) 514 U.S. 419, 435, fn. omitted; *In re Williams* (1994) 7 Cal.4th 572, 611.) “‘The mere possibility that an item of undisclosed information might have

helped the defense, or might have affected the outcome of the trial, does not establish “materiality” in the constitutional sense.” (*People v. Fauber* (1992) 2 Cal.4th 792, 829, quoting *United States v. Agurs* (1976) 427 U.S. 97, 109-110.) The defendant has the burden of showing materiality. (*People v. Hoyos* (2007) 41 Cal.4th 872, 918.)

The prosecutorial obligation to disclose relevant materials in the possession of the prosecution includes information within the possession or control of the prosecution or to which the prosecutor has reasonable access. (*In re Littlefield* (1993) 5 Cal.4th 122, 135; *People v. Kasim* (1997) 56 Cal.App.4th 1360, 1380.) The duty of disclosure “is not limited to evidence the prosecutor’s office itself actually knows of or possesses, but includes ‘evidence known to the others acting on the government’s behalf in the case, including the police.’” (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1132, quoting *Kyles v. Whitley, supra*, 514 U.S. at p. 437 [*Zambrano* overruled on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22].)

In order to establish a violation of *Brady*, the “evidence must have been suppressed by the State.” (*Strickler v. Greene* (1999) 527 U.S. 263, 282.) *Brady* does not provide an accused with a constitutional right to criminal discovery. (*People v. Morrison* (2004) 34 Cal.4th 698, 715.) Thus, “[a]lthough the prosecution may not withhold favorable and material evidence from the defense, neither does it have the duty to conduct the defendant’s investigation for him. [Citation.] If the material evidence is in a defendant’s possession or is available to a defendant through the exercise of due diligence, then, at least as far as evidence is concerned, the defendant has all that is

necessary to ensure a fair trial, even if the prosecution is not the source of the evidence. [Citations.]” (*People v. Salazar, supra*, 35 Cal.4th at pp. 1048-1049.)

Our state Supreme Court has stated that “evidence that is presented at trial is not considered suppressed, regardless of whether or not it had previously been disclosed during discovery. [Citations.]” (*People v. Morrison, supra*, 34 Cal.4th at p. 715; accord, *People v. Verdugo* (2010) 50 Cal.4th 263, 281.) However, courts have also held that the disclosure of *Brady* material ““must be made at a time when the disclosure would be of value to the accused.”” (*People v. Superior Court (Meraz)* (2008) 163 Cal.App.4th 28, 51, quoting *United States v. Davenport* (9th Cir. 1985) 753 F.2d 1460, 1462; see also *United States v. Pollack* (D.C. Cir. 1976) 534 F.2d 964, 973 [“Disclosure by the government must be made at such a time as to allow the defense to use the favorable material effectively in the preparation and presentation of its case”].)

4. Alleged *Brady* Violations

Defendant contends the prosecutor withheld evidence that Parram and Hernandez “received leniency and other special treatment in their own pending cases in exchange for their testimony” in this case. He argues that the prosecutor had a duty to produce such evidence and “failed to do so until the defense found the evidence on its own in the middle of trial.” For the reasons that follow, we hold there was no violation of the prosecution’s duties under *Brady*.

(a) *Hernandez’s Involvement in Witness Protection Program*

Regarding Hernandez, defendant argues that he did not learn of Hernandez’s participation in the CAL WRAP program until Ford testified in the defense case. By that

time, he argues, “it was too late to use the information during her cross-examination to attack her credibility.” Because this information was favorable and not readily accessible to the defense, he concludes, the prosecution had a duty to disclose it.

Initially, we note that the fact that Hernandez was in the CAL WRAP program was disclosed during trial and presented to the jury through Ford’s testimony. There was thus arguably no suppression of evidence and, therefore, no *Brady* violation. (See *People v. Morrison, supra*, 34 Cal.4th at p. 715 [evidence presented at trial is not considered suppressed even if not previously disclosed].) He asserts, however, that Ford’s testimony was given “too late to use the information during [Hernandez’s] cross-examination to attack her credibility.” Although the information was disclosed late in the trial, defendant did not request a continuance or attempt to recall Hernandez to question her about her involvement in the program. We cannot know, therefore, whether it was too late to examine Hernandez on the matter. Moreover, this argument is weakened by defense counsel’s limited questioning of Ford on the matter. After learning of Hernandez’s temporary participation in the witness protection program, defense counsel asked Ford only about the dollar amounts expended for her; he did not inquire as to the nature of the treatment she received, how long she was in the program, or why she entered or left the program.

Nor is it clear whether the fact that Hernandez was temporarily in a witness protection program is favorable to defendant. Ford testified that the CAL WRAP program is provided “to preserve the safety of the witness or victim.” The fact that a person is given the protection offered by the program implies that someone believed that

Hernandez was at risk of being harmed because of her involvement in this case. This fact, by itself, does not appear to reflect negatively upon Hernandez's credibility or be otherwise favorable to defendant. We have not been referred to any California authority addressing the question whether participation in a witness protection program constitutes *Brady* material. There are federal court decisions that provide authority for contrary views. (Compare *U.S. v. Davis* (5th Cir. 2010) 609 F.3d 663, 696 [information that witness was offered witness protection was not favorable to defendant because jury may have assumed that the witness needed protection from the defendant] with *U.S. v. Talley* (6th Cir. 1999) 164 F.3d 989, 1003 [relocation benefit for key government's witness must be disclosed].)⁹

Defendant asserts that favorable evidence includes any inducements made to prosecution witnesses for favorable testimony. (See, e.g., *People v. Kasim, supra*, 56 Cal.App.4th at p. 1380.) However, there is nothing in the record to indicate that Hernandez's participation in CAL WRAP was an inducement for favorable testimony. Defendant's suggestion otherwise is conjecture and will not support a *Brady* claim. (See *Wood v. Bartholomew* (1995) 516 U.S. 1, 6; *People v. Hoyos, supra*, 41 Cal.4th at p. 922.)

⁹ The fact that Hernandez's involvement in the program might not have been favorable to the defense may explain why defense counsel did not pursue the matter further with Ford. The failure to delve further into the area could have been a reasonable tactical decision based upon a belief that there was little or nothing to be gained from pursuing the issue and much to lose. For example, further questioning might have revealed reasons as to why Hernandez needed protection that could prove unfavorable to the defense.

Even if the fact that Hernandez was in a witness protection program is favorable to the defense, defendant fails to show how that information is material for purposes of *Brady*. As explained above, information is material only if there is a reasonable probability that, had it been disclosed to the defense, the result would have been different. (*In re Sassounian, supra*, 9 Cal.4th at p. 544.) Here, defendant does not make any meaningful showing as to how further information regarding Hernandez’s involvement in the witness protection program could have altered the result at trial. Even if additional information about her participation in the witness protection program had some conceivable impeachment value, the jury had already been informed that Hernandez had entered into an agreement to testify in exchange for immunity from prosecution and that she had been in the witness protection program temporarily. It is not reasonably likely that further information about her participation in the witness protection program would have impacted her credibility in a meaningful way or affected the result at trial. Therefore, based upon the circumstances present here, such information was not material for purposes of *Brady*.

(b) *Alleged Special Treatment and Leniency Toward Parram*

The primary focus of defendant’s *Brady* argument is the alleged special treatment and leniency that Parram supposedly received in exchange for his testimony. In particular, defendant claims that such “special treatment included release from custody, release with his family into the CAL WRAP program with \$17,000 of monetary benefits, and reinstatement of his probation.” In addition, after defendant’s conviction, “Parram

received a plea deal that reduced his felony forgery case to a misdemeanor with time served.”

We begin by noting that there is no direct evidence of an agreement between the prosecution and Parram involving Parram’s testimony in this case or any special treatment or leniency. Parram testified that he came forward to talk to police investigators about the murder because it was “the right thing to do,” and not because he wanted to get out of jail. He further stated he never had any discussions to work out a deal, and no one ever implied that the continuances in his forgery case were related to his testimony in this case. Finally, he testified that he had “no idea at all” what the district attorney’s office was doing with respect to the BevMo forgery incident. Ford, the CAL WRAP liaison for Parram, testified that he never talked to Parram about his testimony or offered him any preferential treatment. Finally, the prosecutor represented to the court that there was no deal or discussions about an agreement or grant of leniency.

There was arguably circumstantial evidence of a tacit or implied agreement or understanding that Parram would receive leniency in his forgery or probation violation cases if he cooperated with the prosecution. Such evidence includes the matters defendant points to, including the continuances in the forgery case until after the trial in this case was completed, the reinstatement of probation on the original terms, and the plea agreement entered into after the trial in this case was complete. However, with the exception of the plea agreement—which occurred after the verdict in this case—such evidence was disclosed or known to the defense prior to or during trial, or could have been obtained through the exercise of due diligence.

Defendant's pretrial discovery request specifically referred to Parram's pending forgery case. As defense counsel explained during the prosecution's case-in-chief, he was able to access and review Parram's criminal case files via the court's computer system and thereby learn the essential facts that support his claim for special treatment and leniency. To the extent such information constitutes *Brady* material, it was thus plainly available to defendant "through the exercise of due diligence" and not, therefore, suppressed. (See *People v. Salazar, supra*, 35 Cal.4th at pp. 1048-1049; *U.S. v. Stuart* (8th Cir. 1998) 150 F.3d 935, 937.)

Moreover, when defense counsel first raised this issue, the court granted defendant's request for an order that the prosecution turn over the police reports regarding the forgery case, and gave defendant time to recall Parram for questioning as to the new issues. Not only was Parram thereafter examined by defense counsel as to the special treatment and leniency issues, but Parram's counsel also examined an investigating officer regarding the facts giving rise to the forgery case. Through such evidence, the defense was able to suggest prosecutorial leniency toward Parram in exchange for his testimony. Although defendant insists there was an agreement between the prosecution and Parram that was never disclosed, he does not point to any actual evidence, circumstantial or otherwise, that was not disclosed before or during trial or about which he was unable to question Parram.

The present case is distinguishable from *People v. Ruthford, supra*, 14 Cal.3d. 399, upon which defendant relies. In *Ruthford*, Thomas, an accomplice of the defendant in an armed robbery case, testified against the defendant at trial. (*Id.* at p. 402.) After the

defendant was convicted, he received a letter from Thomas, in which Thomas stated the district attorney had offered his wife's freedom in return for his testimony against the defendant. (*Id.* at p. 403.) (Thomas's wife had also been convicted of robbery and was awaiting sentencing.) (*Ibid.*) In a motion for new trial, further evidence was developed of a "bargain" reached between prosecutors and Thomas whereby his wife would not receive a prison term if Thomas cooperated with the prosecution. (*Id.* at pp. 403-404.) The court held that the evidence of that bargain was improperly suppressed by the prosecution. (*Id.* at p. 409.) Here, by contrast, there is no direct evidence of an agreement, as there was in *Ruthford*, and the circumstantial evidence of lenient treatment was available to defendant and brought out at trial.

With respect to Parram's participation in the CAL WRAP program, the discussion above regarding Hernandez's participation generally applies here. First, the information does not appear to us to have been suppressed; it was disclosed during trial with ample time for the defense to examine Parram and Ford regarding Parram's participation in the program. Defendant does not indicate what additional facts he could have brought out at trial if the information had been earlier disclosed. Second, it is not clear that such evidence is favorable to the defense. Although defendant argues that it indicates "special treatment," it appears from Parram's and Ford's testimonies that Parram was placed in the witness protection program because of the jailhouse attack against him as punishment for implicating defendant in Martin's murder. The amount of \$17,000 for more than 11 months of expenses related to the program—essentially, the payment of rent, meals, and utilities—suggests basic sustenance more than any kind of "special treatment." It was

likely viewed by the jury not as preferential treatment received in exchange for his testimony, but as a necessary and appropriate action to protect Parram from further attack.

5. Statutory Duty of Disclosure Under Section 1054.1

The duty of disclosure under *Brady* is independent from the prosecution's statutory disclosure duties under section 1054.1. (*Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 378.) Under this statute, the prosecution must disclose to the defense, prior to trial or as soon as discovered, certain categories of evidence "in the possession of the prosecuting attorney or [known by] the prosecuting attorney . . . to be in the possession of the investigating agencies." (§ 1054.1.) Evidence subject to disclosure includes "[t]he existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial," and "[a]ny exculpatory evidence." (§ 1054.1, subds. (d), (e).)

Defendant contends the prosecution did not comply with section 1054.1 because it failed to turn over police reports in Parram's pending cases, evidence of Parram's release from jail, evidence of Parram's and Hernandez's "receipt of monetary support" and "Parram's receipt of leniency in his pending cases."

The People contend the prosecution did disclose Parram's criminal threats case prior to trial as required by section 1054.1, subdivision (d). "Nothing more," the People argue, was required under the statute. They further contend the prosecution was not statutorily required to disclose evidence of Hernandez's and Parram's participation in CAL WRAP or the facts regarding Parram's pending forgery case. Even if such

information may be relevant for impeachment and subject to disclosure under *Brady*, the People explain, it need not be disclosed under section 1054.1 because it is not “exculpatory” for purposes of section 1054.1. They refer us to *Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, where the court states “there is reason to think” that the phrase “exculpatory evidence” in section 1054.1, subdivision (e), does not include impeachment evidence. (*Kennedy v. Superior Court, supra*, at p. 377.) The *Kennedy* court, however, did not resolve this statutory interpretation question.

We need not decide whether “exculpatory” includes impeachment for purposes of section 1054.1. Even if the People failed to disclose information as required by section 1054.1, the court’s rulings regarding such evidence did not constitute an abuse of discretion.

The sanctions for failing to comply with section 1054.1 are described in section 1054.5. Under that section, the trial court “may make any order necessary to enforce the provisions” of the statute, “including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order.” (§ 1054.5, subd. (b).) The court may also “advise the jury of any failure or refusal to disclose and of any untimely disclosure.” (*Ibid.*) If all other sanctions have been exhausted, the court may prohibit the testimony of a witness. (§ 1054.5, subd. (c).) The court may not, however, dismiss a charge for failure to comply with the statutory obligations “unless required to do so by the Constitution of the United States.” (*Ibid.*)

As the language of section 1054.5 indicates, a trial court may ““““consider a wide range of sanctions’ in response to the prosecution’s violation of a discovery order.” [Citation.]’ [Citation.]” (*People v. Superior Court (Meraz)*, *supra*, 163 Cal.App.4th at p. 49.) In fashioning a remedy for a violation of section 1054.1, courts have “broad discretion.” (*People v. Jenkins* (2000) 22 Cal.4th 900, 951; *People v. Bowles* (2011) 198 Cal.App.4th 318, 325.) We review a trial court’s rulings regarding discovery abuses for abuse of such discretion. (*People v. Ayala* (2000) 23 Cal.4th 225, 299; *People v. Lamb* (2006) 136 Cal.App.4th 575, 581.) A court abuses its discretion in this context when it exceeds the bounds of reason. (*People v. Superior Court (Meraz)*, *supra*, at p. 49.)

Here, when defense counsel first raised the alleged noncompliance with section 1054.1, he requested the police reports for the forgery case and “at least one day to research this issue . . . and have an opportunity to investigate.” The court agreed. It ordered the prosecution to turn over the police reports and granted defense counsel “whatever time” he needed to research the issue and to allow him to recall Parram for further examination. As a remedy explicitly permitted by section 1054.1—“immediate disclosure” of the withheld information—the order to produce the police reports was well within its discretion. Keeping Parram subject to the court’s power to compel his appearance for defense examination was also appropriately tailored to the circumstances and constitutes an “order necessary to enforce the provisions” of the discovery statutes. (See § 1054.5, subd. (b).)

Defendant further requested dismissal of the action or to preclude Parram’s testimony because the prosecution failed to disclose that Parram was given special

treatment “as a result of his cooperation in this case.” The court denied this request. This too was appropriate. Under section 1054.5, subdivision (c), the court may prohibit the testimony of a witness ““only if all other sanctions have been exhausted.’ [Citation.]” (See *People v. Superior Court (Mitchell)* (2010) 184 Cal.App.4th 451, 459.) Here, other sanctions had not been exhausted. Nor can the court dismiss the case unless required to do so by the United States Constitution. (§ 1054.5, subd. (c).) As explained above, there was no violation of defendant’s constitutional rights.

Defendant raised the issue of nondisclosure again after Parram revealed that he entered a witness protection program. He complained that Parram had been “placed into a special program where . . . he’s actually receiving monetary aid,” about which the defense had received “absolutely no discovery.” Defense counsel requested that Parram’s testimony be stricken. He also asked for “discovery of whatever benefits Mr. Parram has been given.” When the court inquired as to “actual prejudice” to defendant, defense counsel merely pointed to the fact that Parram had been released into the witness protection program; he then asked for discovery of the financial benefits Parram received. Following argument, the court ordered the prosecutor to provide the court with a statement of the expenditures attributable to Parram’s involvement in the program and a person knowledgeable “as to the particular dangers that would exist from the disclosure of certain material” regarding the program. The following day, the prosecutor produced Ford, the CAL WRAP liaison, and a document setting forth the applicable expenses.

The court’s order was, again, well within its broad discretion. Once Parram’s involvement in the program came to light, the court ordered the immediate production of

the relevant information. The remedy was particularly appropriate in light of defense counsel's inability to identify any meaningful prejudice resulting from the failure to disclose the matter earlier.

Following Ford's testimony regarding the CAL WRAP program and the expenses related to Parram, defense counsel again moved for dismissal or for striking Parram's testimony. It appears from counsel's argument that the motions were based on theories of prosecutorial misconduct and violation of defendant's rights under *Brady*, not for violating section 1054.1. The court denied the motions, finding there has been no *Brady* violation because "the People have turned over all the information that they were required to [turn over]." To the extent that defendant's motions could be deemed to have been made under section 1054.5, the court did not err in denying them. As the court indicated, the People had complied with its earlier orders to turn over the police reports and the information regarding Parram's involvement in CAL WRAP (including the production of Ford for examination). No further sanction under section 1054.5 was necessary.

For all the foregoing reasons, we conclude that the court did not abuse its discretion in making its orders concerning any possible violations of the prosecutor's statutory discovery obligations.

B. *Prosecutorial Misconduct*

Defendant contends the prosecutor's failure to disclose prior to trial "information showing any kind of leniency or other special treatment given to" Parram constituted prejudicial misconduct that violated his "rights to due process and a fair trial, as well as a

meaningful opportunity for confrontation and cross-examination, under the Sixth and Fourteenth Amendments.”

A prosecutor violates the federal Constitution when he or she engages in a pattern of conduct so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process. (*People v. Stanley* (2006) 39 Cal.4th 913, 951.) Conduct that does not render a criminal trial fundamentally unfair is misconduct under state law if it involves “deceptive or reprehensible methods” to persuade the jury. (*People v. Hill* (1998) 17 Cal.4th 800, 845.) We review a trial court’s ruling on prosecutorial misconduct for abuse of discretion. (*People v. Alvarez* (1996) 14 Cal.4th 155, 213.)

Defendant’s prosecutorial misconduct claim is based largely on the same facts offered in support of his *Brady* and statutory discovery arguments, which are discussed above. He adds to these arguments the assertion that “the prosecutor’s behavior was a purposeful attempt to circumvent her duty and manipulate the evidence at trial”

The essence of defendant’s claims is his assertion that the prosecution withheld evidence that Parram had received special treatment in his pending criminal cases and the prosecution engineered continuances so that Parram’s cases would not be concluded until after the trial in defendant’s case. As discussed above, however, there is no direct evidence of any agreement for special treatment or leniency in exchange for Parram’s testimony or cooperation; Parram denied such an agreement under oath and the prosecutor represented to the court that there was no “deal or discussion” on the subject. At the hearing on the motion for new trial, the prosecutor again denied “any deals or

agreements or leniency grants.” Although there is circumstantial evidence of leniency toward Parram, the trial court could reasonably conclude there was no agreement between the prosecution and Parram regarding his pending cases or his testimony in defendant’s case.

Defendant argues that even in the absence of an explicit agreement, the prosecutor could “hold a potential deal out as a ‘carrot’ until after Parram testified without having to disclose an agreement, or subject Parram to more intense cross-examination regarding his pending cases.” Defendant points to evidence of continuances in Parram’s forgery case and the testimony of Parram’s counsel, who recalled the prosecutor telling him that “things [in Parram’s case] would be taken care of afterwards, after he testified” in the murder case. This strategy raises the possibility expressed by defendant’s trial counsel that “what the prosecution can always do is not reach an agreement and just continue the case until after testimony, and then thereby avoid having to disclose it, by saying, there was no agreement.”

Defendant’s interpretation of the prosecutor’s conduct is, while plausible, based largely on speculation regarding the prosecutor’s motives. The trial court rejected the argument and we cannot conclude that the ruling was an abuse of discretion. Based upon the evidence discussed above, the court could reasonably have found there was no explicit or implicit agreement of special treatment or leniency with Parram or that the continuances in Parram’s criminal cases constitute a pattern of conduct so egregious that it infected the trial with such unfairness as to make the conviction a denial of due process. Accordingly, we reject defendant’s prosecutorial misconduct argument.

C. Denial of Request to Give Instruction Regarding Prosecution’s Late Disclosure of Evidence

During trial, defendant requested that the jury be instructed with CALCRIM No. 306. This instruction provides, in relevant part: “Both the People and the defense must disclose their evidence to the other side before trial, within the time limits set by law. Failure to follow this rule may deny the other side the chance to produce all relevant evidence, to counter opposing evidence, or to receive a fair trial. [¶] An attorney for the (People/defense) failed to disclose: _____ <describe evidence that was not disclosed> [within the legal time period]. [¶] In evaluating the weight and significance of that evidence, you may consider the effect, if any, of that late disclosure.”¹⁰

The court denied the request to give the instruction, stating: “I don’t believe there’s been a sufficient showing there’s been any prejudice nor has there been any delay in providing any information. I think the information we discussed was information that was peripheral in nature and not necessarily covered on [*Brady*].”

Defendant raised the issue again a few days later, arguing he was entitled to the instruction regarding the late discovery of witness protection expenditures and the police reports, which he did not receive until they “were already well into the trial.” The court again denied the request.

¹⁰ Although the defense requested the instruction, our record does not indicate whether or in what manner defense counsel proposed to describe the evidence that was not disclosed.

Defendant contends that the denial of his “request constituted an abuse of discretion that violated [his] due process rights to a fair trial and to present a defense under the federal Constitution.” We disagree.

Defendant’s constitutional argument is premised on the success of his arguments that the prosecution failed to comply with its obligations under *Brady*. Because we hold that defendant failed to establish a *Brady* violation, the court’s refusal to give the requested instruction did not violate defendant’s constitutional rights.

Instructing the jury that a party has failed to disclose information as required is one of the specified sanctions for violating section 1054.1. (§ 1054.5, subd. (b).) The decision whether to give such an instruction, like the decisions as to other possible sanctions, is a matter within the trial court’s discretion and is reviewed for an abuse of such discretion. (*People v. Ayala, supra*, 23 Cal.4th at p. 299; *People v. Lamb, supra*, 136 Cal.App.4th at p. 581.)

As discussed above, to the extent the prosecution failed to comply with its statutory discovery obligations, the court acted within its discretion in ordering the prosecution to produce any undisclosed material and make further orders addressing defendant’s legitimate concerns (i.e., ordering the production of the police reports and the statement of Parram’s witness protection expenditures, ensuring that Parram was available for the defense case, and requiring a person knowledgeable about CAL WRAP

to testify).¹¹ The prosecution complied with these orders, and the defense was able to examine Parram and Ford to address the issues of special treatment and leniency. A further sanction was unnecessary. Therefore, we conclude that the court acted within its discretion in refusing to give CALCRIM No. 306.¹²

¹¹ Although defendant did not receive a statement of expenditures regarding Hernandez’s involvement in CAL WRAP, defendant did not request such a statement and has not made an adequate showing on appeal of its materiality.

¹² The People use a footnote in their brief to assert that the abstract of judgment incorrectly states that the term for the firearm enhancement is a 25-year *determinate* term. We do not believe any correction is necessary. The court orally pronounced defendant’s sentence on the firearm enhancement as 25 years to life and the minutes so state. This is also consistent with the applicable statute. (See §12022.53, subd. (d).) The abstract of judgment is on the form used for indeterminate prison terms and states that defendant’s sentence is “for an INDETERMINATE TERM as follows . . . 25 years to Life on counts 1 . . . PLUS enhancement time shown above.” What is “shown above” is the enhancement under section 12022.53, subdivision (d), which is necessarily for an indeterminate 25-year-to-life term. In a column on the form with the heading, “Y/S,” the number “25” is set forth. Although this aspect of the form could be clearer, viewed in the context of the entire form and the specified statute, it reflects the sentence as pronounced—an indeterminate 25 years to life on the murder count plus an indeterminate 25 years to life on the enhancement.

IV. DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.