

EFFECTIVE BRIEFWRITING

COURT OF APPEAL OF THE STATE OF CALIFORNIA,
FOURTH APPELLATE DISTRICT
DIVISION TWO

PEOPLE OF THE STATE OF CALIFORNIA,	)	E045561
)	
Plaintiff and Respondent,	)	Superior Court
	)	RIF112804
v.	)	(Riverside County)
)	
RAYMOND GRIFFIN,)	
)	
Defendant and Appellant.)	

APPELLANT'S OPENING BRIEF

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA, RIVERSIDE COUNTY

Honorable Michael Wellington, Judge

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By appointment of
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INTRODUCTION

Raymond Griffin was charged with the February 28, 2003, murders of Tanya Morris and Darrin Hutchinson. The state's theory was that in the early morning hours of February 28, 2003, Mr. Griffin shot and killed both victims at point blank range in a parking lot behind a restaurant in Riverside. The defense theory was that the state had the wrong person; Mr. Griffin was nowhere near the crime scene when the shooting occurred.

The state called ten witnesses in its case-in-chief. The testimony of most of these witnesses -- involving such areas as the nature of the crime, the police response to the scene, expertise about gang activity, and autopsies of the two victims -- was quite literally undisputed. Defense counsel did not even bother to cross-examine eight of the state's ten witnesses.

His reason was simple. There was no dispute as to what had happened; the only issue was whether Mr. Griffin was the shooter. In other words, this case was a "who-done-it." Since most of these witnesses did not tie Mr. Griffin to the shooting, there was no reason to cross-examine them.

But the state did have one eyewitness who -- if believed -- directly tied Mr. Griffin

to the crime. This was Robert Pruitt, the state's star witness, who testified that he saw Mr. Griffin follow the two victims into the parking lot, raise a gun and then shoot one victim in the head. Pruitt swore to tell the truth and, on direct examination by the prosecutor, told the jury that he was serving a "life sentence" and there had been "no offers of leniency in exchange for [his] testimony" In closing argument, the prosecutor would ask the jury to believe Pruitt because "he didn't get one thing from pointing the finger at [defendant]."

In contrast to most of the state's witnesses, defense counsel *did* cross-examine Pruitt. Defense counsel tried to impeach Pruitt's credibility by asking about his drug use and mental state on the morning of the shootings. Ultimately, defense counsel asked the jury in closing statements not to believe Pruitt.

The record shows, however, that Pruitt's testimony, and the prosecutor's argument, were both false. Thus, the jury deciding defendant's fate did not know that while Pruitt was indeed a convicted three striker, he was *not* serving a "life sentence" as he testified but -- in fact -- his sentencing had been stayed pending his testimony in this case at the prosecutor's own request. The jury did not know that in a formal hearing in July 2007 -- four months *before* Mr. Griffin's trial -- Pruitt explicitly agreed to testify for the state in exchange for an explicitly promised reduction in his sentence from twenty-five-year-to-

life to ten years in prison. The jury did not know that Pruitt's testimony (and the prosecutor's argument) that there were "no offers of leniency" was false.

As more fully discussed in the Argument section of this brief, there are a number of different reasons to reverse this conviction. Foremost among them, however, is that the jury deciding this case never had a complete picture of the only eyewitness who really mattered. The jury heard false testimony from Pruitt, which was never corrected by either the prosecutor or defense counsel. Whether the jury was misled by the prosecutor's decision to introduce this evidence, or by trial counsel's failure to impeach it, does not matter; reversal is required.

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,	)	No.: F050664
)	
Plaintiff and Respondent,	)	Superior Court
	)	(Tulare) VCF148271
v.)	
)	
CURTIS LEE MALIN,)	
)	
Defendant and Appellant.)	
_____)	

APPELLANT'S OPENING BRIEF

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA, TULARE COUNTY .

Honorable Gerald F. Sevier, Judge

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STATEMENT OF FACTS

The defendant in this case was Curtis Malin. The state charged him with special circumstances murder; if convicted he would face a sentence of life without parole. Although initially represented by the public defender's office, Mr. Malin eventually hired lawyer David Roberts to represent him.

During trial, however, Roberts and Mr. Malin had several disagreements about how to conduct the defense. As will be discussed, defense counsel's reaction to these disagreements was extraordinary; he exhibited behavior that the Court has probably never before seen in a lawyer. At one point, in addition to calling his own client an "idiot" and a "jerk," counsel actually refused to come in the courtroom to continue and the trial court was forced to convene court in the hallway of the courthouse in order to threaten contempt and get counsel to return to the courtroom to continue.

Following this remarkable display from the lawyer he had retained, defendant quite understandably asked the court for new counsel. After several in-camera hearings to listen to Mr. Malin's complaints, the trial court refused to allow Mr. Malin to fire Roberts because Mr. Malin had not carried his burden of showing that counsel was ineffective. Mr. Malin was forced to keep Roberts as his lawyer; several days later he was convicted

of murder and is now serving a life without parole term. The following statement of facts will detail counsel's actions in this case and Mr. Malin's attempts to discharge him as well as the facts of the charged offenses. As will be discussed in detail in the Argument section of this brief, given the facts of this case, the trial court's refusal to allow Mr. Malin to discharge Roberts requires reversal.

- A. Mr. Malin Tries To Discharge His Lawyer After Counsel Refuses To Return To The Courtroom, Repeatedly Insults Him And Tells The Court He Will Not Work On The Case Anymore.

The state filed a felony complaint against Mr. Malin on July 8, 2005. (1 CT 1.) Mr. Malin was charged with special circumstances murder and was facing a potential sentence of life without parole. (1 CT 2.)

Mr. Malin was represented by the Public Defender's Office for his initial court appearances. (1 CT 6, 8.) Attorney David Roberts substituted in on the case on August 5, 2005. (1 CT 10.) Mr. Roberts was privately retained; he would later make clear that he had taken on this special-circumstances murder case for the grand sum of \$6,200. (4 RT 512.)

The People called their first witness on October 25, 2005. (1 CT 118.) On

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Respondent,

v.

MARK SCHMECK,

Appellant.

) S015008

) Superior Court
) (Alameda)
) H-9033

APPELLANT'S OPENING BRIEF

Appeal From The Judgment Of The Superior Court
Of The State Of California, Alameda County

Honorable William R. McGuiness, Judge

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INTRODUCTION: A MILE WIDE AND AN INCH DEEP

“You shall now retire and select one of your number to act as foreperson . . .
.. In order to reach verdicts, all twelve jurors must agree”

With these words, taken from a standard CALJIC jury instruction, the trial court in this case placed defendant's fate in the hands of the jury. But as would soon become clear, there was nothing standard about the jury deliberations. To the contrary, the jury would struggle for more than eight days of guilt phase deliberations and then -- after receiving a lingering doubt penalty phase instruction -- another six days in the penalty phase. Plainly the jury was having a difficult time deciding this case.

The case itself was relatively simple. . . .

▶
Pepole v. Malin
Cal.App. 5 Dist., 2007.

Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fifth District, California.

The PEOPLE, Plaintiff and Respondent,

v.

Curtis Lee MALIN, Defendant and Appellant.

No. F050664.

(Super.Ct.No. VCF148271).

Aug. 13, 2007.

APPEAL from a judgment of the Superior Court of Tulare County. Gerald F. Sevier, Judge.

Cliff Gardner, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Kelly C. Fincher, Deputy Attorneys General, for Plaintiff and Respondent.

CORNELL, J.

*1 Appellant Curtis Lee Malin contends his Sixth Amendment right to counsel was abridged when the trial court refused to allow him to discharge retained counsel. We agree and will reverse the conviction.

Malin was charged with first degree murder with special circumstances, robbery, and vehicle theft. At the initial court appearances, Malin was represented by a public defender. Thereafter, Malin retained attorney David Eugene Roberts, who substituted into the case on August 5, 2005.

The People called their first witness in the jury trial on October 25, 2005. On October 27, after the People rested their case, the prosecutor overheard Roberts and Malin arguing loudly. The prosecutor brought the dispute to the attention of the trial court, reporting that he had heard Roberts tell Malin to "shut up" and heard Malin tell Roberts that he did not want counsel to call his mother, Ruby Pence, as a defense witness. The trial court stated it was reluctant to become involved in attorney-client matters, but held a side bar conference. At the conclusion of the side bar, Malin was told his mother would be testifying.

Pence was called to testify. On cross-examination, the trial court stopped the questioning and asked Pence if she had consulted an attorney regarding her Fifth Amendment right against self-incrimination. The trial court then excused the jury for the day and summoned an attorney to talk with Pence.

After consulting with Pence, the attorney informed the trial court that Pence was invoking her Fifth Amendment right. The prosecutor moved to have Pence's testimony stricken. Roberts apologized to the trial court, stating Pence had told him she did not want to testify, but he told Pence she had to testify.

Proceedings reconvened on November 1, 2005, at which time the trial court noted on the record that Roberts wanted to withdraw as counsel of record. The trial court ordered Roberts to stay inside the building and granted

a 15-minute recess for Roberts and the prosecutor to research the issue. When court reconvened, Roberts refused to enter the courtroom. Another recess was taken.

When court again reconvened, Roberts still refused to enter the courtroom. The trial court then convened court in the hallway, where Roberts was located. The trial court ordered Roberts to enter the courtroom; Roberts refused. When the trial court threatened to cite Roberts for contempt for refusing to comply and enter the courtroom, Roberts responded, "Make your order." Roberts eventually entered the courtroom.

The trial court excused the jury for the day. Roberts told the trial court that he had "no more interest in representing" Malin and that he would not be doing "one more thing on this case." Roberts went on to state, "[I]t really grieves me to have to do this, but I can't reconcile my-the work I've done and where I am with this idiot that sits to my right, and I have no more interest in representing him." Before allowing Roberts to continue, the trial court closed the proceedings to all except Malin and Roberts. The reporter's transcript refers to this session as a Marsden^{FN1} hearing.

FN1. People v. Marsden (1970) 2 Cal.3d 118.

*2 During what was referred to as a *Marsden* hearing, Roberts told the trial court that he had two dislocated vertebrae in his neck and that he was in intense pain. Roberts told the trial court he could not live with the pain "when I have an idiot sitting here next to me who's telling me what I am supposed to do." Roberts went on to state, "I can't deal with [Malin]. I can't represent him. I can't talk to him. More so, I don't want to listen to him."

When Roberts continued to rant and to refer to Malin as a "jerk," the trial court stopped Roberts and asked him to refrain from calling Malin derogatory names. Roberts stated, "He's trying to tell me how I should run this case, and I'm not having any part of that." The trial court elicited from Roberts that there was a disagreement between Malin and counsel regarding trial tactics and whether Malin should testify.

Roberts again stated that he was "not doing one more thing on this case." Roberts repeated that he was not doing one more thing on the case and then stated, "[Y]ou can put me in jail. I mean, that's not something new." Eventually, Roberts told the trial court he had nothing further to say.

When the trial court asked to hear from Malin, he responded, "Yeah, if you don't mind. I can probably make it a whole lot easier, if it would be easier if I would just fire my attorney." The trial court stated that it was "too late to get a different attorney." Malin responded, "I don't need Mr. Roberts' assistance no longer." To this remark, the trial court replied, "[H]e who represents himself has a fool for a client." The trial court refused a request from Roberts to withdraw.

The closed proceeding concluded and court resumed. The trial court told the prosecutor that Roberts would continue to represent Malin. Roberts apologized to the trial court, but stated he would not apologize to Malin because he (Roberts) "can't be that mature." Roberts then announced that he would not be calling any witnesses for the defense.

The trial court then addressed Malin, stating that the court had found no reason to permit Roberts to withdraw. Malin indicated he did not want to represent himself but stated, "I'm not a lawyer or nothing, but I can get another attorney right quick." The trial court did not reply to this statement.

When court reconvened on November 2, 2005, Roberts again was going to call Pence to testify. After the prosecution stated that Pence was subject to criminal charges for being an accessory after the fact, and possibly subject to a perjury charge and to embezzlement charges on allegations that she embezzled money to pay for Mal-

in's defense, the trial court urged Pence to discuss her testimony with an attorney. While Pence and her attorney conferred outside the courtroom, Malin stated, "Your honor, I'd like to exercise my right and fire my attorney. I'll represent myself if that's all right." The trial court immediately held a closed session to address Malin's request.

*3 The trial court told Malin that it was "very disinclined to allow you to represent yourself." The trial court also stated that Roberts was "a very experienced attorney" and "obviously prepared on the case." Roberts commented, "If I'd known this was going to be his position, I think I probably would have entered an insanity defense."

Malin noted that he really did not want to represent himself, but that he really wanted to get another lawyer, even though the trial court had told him it was too late. The trial court clarified that Malin wanted another attorney because he and Roberts did not agree on "tactics." The trial court stated that "given the totality of the circumstances," there was not sufficient reason to relieve Roberts as counsel for the defense.

Malin indicated that if it was too late to get another lawyer, he did not want to represent himself, but that he had concerns regarding Roberts's representation from the start of trial. Malin mentioned that there was information available that should have been used to call into question the testimony of prosecution witnesses—for example, criminal records, substance abuse, and commitments to mental institutions. Malin also noted that police had shot and killed a "guy that looked like me." This was not brought out in testimony. Malin indicated that this was "serious stuff" and he needed it brought out in testimony. The trial court interrupted and indicated that this type of information was something that could be brought out if Malin testified.

Malin continued with the comment, "I know it's probably not possible or nothing like that to get a whole new trial, you know, start fresh. I know that's probably not possible, you know, but I'd really like one if there was any possible way to get that, but I know, you know, you probably can't." The trial court acknowledged that this was a "situation of retained counsel" and not appointed counsel, but that Malin had never "met that burden that is on [him]" to establish a "claim of ineffectiveness." The reporter's transcript then notes that the *Marsden* proceeding was concluded.

When proceedings resumed in open court, the trial court was informed that Pence declined to testify. The trial court struck all of Pence's testimony because the prosecution had been unable to complete its cross-examination. The trial court then asked Roberts, "[D]o you choose to put on any evidence?" Roberts responded, "No." The trial court announced that this completed the evidentiary portion of the case and proceeded to instruct the jury.

The jury returned its verdict on November 4, 2005. On December 1, 2005, the trial court granted Malin's motion to terminate Roberts's representation. Thereafter, counsel was appointed for Malin.

On May 26, 2006, a motion for new trial was filed alleging that Malin had received ineffective assistance of counsel. The motion was denied. Malin was sentenced on June 12, 2006.

*4 Malin contends he was denied his Sixth Amendment right to counsel when the trial court refused to permit him to discharge his retained attorney. Malin asserts the trial court erroneously applied a *Marsden* standard to determine whether counsel could be discharged. He is correct.

I. Appointed Versus Retained Counsel

A criminal defendant is entitled to assistance of counsel at all stages of the proceeding. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15.) The trial court is under an absolute duty to appoint counsel to represent an in-

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION SEVEN

THE PEOPLE OF THE STATE	)	B174379
OF CALIFORNIA,)	
	)	Superior Court BA240842
Plaintiff and Respondent,	)	(Los Angeles)
)	
)	
v.)	
)	
JORGE SANDOVAL,)	
)	
Defendant and Appellant.)	
_____)	

APPELLANT'S OPENING BRIEF

Appeal From The Judgment of the Superior Court
Of The State of California, County of Los Angeles

Honorable Norman P. Tarle, Judge

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By appointment of the Court of Appeal through
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STATEMENT OF FACTS

Background

Appellant Jorge Sandoval is the second of seven children, born and raised in Guadalajara, Mexico. (CT 466.) In Mexico, Mr. Sandoval eventually married and had four children. (CT 466.) He came to the United States in 1988. (CT 466.) Although he was an illegal alien, Mr. Sandoval found good and stable work here as a daily laborer. (CT 467, 468.) For fourteen years, Mr. Sandoval stayed out of serious trouble with the law. His only offense was a misdemeanor DUI for which he received probation. (CT 464.)

On December 17, 2002, everything changed for Mr. Sandoval. On that day, Mr. Sandoval was arrested and soon thereafter charged, along with co-defendants Jorge Martinez and Alejandro Viveros, with two counts of murder and two counts of attempted robbery. (CT 329-330.)

Because Mr. Sandoval was too poor to afford his own lawyer, the state assigned him an appointed attorney. (CT 16.) Because he did not speak English, however, that would not be enough.

Mr. Sandoval would also need a Spanish language interpreter. There were two distinct purposes for which an interpreter was needed. First, Mr. Sandoval needed a defense interpreter to allow him to communicate with his lawyer. Second, he needed a court proceedings interpreter to translate what was said between the attorneys, the witness and the judge. Indeed, from day one of the state's proceedings against Mr. Sandoval, the trial court recognized that all three defendants were necessarily "utilizing the services of the interpreter." (CT 2.)

Unfortunately, Mr. Sandoval never got what was required. Here is what happened.

Mr. Sandoval Is Forced To Share An Interpreter With Co-Defendants Throughout The Preliminary Hearing.

On April 30, 2003, the preliminary hearing began. (CT 1G.) There were three interpreters present -- William Yanks, Jackie Lowther and Irma Garcia. (CT 1G.)

Unfortunately, although the trial court recognized that each of the three defendants