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6  
7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
8 IN AND FOR THE COUNTY OF LOS ANGELES

9	PEOPLE OF THE STATE OF CALIFORNIA,)	Case No. BA490599
10	Plaintiff,	) PEOPLE'S RESPONSE TO DEFENDANT'S ) MOTION FOR NEW TRIAL
11	vs.	
12	DAYSTAR PETERSON,	) NEXT COURT DATE: April 10, 2023 ) DEPT.: 132 ) TIME: 10:30 a.m.
13	Defendant.	
14	)	
15	)	

16 TO THE HONORABLE JUDGE HERRIFORD OF THE ABOVE ENTITLED COURT,  
17 THE DEFENDANT AND HIS ATTORNEYS OF RECORD, PLEASE TAKE NOTICE:

18 PLEASE TAKE NOTICE that the People will move this court to deny the defense  
19 motion for new trial. The People's opposition is based on the attached Memorandum of Points  
20 and Authorities, all pleadings and any other evidence filed with the court, the court's own  
21 records together with any other evidence or law the People introduce at the hearing on the  
22 motion.

23 Dated this 6th day of April 2023

Respectfully Submitted,  
GEORGE GASCÓN  
DISTRICT ATTORNEY

24  
25  
26 By:   
27 ALEXANDER BOTT  
KATHY TA

28 DEPUTY DISTRICT ATTORNEYS

1  
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3  
4 **I.**

5 **INTRODUCTION**

6 In this memorandum, the defendant's motion for a new trial pursuant to Penal Code  
7 section 1181(5) is under consideration. The defendant's brief is replete with colorful rhetoric  
8 and conclusory statements, but it lacks substance. Despite being nearly 80 pages long, the  
9 defendant has failed to cite a single instance of error in the trial court. Therefore, this motion  
10 should be denied.

11 As the court is aware, the right to a fair trial is a cornerstone of our justice system.  
12 However, a motion for a new trial must be based on substantial legal grounds and supported by  
13 evidence. It is not a vehicle for a litigant to reargue their case or to make vague and unsupported  
14 allegations.

15 This memorandum will demonstrate that the defendant's motion for a new trial is without  
16 merit and should be denied. It will analyze the relevant legal authority, examine the evidence  
17 presented at trial, and demonstrate that the defendant has failed to meet their burden of proof.  
18 Ultimately, this court should deny the defendant's motion and uphold the integrity of the trial  
19 process.

20 **II.**

21 **FACTS AND PROCEDURAL BACKGROUND**

22 On July 12, 2020, at approximately 4:30 in the morning, the defendant fired five rounds  
23 from a semi-automatic handgun at Victim Megan Pete ("the victim"), causing her to sustain  
24 gunshot wounds to both feet that required surgery to repair.

25 The incident took place after a party in the Hollywood Hills hosted by celebrity  
26 personality Kylie Jenner, which was attended by the victim, the defendant, and the victim's  
27 assistant and best friend, Kelsey Harris. At the time, the victim and the defendant were friends  
28 with a brief romantic history.

The victim, the defendant, and Ms. Harris left the party together in a Cadillac Escalade  
driven by the defendant's security guard and driver, Jauquan Smith. While in the car, an

1 argument ensued between the victim and the defendant. Ms. Harris intervened on behalf of the  
2 victim, accusing the defendant of disrespecting her, which led the defendant to threaten Ms.  
3 Harris, stating he would "shoot her," as he reached towards the center console as if to grab  
4 something.

5 The argument escalated, and Mr. Smith pulled the car over on a residential road in the  
6 Hollywood Hills so the victim and Ms. Harris could get out. The victim and Ms. Harris exited  
7 the vehicle on the passenger side. As the victim was walking away from the car, the defendant  
8 produced a semi-automatic handgun, yelled out, "Dance, bitch!" and fired five rounds at the  
9 victim, striking her in both feet. Injured, the victim crawled to the driveway of a nearby house.

10 The defendant approached the victim in the driveway, apologized for his actions, and  
11 begged her not to say anything. He convinced the victim to get back in the car. Ms. Harris  
12 confronted the defendant for shooting at the victim, causing the defendant to physically assault  
13 Ms. Harris. He grabbed her by the throat and pulled her by the hair before calming down again.

14 Everyone got back in the car. The defendant sat in the front passenger seat, the victim sat  
15 in backseat on the passenger side, and Ms. Harris sat in the backseat on the driver side. The  
16 victim was bleeding profusely from her injuries. Witness Harris quickly sent a text message to  
17 the victim's security guard, Justin Edison, stating, "Help. Tory shot Meg. 911."

18 A resident from the scene of the shooting reported the incident to the police, including a  
19 description of the car and license plate number. Officers located the car traveling in the area of  
20 Hollywood Boulevard and La Brea Avenue and conducted a felony traffic stop.

21 Before officers approached the car, the defendant begged the victim and Ms. Harris to  
22 keep quiet and offered them each a bribe of a million dollars, which they summarily rejected.  
23 The defendant also attempted to bribe Ms. Harris a second time shortly after the incident, which  
24 was also rejected.

25 Officers ordered the parties out of the car and conducted a search, during which they  
26 recovered a semi-automatic handgun on the front passenger floorboard, where the defendant was  
27 sitting, that was warm to the touch. Several cartridge cases were recovered from the shooting  
28 scene that matched the firearm recovered from the vehicle.

The victim initially told officers that she sustained the injuries to her feet by stepping on  
glass. She was in shock, scared, and embarrassed about what happened. Four days later, once  
removed from the excitement of the situation and with a clear head, she told the truth about what

1 happened. The defendant and Ms. Harris never made a statement to the police. Mr. Smith said  
2 only that he didn't see or hear anything.

3 DNA testing was conducted on the recovered firearm, but the results were inconclusive.  
4 Gunshot residue tests were performed on all the occupants except for the victim, who was  
5 transferred by ambulance to Cedars-Sinai medical center. The defendant and Ms. Harris were  
6 both positive for gunshot residue, while the driver, Mr. Smith, was negative.

7 The defendant was arrested for possession of a concealed weapon during the ongoing  
8 investigation into the shooting that occurred less than five hours earlier. While in detention, he  
9 made a jail call to Ms. Harris in which he expressed deep remorse for his actions, admitting that  
10 he "made a mistake" that he "can't take back." He acknowledged that he was "just so fucking  
11 drunk" and that the victim may never speak to him again.

12 On December 23, 2022, a jury convicted the defendant in Count 1 of a violation of Penal  
13 Code section 245(b), assault with a semi-automatic firearm; in Count 2 of a violation of Penal  
14 Code section 25400(a)(1), having a concealed firearm in a vehicle; and in Count 3 of a violation  
15 of Penal Code section 246.3(a), discharge of a firearm with gross negligence. The jury also  
16 found the allegation to Count 1 and Count 3, that the defendant personally used a firearm during  
17 the commission of the offense within the meaning of Penal Code section 12022.5(a) to be true,  
18 and the allegation to Count 1, that the defendant personally inflicted great bodily injury within  
19 the meaning of Penal Code section 12022.7(a), to be true.

### 20 III.

### 21 ARGUMENT

#### 22 A. GENERAL STANDARD

23 The defendant has filed a motion for a new trial under Penal Code section 1181,  
24 following a guilty verdict. According to *People v. Guerra* (37 Cal. 4th 1067, 1159 (2006)), the  
25 trial court may grant such a motion only if the defendant can demonstrate a reversible error or  
26 other defect. The court has broad discretion in ruling on the motion, and there is a strong  
27 presumption that it will properly exercise its discretion, as stated in *People v. Davis* (10 Cal. 4th  
28

1 463, 529, (1995)), with the determination of the motion being subject to review only if a  
2 manifest and unmistakable abuse of discretion is evident.

3 Penal Code section 1181 specifies the grounds on which a new trial may be granted, as  
4 per *People v. Guerra* (347 Cal. 4th 1070, 1159). Nonetheless, in exceptional cases, a motion  
5 may be granted on other constitutional grounds, according to *People v. Knoller* (41 Cal. 4th 139,  
6 158 (2007)). However, regardless of whether the grounds are statutory or constitutional, the  
7 defendant can only be granted relief on the grounds raised in their motion, as mentioned in  
8 *People v. Masotti* (163 Cal. App. 4th 504, 508 (3d Dist. 2008)). In this case, the defendant's  
9 motion for a new trial is based on the grounds enumerated in Penal Code section 1181(5).  
10

## 11 **B. DEFENDANT'S MOTION FOR A NEW TRIAL SHOULD BE DENIED**

12 The defendant has failed to demonstrate any error by the trial court in support of its  
13 motion for a new trial. The defendant's claims of error are addressed below, and each should be  
14 rejected by this Court.

### 15 **a. The Court Properly Admitted People's Exhibit 41A**

16 The defendant argues that the Court erred in admitting People's Exhibit 41A on three  
17 grounds. First, the defendant claims that the People violated their statutory discovery obligation  
18 by failing to timely turn over the reply from the defendant's verified Instagram account  
19 contained in the exhibit. Second, the defendant argues that the reply from the defendant's  
20 verified Instagram account was inadmissible. Third, the defendant contends that the exhibit of  
21 the post also contained inadmissible hearsay. However, the Court correctly admitted the exhibit,  
22 and the defendant's arguments are without merit.

23 The Instagram post at issue in Exhibit 40A was published by "TheShadeRoom"  
24 Instagram account on September 25, 2020 and discussed in the news. The defendant's verified  
25 Instagram account posted a response to a comment by user "spliffkaay\_" claiming that "People  
26 saying Kelsey shot [Megan]" to which the defendant's account replied, "that's not true." His  
27  
28

1 reply was discussed in the news.<sup>1</sup> The reply from the defendant's account became relevant at  
2 trial when the defense stated its theory of the case that Kelsey Harris shot the victim.

3 During trial, Detective Warren Eberhardt investigated the Instagram post to lay  
4 foundation for its admissibility, and both parties briefed and argued the issue during a motion in  
5 limine.<sup>2</sup> (Dec. 15, 2022 Tr. at 78). The Court ruled that the evidence was admissible based on  
6 the case law cited by the People and the Court, at which point it gave the defense an opportunity  
7 to be heard further. The defendant maintained its objection to the admissibility of the Exhibit but  
8 never asked for a continuance or for a late discovery instruction on this issue. The failure to ask  
9 for a continuance is particularly important considering that the defendant now claims the  
10 response was purportedly authored by his social media manager, Joshua Farias. However,  
11 assuming the declaration by Mr. Farias is factually accurate, the defense had ample opportunity  
12 to call him as a witness with reasonable diligence and could have asked for a brief continuance in  
13 order to produce him, if necessary.

14 The defendant now contends that the People violated their disclosure obligations under  
15 section 1054.1 with respect to Exhibit 40A. This argument is without merit, as the discovery  
16 was already in the possession of the defense on September 25, 2020, when the defendant's own  
17 verified account commented on the Instagram post. The defendant is essentially complaining  
18 about late disclosure of information that was already under his agency and control for over two  
19 years.

20 In *People v. Williams*, 49 Cal.4th 405 (2010), the California Supreme Court held that  
21 there was no discovery violation because the defendant should have known about the evidence.  
22 The court noted that the defendant was aware of the circumstances surrounding the evidence, and  
23 that he could have easily discovered it himself. The California Supreme Court reached similar  
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25 <sup>1</sup> [https://hip-hopvibe.com/news/tory-lanez-denies-rumors-that-megan-thee-stallions-best-friend-kelsey-was-actually-  
26 the-one-who-shot-her/](https://hip-hopvibe.com/news/tory-lanez-denies-rumors-that-megan-thee-stallions-best-friend-kelsey-was-actually-the-one-who-shot-her/)

27  
28 <sup>2</sup> The People asked Detective Warren Eberhardt to investigate the Instagram post at issue on December 13, 2022. (Dec. 15, 2022 Tr. at 30). The defense was made aware of the investigation, both parties briefed the issue, and it was formally litigated on December 15, 2022. (Dec. 15, 2022 Tr. at 78). Thus, the investigation into the Instagram post and its disclosure were made contemporaneously.

1 holdings in *People v. Lewis*, 25 Cal.4th 610 (2001) and *People v. Brown*, 198 Cal.App.4th 1102  
2 (2011). In *People v. Morrison*, 34 Cal.4th 698 (2004), the Court addressed the issue of *Brady*  
3 evidence. The defendant argued that the People violated their disclosure obligations under  
4 section 1054.1 by failing to turn over relevant evidence regarding motive, etc. However, the  
5 court held that there was no violation because the defendant's contentions were based on  
6 information that was known or available to him at trial. The court further held that when  
7 information is fully available to a defendant at the time of trial, and the defendant's only reason  
8 for not obtaining and presenting the evidence to the court is his lack of reasonable diligence, the  
9 defendant has no *Brady* claim.

10 In the present case, the defendant is not entitled to claim a discovery violation because he  
11 knew or should have known about the reply from his own Instagram account. Moreover, the  
12 information was disclosed to the defendant once the People became aware of it. Therefore, the  
13 Court properly admitted People's Exhibit 41A, and the defendant's arguments to the contrary are  
14 meritless.

15 The *Morrison* Court also addressed the issue of "newly discovered evidence," citing  
16 *United States v. Slocum* (11th Cir. 1983) 708 F.2d 587, stating that newly discovered evidence  
17 does not warrant a new trial unless, *inter alia*, the evidence is discovered following trial, and the  
18 movant demonstrates due diligence to discover the evidence prior to trial. To the extent that the  
19 defendant frames the declaration of Mr. Farias as an issue of newly discovered evidence, the  
20 argument fails because he failed to make these requisite showings.<sup>3</sup>

21 Even if there was an actionable delay in disclosure, which the People do not concede,  
22 exclusion is not the remedy. Penal Code section 1054.5 subdivision (c) provides that exclusion  
23 of prosecution evidence should be a last-resort sanction, and all other sanctions must be  
24 exhausted before the court may prohibit the testimony of a witness as a discovery order sanction.  
25 The defendant has the burden to prove that a continuance is not an adequate remedy for a

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26  
27 <sup>3</sup> Before trial court, in its discretion, may properly grant a new trial on ground of newly discovered evidence, it must  
28 appear (1) that evidence, and not merely its materiality, is newly discovered, (2) that evidence is not cumulative  
merely, (3) that evidence is such as to render different result probable on retrial of cause, (4) that party could not  
with reasonable diligence have discovered and produced it at trial, and (5) that these facts are shown by best  
evidence of which case admits. (*People v. Cua* (App. 1 Dist. 2011) 119 Cal.Rptr.3d 391).

1 prosecution discovery violation. “It is the defendant’s burden to show that the failure to timely  
2 comply with any discovery order is prejudicial, and that a continuance would not have cured the  
3 harm.” (*People v. Pinholster* 1 Cal.4th 865, 941 (1992); overruled on different grounds in  
4 *People v. Williams* 49 Cal. 4th 405 (2010)).

5 There are numerous cases upholding the remedy of continuance as preferable to  
6 exclusion of evidence for an inadvertent or unintentional discovery violation. Except for cases  
7 of intentional destruction of prosecution evidence, there are virtually no cases in which an  
8 appellate court has determined that exclusion of prosecution evidence, instead of a continuance,  
9 is the appropriate remedy for a prosecution discovery violation. That is especially true here,  
10 where the defendant could have easily produced the testimony of his social media manager  
11 during the trial.

12 Although the People have addressed the merits of the defendant’s arguments under the  
13 discovery statute, the defendant also waived the issue by failing to object at trial. (Dec. 15, 2022  
14 Tr. at 78); (Dec. 20, 2022 Tr. at 135). Under California law, the failure of a defendant to make a  
15 timely objection at trial to an alleged error or irregularity constitutes a waiver of the objection,  
16 unless the defendant can demonstrate good cause for the failure to object (Evidence Code section  
17 353(a)). This rule is commonly referred to as the “waiver rule” or the “forfeiture rule.”

18 The purpose of the waiver rule is to encourage parties to bring errors or irregularities to  
19 the attention of the trial court in a timely manner, so that the court may address and correct them  
20 if possible. This helps to avoid unnecessary appeals and to ensure a fair and efficient trial  
21 process. (See, *People v. Williams* (1997) 16 Ca.4<sup>th</sup> 153; see also, *People v. Mitcham*, Cal.4th at  
22 pp. 1050–1051). Obviously, that purpose can be served only if the defendant is required to, and  
23 does, raise any objection before the jury retires. (*Williams*, 16 Ca.4<sup>th</sup> 153).

24 In *People v. Blackburn*, 45 Cal. 3d 1145 (1988), the defendant argued that the  
25 prosecution violated their duty to disclose exculpatory evidence by failing to produce certain  
26 police reports until shortly before trial. However, the California Supreme Court held that the  
27 defendant waived the issue by failing to object to the late production of the reports or to request a  
28



1 continuance to review them. The court noted that a party who fails to object to late discovery  
2 may be deemed to have waived any claim of prejudice resulting from the late production.

3 Similarly, in *People v. Pride*, 3 Cal. App. 5th 680 (2016), the defendant argued that the  
4 trial court erred in allowing the prosecution to introduce evidence of prior uncharged acts  
5 because the prosecution failed to provide sufficient notice of the evidence. However, the  
6 California Court of Appeal held that the defendant waived the issue by failing to object to the  
7 evidence at trial or to request a continuance to review it.

8 That the defendant objects now in his Motion for New Trial does not remedy his error in  
9 failing to object at trial. In *People v. Romero* (1994) 8 Cal.4th 728, the defendant argued that the  
10 trial court's admission of certain evidence was erroneous, even though he did not object to the  
11 evidence at trial. The defendant claimed that he had preserved the issue for appeal by raising the  
12 issue in his motion for new trial. The California Supreme Court rejected the defendant's  
13 argument, holding that he had waived the issue by failing to object at trial. The court noted that  
14 "a motion for new trial may not be used as a substitute for a timely objection" and that "a party  
15 cannot avoid the forfeiture of a claim of error by raising the issue for the first time in a motion  
16 for new trial."

17 Based on the case law regarding waiver of objections to late discovery, the defendant in  
18 the present case waived his objection by failing to object on grounds of late production of  
19 evidence.

20 The defendant next argues that the Court erred in admitting Exhibit 40A, which contained  
21 an Instagram post, on the grounds of insufficient foundation and hearsay. However, the People  
22 had already litigated the issue of foundation during a previous motion in limine, and the Court  
23 correctly ruled that if the People establish the requisite foundation, any objections go to the  
24 weight of the evidence rather than its admissibility. Moreover, the defendant failed to cite any  
25 new cases to support its position, and the Court properly ruled on the issue at trial. (Dec. 15,  
26 2022 Tr. at 79).

27 The defendant's arguments regarding other statements contained in Exhibit 40A being  
28 hearsay are without merit, as the only statement offered for the truth of the matter asserted was

1 the comment from the defendant's verified Instagram account. The defendant's conclusory  
2 statements about other statements being used for the truth of the matter asserted lack support in  
3 the trial transcript.

4 Additionally, the defendant's failure to object to Exhibit 40A on hearsay grounds waived  
5 the issue, pursuant to the long-standing rule that "incompetent hearsay admitted without  
6 objection is sufficient to sustain a finding or judgment." (*People v. Baker*, 204 Cal.App.4th  
7 1234, 1241 (2012), citing *Gallagher v. Connell*, 123 Cal.App.4th 1260, 1268 (2004)). The  
8 *Gallagher* court explained that an objection that the evidence is "not admissible" or "not  
9 competent" is too general to include the objection it calls for hearsay. As a result, a party must  
10 specifically object to evidence on hearsay grounds to preserve the issue for appeal (*Gallagher*,  
11 123 Cal.App.4th at 1267; see also *People v. Seijas*, 36 Cal. 4th 291 (2005) [the California  
12 Supreme Court held that the defendant waived any objection to the evidence by failing to object  
13 on hearsay grounds at trial]).

14 Even if the Court erred in admitting Exhibit 40A, the error was harmless. The harmless  
15 error standard applies to determine whether errors or irregularities during trial require a new trial.  
16 An error in the admission of evidence is harmless if it is not reasonably probable that the jury  
17 would have reached a different verdict if the evidence had been excluded. (*People v. Gonzalez*,  
18 126 Cal.App.4th 1539 (2005)). In this case, the evidence of the defendant's guilt was  
19 overwhelming, with multiple eyewitnesses identifying him as the shooter, the gun used in the  
20 assault found at his feet, and recorded apologies for the shooting. In contrast, Exhibit 40A was a  
21 relatively insignificant piece of evidence, and it is not reasonable to conclude that the jury would  
22 have reached a different verdict if the evidence had been excluded.

23  
24 **b. Evidence of Defendant's Statement Regarding Probation Was Properly**  
25 **Admitted**

26 The defendant argues that the victim's testimony regarding the defendant's statement,  
27 "please don't say anything because I'm on probation," was improperly admitted at trial since it is  
28 false and prejudicial to the defendant. However, the context in which the statement was elicited  
is important. It was revealed during the victim's direct examination, wherein she was asked

1 about the things the defendant said to her right after the shooting. She testified that the defendant  
2 urged her not to speak about the incident and offered her and Ms. Harris a million dollars to keep  
3 quiet. He claimed he couldn't go to jail as he was already caught with a gun before and on  
4 probation. (Dec. 13, 2022 Tr. at 23). The defendant's motive for making the statement was to  
5 manipulate the victim and Ms. Harris into keeping silent.

6 The defendant's argument fails to consider that whether or not the defendant was actually  
7 on probation is immaterial since he said what he believed was necessary to maintain their  
8 silence. Thus, the court did not err in admitting this evidence at trial, and the defendant waived  
9 this issue by failing to object at trial.

10 In *People v. Virary*, (2005) 134 Cal.App.4th 1186, the Court of Appeal held that it is the  
11 defendant's responsibility to object to evidence believed to be inadmissible. The court cannot  
12 commit error in the admission of evidence unless a party objects, and the task of raising  
13 evidentiary objections is the responsibility of counsel. If the proffered evidence is relevant,  
14 courts will rarely exclude it *sua sponte* unless it is redundant or irrelevant.

15 This rule of criminal procedure is so fundamental that even errors of "constitutional  
16 stature," such as the Sixth Amendment right to counsel issue in *Virary*, are waived without  
17 proper objection. Therefore, the defendant's failure to object to the victim's testimony regarding  
18 the defendant's probationary status waived and forfeited the issue.

### 19 20 **c. The Defendant's 6<sup>th</sup> Amendment Right to Counsel Was Not Violated**

21 The defendant argues that the People violated his Sixth Amendment right to counsel by  
22 eliciting testimony from Kelsey Harris about defendant's mention of his attorney, Shawn Holley,  
23 in his attempt to solicit a bribe. However, this claim is inaccurate, misleading, and unethical.  
24 The defendant attempts to shift the blame onto the People for an issue he created himself.

25 Furthermore, the defendant's claims regarding Holley's withdrawal from representing  
26 him—*without a supporting declaration from Holley*—are false and an intentional  
27 misrepresentation to the court. In a letter submitted to the court on January 10, 2023 (attached as  
28 Exhibit A), Holley explained that her absence from the defendant's trial was due to her

1 engagement in an out-of-state arbitration and not related to the defendant's claims. The  
2 defendant's claim is therefore a fraud upon the court. The court should reject this claim.

3 Additionally, the defendant's claims under the Sixth Amendment are waived and  
4 forfeited because he failed to object to the evidence at trial, did not seek to exclude it during a  
5 motion in limine, and did not object when the evidence was presented during Harris's testimony.  
6 (See *People v. Virary*, 134 Cal.App.4th 1186 (2005)).

7  
8 **d. The Admission of DNA Evidence Was Proper**

9 The defendant's claim that the admission of DNA evidence in this case was "unduly  
10 prejudicial" and resulted in a "miscarriage of justice" is baseless and perplexing, given that the  
11 defendant himself sought the admission of this exact same evidence at trial. In fact, the defense  
12 only objected to a single question as argumentative during the testimony of the People's DNA  
13 expert, and that objection was overruled by the court. The defendant failed to object to any of  
14 the expert's findings, conclusions, or methodology, either during the testimony or in a motion in  
15 limine before the trial. (Dec. 15, 2022 Tr. at 110).

16 Furthermore, the defendant's own DNA expert, Mr. Taylor, confirmed the findings and  
17 conclusions of the People's expert, stating that they could not determine whether the defendant's  
18 DNA was present on the gun. The defendant called Mr. Taylor to largely parrot the testimony of  
19 the People's expert, indicating that he wanted the jury to hear this testimony. (See Dec. 16, 2022  
20 Tr. at 136-161). However, the defendant now attempts to claim that the evidence was  
21 inadmissible and should not have been presented to the jury.

22 The testimony was relevant and admissible, and the fact that the defendant failed to  
23 object at trial waives any defect on appeal. (*People v. Fudge*, 7 Cal. 4th 1075 (1994) [The  
24 California Supreme Court held that the failure to object to evidence on a particular ground  
25 waives the issue on appeal]; *United States v. Olano*, 507 U.S. 725 (1993) [The Supreme Court  
26 held that the waiver rule applies to claims of error based on the admission of evidence]). As  
27 already discussed, where alleged inadmissible evidence is offered, the objecting party must  
28 specifically state the grounds of the objection and direct the objection to the evidence they seek  
to exclude. *Gallagher v. Connell*, 123 Cal.App.4th 1260, 1268 (2004). Therefore, the  
defendant's claim is without merit and forfeited by his failure to object.

1                                    **e. The Admission of a Photograph of Defendant's Tattoos and Questions**  
2                                    **Regarding the Tattoo of Defense Character Witness Was Proper**

3                    The defendant's claim that the court erred in admitting Exhibit 18, a shirtless photograph  
4 of the defendant showing his tattoos, and questions to defense character witness Eric Culberson  
5 about one of the defendant's tattoos, lacks merit.

6                    The admission of the photograph was relevant for several reasons, such as to compare the  
7 witness's description of the parties' appearance with their actual appearance, and to determine  
8 who was swabbed for gunshot residue by members of the Los Angeles Police Department. The  
9 court conducted an Evidence Code section 352 balancing test and correctly admitted the exhibit  
10 over the defendant's objection on prejudice grounds.

11                    The subsequent questioning of Culberson by the People about the gun tattoo was proper  
12 impeachment evidence of his testimony regarding the defendant's character relating to guns on  
13 direct examination. In California, a party in a criminal trial may seek to impeach a character  
14 witness by introducing evidence of specific instances of conduct that are inconsistent with the  
15 character trait for which the witness testified. (*People v. Wheeler*, 4 Cal.4th 284 (1992). In  
16 *People v. Solis*, 32 Cal.App.5th 722 (2019), the defendant called a character witness to testify to  
17 his good character for nonviolence, and the People sought to impeach the witness with evidence  
18 of prior acts of violence committed by the defendant. The court held that the evidence was  
19 admissible for specific acts impeachment because it was relevant to the issue of the witness's  
20 credibility. Therefore, the People's question to Culberson regarding the defendant's gun tattoo  
21 was proper and consistent with California law on impeachment evidence.

22                    The defendant's attempt to frame the impeachment of Mr. Culberson as an Evidence  
23 Code section 352.2/Assembly Bill 2799 issue fails for obvious reasons. The question was  
24 designed to impeach the witness and was not used to show the defendant's bad character or that  
25 he committed the charged crimes. Even if this was an Evidence Code section 352.2 issue, which  
26 it is not, the claim would still fail.

27                    Evidence Code section 352.2/AB 2799 prohibits the use of a defendant's or witness's  
28 "creativity, poetry, or other forms of artistic expression" as evidence in a criminal trial to prove  
the commission of a crime or the intent to commit a crime. Cases like *People v. Banks*, (2021)  
65 Cal.App.5th 767, discuss the law in the context of rap lyrics, but none of the cases cited by  
the defendant hold that tattoos are included in the law. The law only pertains to a defendant's or

1 witness's "creativity, poetry, or other forms of artistic expression," but it does not include tattoos  
2 within its scope. Therefore, the defendant is asking the court to act as the legislature and  
3 improperly expand the scope of the law to include tattoos, which it does not.

4 The defendant also claims that the court improperly admitted evidence of the defendant's  
5 rap lyrics in violation of the same law during the victim's testimony. However, this testimony  
6 was properly admitted as it was relevant to the victim's credibility and the tragic cost to her of  
7 "speaking her truth" about what the defendant did to her. Victim credibility is always relevant in  
8 a criminal trial, *People v. Davis*, 46 Cal. 4th 539 (2009), and Evidence Code section 352.2 does  
9 not apply because the testimony was not elicited to show the defendant committed the crime or  
intended to commit the crime.

10 Any claim of error with respect to the defendant's claims based on Evidence Code  
11 section 352.2 is waived based on the numerous cases already cited because the defendant failed  
12 to object. Any error is also harmless because Exhibit 18 was already published to the jury during  
13 testimony about swabbing for gunshot residue.

14  
15 **f. The Court Did not "Chill" the Defendant's Right to Testify**

16 The Court's inquiry into the People's intended impeachment evidence was appropriate  
17 and in line with its duty to ensure a fair trial. (See Dec. 20, 2022 Tr. at 124-127). The Court did  
18 not preclude the defendant from testifying or limit his right to testify, but rather indicated that  
19 any questioning would be evaluated on a case-by-case basis and must be relevant to this case.<sup>4</sup>  
20 The defendant's argument that the Court chilled his right to testify is unsupported by the record  
21 and fails to recognize the Court's responsibility to ensure a fair trial for all parties.

22 **g. The Court Did Not Violate Defendant's Rights Under the Confrontation  
23 Clause**

24 The defendant's claim that his right to confront and cross-examine Kelsey Harris was  
25 violated by the People's admission of the September 2020 interview with Ms. Harris is  
26 unfounded and contradicts the holding in *Crawford v. Washington*, 541 U.S. 36 (2004). The  
27

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28 <sup>4</sup> The Court specifically stated, "Well, the best I can tell you at this point is if your client testifies, I'll have to take it on a case-by-case basis. But, essentially, anything pertaining to this case, obviously, is fair game. If it pertains to some other incident, maybe it is. Maybe it isn't. It depends." (Dec. 20, 2022 Tr. at 127).

1 Confrontation Clause of the Sixth Amendment requires that a defendant be given the opportunity  
2 to confront the witnesses against them. However, *Crawford* specifically addressed the  
3 admissibility of hearsay statements made by a witness who did not testify at trial. The *Crawford*  
4 decision does not apply when the witness testifies at trial and is subject to cross-examination by  
5 the defense. Kelsey Harris testified and was extensively cross-examined by the defendant, so his  
6 claim under *Crawford* is without merit.

7 Furthermore, the court properly allowed the People to play the entire taped interview  
8 because the defendant suggested during his cross-examination of Ms. Harris that the People  
9 acted unethically by pressuring her into lying when she gave her September 2020 statement.  
10 This issue is similar to the one presented in *People v. Ruiz*, 44 Cal.4th 981 (2008). In that case,  
11 the defendant implied that the People had engaged in misconduct during his cross-examination  
12 of a government witness. In response, the prosecutor sought to introduce a tape recording of a  
13 conversation between the defendant and an informant, which had been previously excluded from  
14 evidence. The defendant objected, but the court allowed the recording to be played, finding that  
15 the defendant had opened the door to its admission by implying that the People had acted  
16 unethically. The recording provided context for the defendant's comments and allowed the jury  
17 to evaluate the credibility of the defendant's claims.

18 Similarly, in *United States v. Skilling*, 554 F.3d 529 (5th Cir. 2009), the court held that a  
19 defendant can "open the door" to the admission of evidence by making statements that suggest  
20 misconduct by the prosecution. In such cases, the court may allow the admission of evidence  
21 that would otherwise be excluded in order to provide context or rebut the defendant's claims.

22 In this case, the defendant's suggestion of misconduct by the People opened the door for  
23 the entire September 2020 interview to be admitted into evidence, and the court properly allowed  
24 it. Therefore, the defendant's claim that his right to confront and cross-examine Ms. Harris was  
25 violated should be rejected.

#### 26 IV.


#### 27 CONCLUSION

28 In conclusion, after careful review of the defendant's motion for new trial and the  
relevant legal authorities, the People respectfully request that the court deny the motion pursuant  
to Penal Code section 1181. The evidence presented at trial was properly admitted, and the

1 defendant's claims of errors and violations of his constitutional rights are without merit. The  
2 verdict reached by the jury was based on credible evidence and was supported by the law.  
3 Therefore, the People respectfully urge the court to uphold the jury's verdict and deny the  
4 defendant's motion for new trial.

5  
6 Dated this 6<sup>th</sup> day of April 2023.

Respectfully Submitted,  
GEORGE GASCÓN  
DISTRICT ATTORNEY

8  
9 By: 

10 ALEXANDER BOTT  
KATHY TA

11 DEPUTY DISTRICT ATTORNEYS  
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# EXHIBIT A

# KWIKH

KINSELLA WEITZMAN ISER KUMP HOLLEY  
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January 10, 2023

## **HAND DELIVERED & FACSIMILE**

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Re: People v. Daystar Peterson / Case Number BA490599

Judge Herriford,

As the Court is aware, I did not appear at Mr. Peterson's trial due to my engagement in an arbitration out of state which began in May and did not conclude until December 16, 2022. Mr. Peterson understood and agreed that George Mgdesyan would represent him at trial and that I would not.

I am advised that attorney David Kenner has now been retained to substitute in as counsel for Mr. Peterson. Though it may not be necessary for me to do so under these unique circumstances, I thought it important to advise the Court that I have no objection to the substitution and hereby offer my consent thereto.

Respectfully,



Shawn Holley

cc: George Mgdesyan, Esq. (via email)  
David Kenner, Esq. (via email)  
Kathy Ta, Esq. (via email)  
Alexander Bott, Esq. (via email)  
Daystar Peterson (via U.S. mail)