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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

EDDIE VICTOR VILLA,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA
CLARA COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

No. H036850
(Santa Clara County
Super. Ct. No. C1079346)

Eddie Victor Villa filed a petition for writ of mandate and/or prohibition naming the Santa Clara County Superior Court as respondent and the People of the State of California as real party in interest. Petitioner requested that this court direct respondent to vacate its order denying him access to the witnesses' contact information. We denied the petition. The California Supreme Court granted his petition for review, and transferred the matter to this court with directions to vacate our order and to issue an alternative writ. We stayed all further proceedings in the matter pending our review of

the petition and issued an order for the real party to show cause why the petition should not be granted. We conclude that the trial court did not abuse its discretion in refusing to authorize pretrial disclosure of the witnesses' contact information. Accordingly, the petition is denied, and the alternative writ is discharged.

I. Factual and Procedural History

On June 6, 2010, several gunshots were fired and David Maldonado was hit. Petitioner was wearing a Pittsburgh Pirates hat which is worn by members of El Hoyo Palmas, "one of the most notorious street gangs in San Jose." There were several witnesses to the shooting. Following a police investigation, petitioner was charged with attempted murder (Pen. Code, §§ 664, subd. (a), 187),¹ and discharging a firearm from a vehicle (former § 12034, subd. (c)). It was also alleged that petitioner personally discharged a firearm causing great bodily injury (§ 12022.7) and that petitioner committed the offenses for the benefit of, at the direction of or in association with, a criminal street gang (§ 186.22, subd. (b)(1)).

Petitioner's counsel requested that the prosecutor provide the names and addresses of witnesses that he intended to call at trial. The prosecutor responded by providing the names of seven witnesses, but not their addresses.² The prosecutor also provided statements from each of the witnesses in which he or she objected to the release of personal information, including addresses and telephone numbers, to petitioner's counsel, and gave the reasons for the objection.³ Three of them noted that this was a gang case

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

² During discovery, petitioner's counsel received police reports in which the addresses and telephone numbers of all individuals had been redacted.

³ These forms also included the statement that "[n]o police officer or representative of the Santa Clara County District Attorney's Office has told me whether or not to object

and they feared retaliation.⁴ Two witnesses indicated that they had no information to provide.⁵ The remaining two witnesses, who were the victim and his brother, stated that they did not want to be involved in the case.⁶ The prosecutor also filed points and authorities to deny disclosure of witness identifying information. The prosecutor argued that he was entitled to withhold contact information if there was any possible danger to witnesses. Petitioner's counsel filed a reply in which he argued that the prosecutor had failed to show good cause for withholding contact information for prosecution witnesses because there was no evidence of any threats or attempts to intimidate witnesses by petitioner or anyone acting on his behalf. He also argued that the prosecutor failed to present any reason for the nondisclosure of contact information for possible defense witnesses.

At the hearing, the parties restated their arguments. Petitioner's counsel also sought an unredacted copy of the police reports. Though he acknowledged that some of the individuals referred to in the police reports stated that they did not see the shooting, he asserted that he had an obligation to contact them because they were in a position to see or hear it. He also noted that petitioner allegedly used a revolver and one of the

to personal information about me (including, but not limited to, my address and telephone number) being released in this case. I have reached these decisions on my own.”

⁴ Eric Bautista stated: “It is gang related and I prefer not to get involved for fear of putting myself or my family in danger in case of retaliation.” Esmeralda Chavez stated: “This is a gang related case. I do not want to put myself or family at risk or in danger.” Bianca Chavez stated: “This is a gang related case and I do not want to put my daughter or family in any danger.”

⁵ Andrea Madriz stated: “Is that I choose not to get involved because I feel I really do not have to[o] much information on this case.” Reinario Argot stated: “I have 2 jobs: one in the morning @ 8:00 am to 2:30 pm and the 2nd is a 3 pm to 11 pm; [¶] My testimony will not suffice considering my earlier statement.”

⁶ Both David Maldonado and Norman Maldonado stated that they did not want to be involved in the case.

witnesses heard eight gunshots. Asserting that a revolver does not contain eight bullets, he claimed that this witness could provide exculpatory evidence. Petitioner's counsel also stated that he would not provide any of the contact information to petitioner or his representatives. The prosecutor responded by stating that he could contact the individuals in the police reports to determine if they did not object to being contacted by petitioner's counsel.

Following the hearing, the trial court issued an order, stating: "Defense Counsel shall provide the Deputy District Attorney with a telephone number for witnesses to call Defense Investigator. The Deputy District Attorney will then notify Defense Counsel of date and time each witness may call if he or she wishes to initiate such a call. [¶] During such a call from a witness to the Defense Investigator no witness has any obligation to give identifying information."⁷

II. Discussion

Petitioner contends that the trial court's order to withhold the witnesses' contact information was not based on a showing of good cause.

As this court stated in *Reid v. Superior Court* (1997) 55 Cal.App.4th 1326, "[a] criminal defendant does not have a fundamental due process right to pretrial interviews or depositions. [Citation.] However, a defendant does have a right to the names and addresses of prosecution witnesses and a right to have an opportunity to interview those witnesses if they are willing to be interviewed. [Citations.] 'A criminal trial, like its civil counterpart, is a quest for truth. That quest will more often be successful if both sides have an equal opportunity to interview the persons who have the information from which

⁷ Given petitioner's request for contact information for all individuals named in the police reports and the prosecutor's offer to determine whether these individuals wanted to release their contact information, we assume that the trial court's order refers not only to the prosecution witnesses, but also to the individuals named in the police reports.

the truth may be determined.’ [Citation.] ‘As a general rule, a witness belongs neither to the government nor to the defense. Both sides have the right to interview witnesses before trial. [Citations.] Exceptions to this rule are justifiable only under the “clearest and most compelling circumstances.” [Citation.]’” (*Id.* at pp. 1332-1333.) Thus, a prosecutor must disclose the names and addresses of potential trial witnesses, upon request, “unless good cause is shown why a disclosure should be denied, restricted, or deferred. ‘Good cause’ is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement.” (§§ 1054.1, 1054.7.)

The standard of review for discovery orders in criminal cases is abuse of discretion. (*Hill v. Superior Court* (1974) 10 Cal.3d 812, 816; see also *Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1134 (*Alvarado*).

Montez v. Superior Court (1992) 5 Cal.App.4th 763 (*Montez*) is instructive. In *Montez*, the petitioner’s counsel sought disclosure of the addresses and telephone numbers of the prosecution witnesses. (*Id.* at p. 765.) The four witnesses were present when the victim was murdered at the witnesses’ place of employment, and they objected to the disclosure of their telephone numbers and addresses. (*Id.* at pp. 767, 771.) Based on the defendants’ gang affiliation, the witnesses described their fears. (*Id.* at p. 768.) One witness stated that the defendants’ associates had previously attempted to harass him and his family, and another stated that his parents “‘fear that these people might come back and avenge their conviction toward [them]. Also these people are capable of doing the same crime again without thinking twice about it.’” (*Id.* at p. 771.) The third witness “‘noticed persons who appeared to [him] to be either relatives & or friends of the defendants checking [him] out as to intimidate [him]’” while the other witness stated that he would not feel safe if “‘these guys found out or their friends they could do bad things to [him] or [his] family.’” (*Ibid.*) The prosecution offered to make the witnesses available to petitioner’s counsel. (*Id.* at p. 767.) *Montez* upheld the trial court’s order to

withhold the witnesses' contact information, noting that no showing had been made that the witnesses had a bad reputation for veracity. (*Id.* at pp. 765, 768.)

Unlike in *Montez*, here, there is no indication that petitioner, his associates, or family have intimidated or attempted to harass the witnesses. As in *Montez*, however, the present case involves a violent crime and petitioner is allegedly a member of a notorious criminal street gang. That some of the witnesses have expressed fear of retaliation and others do not want to be involved in the case at all is reasonable, since one of the primary activities of a “‘criminal street gang’” is statutorily defined as the “‘intimidation of witnesses and victims.’” (§ 186.22, subd. (f).) Moreover, as in *Montez*, there has been no showing in the present case that the witnesses have a bad reputation for veracity or that there is any question as to their bias. Under these circumstances, the prosecution has made a sufficient showing of a “‘possible danger to the safety of a . . . witness,’” thereby constituting “‘good cause’” for nondisclosure of contact information. (§ 1054.7.) Accordingly, the trial court did not abuse its discretion in withholding the witnesses' contact information prior to trial.

Relying on *Alvarado, supra*, 23 Cal.4th 1121, petitioner argues that section 1054.7 requires a showing of evidence that he, or his agents, threatened or harmed a witness as well as gang affiliation. *Alvarado* did not consider the issue before us. In *Alvarado*, the defendants were charged with the murder of a fellow inmate. (*Id.* at p. 1126.) When the defendants requested the prosecution witnesses' names and addresses, the prosecution sought a protective order. (*Id.* at p. 1128.) At a series of in camera hearings, the prosecution presented evidence of the following: the killing was ordered by the Mexican Mafia; the defendants participated in the killing to gain favor with the Mexican Mafia; the Mexican Mafia was known for retaliatory acts against government witnesses; the Mexican Mafia employed a sophisticated procedure for issuing contracts to kill witnesses; one of the witnesses was attacked in jail after the charged killing; and another witness was threatened. (*Id.* at pp. 1128-1129.) The trial court ordered that the

witnesses' identities be permanently withheld from the defense and that the witnesses were to be produced for an interview by the defendant within 30 days of trial. (*Id.* at p. 1130.) On appeal, the defendants conceded that disclosure of the witnesses' identities constituted good cause under section 1054.7, but argued that withholding disclosure of their identities at trial violated their federal constitutional rights to due process and to confront witnesses against them. (*Id.* at p. 1134.) *Alvarado* held that the order was valid insofar as it protected the witnesses' identities before trial, but that the witnesses could not testify anonymously at trial. (*Id.* at pp. 1136, 1149.) In contrast to *Alvarado*, here, the prosecutor has disclosed the witnesses' identities to petitioner, and the trial court's order does not prohibit the disclosure of witness contact information at trial.⁸

Relying on *United States v. Cadet* (9th Cir. 1984) 727 F.2d 1453 (*Cadet*) and *Gregory v. United States* (D.C. Cir. 1966) 369 F.2d 185 (*Gregory*), petitioner argues that he is constitutionally entitled under due process of law and the right to counsel to discover witnesses' contact information.

In *Cadet*, the district court ordered, among other things, the disclosure of the names and addresses of all witnesses to the actions or the offenses charged in the indictment. (*Cadet, supra*, 727 F.2d at p. 1468.) On appeal, the government argued that the identity of nonwitnesses was not subject to discovery absent a showing of materiality. (*Id.* at p. 1469.) *Cadet* rejected this argument, stating: "A person who has actually witnessed a crime through any of his senses can either provide evidence which is favorable to the defense or which may tend to raise a reasonable possibility that the accused is guilty. Thus, it was quite appropriate for the district court to conclude from

⁸ The present case is also distinguishable from *Reid, supra*, 55 Cal.App.4th 1326. In *Reid*, the prosecution presented no evidence of potential danger to the witnesses and the trial court specifically found that there was no danger to them. (*Id.* at p. 1336.) *Reid* noted that though the victims expressed fear, there was "no evidence of threats, danger to the victims, inappropriate attempts to contact the victims, harassment or gang affiliation." (*Ibid.*) Here, the prosecutor presented evidence of gang affiliation.

the fact that the government did not intend to call a witness to the crime that there was a reasonable possibility that such person would be able to provide evidence favorable to the defense. No further showing of materiality was required. The government offered no evidence to rebut this logical inference. No legitimate governmental interest has been suggested which would justify denying to the accused the identity of a witness to a crime whose testimony may be exculpatory.” (*Ibid.*) In contrast to *Cadet*, here, the identities of all witnesses have been provided to petitioner, and the prosecution made an adequate showing of a “possible danger to the safety of a . . . witness.” (§ 1054.7.) Moreover, the trial court’s order set forth a procedure in which witnesses could contact petitioner’s investigator prior to trial.

In *Gregory, supra*, 369 F.2d 185, the prosecutor advised the witnesses that they were not to speak to anyone unless he was present. (*Id.* at p. 187.) The trial court subsequently refused defense counsel’s request that the prosecutor be directed to allow the witnesses to talk to him. (*Ibid.*) *Gregory* held that due process required that the defense be allowed the opportunity to interview witnesses outside the prosecutor’s presence. (*Id.* at p. 188.) *Gregory* is inapposite. Here, the witnesses themselves stated that they did not want their contact information revealed. Moreover, in *Gregory*, the prosecution did not make any showing of a possible danger to the witnesses.

III. Disposition

The petition is denied, and the alternative writ is discharged.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.