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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL DAVID MAYER, Defendant and Appellant.	B230332 (Los Angeles County Super. Ct. No. VA106645)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert J. Higa, Judge. Affirmed.

Ronald Talmo for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Deputy Attorney General, Steven D. Matthews and Timothy M. Weiner, Deputy Attorneys General for Plaintiff and Respondent.

Defendant and appellant Michael David Mayer appeals from his conviction of three counts of child molestation. He contends that the trial court lacked jurisdiction to try him for a crime committed outside California, that prejudicial juror misconduct deprived him of a fair trial, and that the trial court erred in denying his petition to unseal confidential juror identification information. We reject defendant's contentions and affirm the judgment.

BACKGROUND

1. Procedural Background

The second amended information charged defendant with three counts of committing a lewd act upon a child under the age of 14 years in violation of Penal Code section 288, subdivision (a).[1] It was specially alleged as to each count that there was more than one victim within the meaning of section 667.61, subdivision (b). Count 1 alleged that the crime was committed between August 1, 2001 and February 28, 2002, against Rylie C. (Rylie); count 2 alleged that the crime was committed between July 1, 2006 and August 31, 2006, against Juliane Sage C. (Sage); and count 3 alleged that the crime was committed between June 27, 2008 and June 29, 2008, against Sage.

Defendant objected to jurisdiction prior to trial in his section 995 motion to set aside the information, and prior to verdict in a motion to dismiss brought pursuant to section 1118.1. The trial court denied both motions. A jury convicted defendant of the three counts as charged, and found true the multiple victim allegation in all three counts.

On January 12, 2011, after denial of defendant's motion for new trial, the trial court sentenced defendant to an indeterminate term of 15 years to life in state prison, calculated as 15 years to life as to count 2, plus concurrent terms of 15 years to life as to each of counts 1 and 3. The court imposed mandatory fines and fees, ordered defendant to provide DNA and an AIDS test, and awarded defendant 72 days total presentence custody credit. Defendant filed a timely notice of appeal.

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

2. Count 1, Rylie (2001-2002)

Rylie's mother Michelle I. (Michelle)[2] testified that in 2001, defendant and his wife Mary babysat Rylie overnight on several occasions along with defendant's granddaughter Hailey, including one three-night period surrounding New Year's Eve. Rylie was three and a half years old at the time. She was 12 years old at the time of trial.

Rylie testified that when she spent the night at defendant's house, she slept in the computer room inside a tent on an air mattress. On these occasions, defendant "always" slept with her on the air mattress and was "totally naked." More than once while inside the tent, defendant would have Rylie "put his privates in [her] mouth." Afterward, defendant gave Rylie ice cream. Twice, defendant put baby oil on Rylie's hands before demanding that she "touch his private part." At least once, after promising her ice cream, defendant showed Rylie a videotape of a child "doing the same thing [defendant] had [her] do," which Rylie described as "putting a man's privates in her mouth."

Rylie's grandmother Sandra I. (Sandra) testified that in February 2002, she discovered what defendant had done after she saw Rylie in the bathroom rubbing her buttocks with her hand. Rylie told Sandra it was a game that she played with defendant and demonstrated other games they played by rubbing her chest, vagina, and buttocks. Rylie said, "I used to rub his wiener, but I don't do that anymore," and "He wanted me to kiss his pee pee but I wouldn't do it." Sandra reported this to Michelle, who called the police.

3. Count 2, Sage (2006)

In 2006, Mary's grandchildren, T. H. (T.) and Sage, spent the summer at Mary's and defendant's home. T. was then about 11 years old and Sage was about seven. T. testified that he and his sister slept on an inflatable mattress in defendant's office. One night, while Sage was sleeping, T. saw defendant take her out of the bed and into the living room. Though defendant told T. that he had taken Sage from her bed because she had been tossing and turning due to nightmares, T. had seen her sleeping soundly.

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[2] Because some of the witnesses share surnames, we use their first names to avoid confusion and to protect the minors' privacy.

Sage testified that on several occasions during that summer while she was alone in the hot tub with defendant, he touched her breasts, buttocks, and in the "area [she] use[d] to urinate" from, "up and down," "side to side," and in "circular" motions. Defendant also took Sage's hand under his swimming trunks and forced her to move her hand up and down on his penis. Other times defendant would molest Sage in similar fashion at night behind the couch after taking her from her bed.

Defendant gave Sage stuffed animals, ice cream, and beef jerky in exchange for allowing him to touch her. She never told anybody that summer about the molestation.

4. Count 3, Sage (2008)

In the summer of 2008, T., Sage, their mother D. C. (D.), Mary (D.'s mother), and defendant took an RV vacation outside of California. The idea of taking the trip originated with defendant and Mary, and defendant paid the cost of the vacation. During the trip, T. slept on the couch in the RV, Sage and D. slept on a foldout bed, and defendant slept with Mary in the back bedroom. After T. noticed "tension in the air" between defendant and his sister, Sage told him that defendant "had been touching her inappropriately." T. testified that he did not report the conversation to his mother because he was afraid.

Sage testified that during the trip she often slept in the RV with the rest of the family, but "quite a few times" she slept in a tent with defendant. No one else slept in the tent. In the tent, defendant would reach underneath Sage's clothing and touch her "private areas," including her breasts, buttocks, and the part she used "to go pee." Defendant touched Sage in the same way while they were inside the RV when T. was asleep. Defendant used money and stuffed animals to "bribe" Sage into touching his penis and "do movement up and down."

One night defendant set up the tent but Sage refused to sleep in it with him. Defendant argued with her, calling her a "bitch." After noticing that Sage was upset, D. asked what was wrong and Sage replied that defendant "had been touching her and . . . was a bad person." D. then confronted defendant who became angry and accused Sage of lying.

The remainder of the vacation was canceled and the family drove back to California. After their return, D., T., and Sage continued to sleep in the RV for about 10 days before D. called the police. When defendant was taken into custody he yelled to Mary either, "Don't you say anything" or "You don't talk to anyone and you don't know anything."

5. Defense Evidence

Kathryn Ohanian (Ohanian) testified that she had known defendant for two and a half months, and was romantically involved with him. Ohanian sat in court during the trial to support defendant and was present when Sage testified. During a break in the trial, Ohanian saw Sage, D., and a juror in the restroom and overheard Sage say "I can't do this anymore. I don't want to do this," and D. reply, "You are okay. You're fine. You'll be fine. We'll talk about it as soon as they're out." As Ohanian was leaving the restroom she dropped her glasses, stopped to pick them up and heard Sage crying and asking why he wanted to know about My Space and why he kept asking her about My Space. Sage told D. that she created the account in order to talk to her dad and did not think there was anything on it.

Lieutenant Silverio Rivas testified that he was a detective with the Los Angeles County Sheriff's Department assigned to the Special Victims Bureau (SVB) and was familiar with the SVB training manual, which recommended interviewing sexual abuse victims at a multidisciplinary facility or crisis center where interview tools may or may not include anatomical dolls, timelines, and medical examinations. Among other things, investigators are trained to recognize behavioral symptoms and look for motives to make false accusations. He did not believe that multidisciplinary interviews were necessary in all cases.

Forensic psychologist Laura Brodie testified that it was best to interview child sex abuse victims in a crisis center with a multidisciplinary team. She would be concerned about a police officer interviewing a child outside such a setting.

Legal investigator Jennifer Conta interviewed Michelle in May 2009. Conta asked about Sandra's 2002 bathroom conversation with Rylie, and Michelle told her that Sandra

reported that defendant had put medicine on Rylie's "owie." Michelle also said that since Rylie was three years old, she would ask, with increasing frequency "What happened to me when I was little? What happened to me?"

Forensic psychologist Phillip Esplin testified as an expert in interviewing and treating child victims of sexual abuse, including memory formation and suggestibility in forensic interviews. Dr. Esplin observed that children under three years of age did not possess the verbal skill or cognitive development necessary to retain sufficient memory to give a consistent, reliable account of an event. Children 9 or 10 years of age were as capable of forming memories as adults, but since "memories do not improve with time," children as they age do not become more capable of having an accurate recollection of events that occurred at the age of three. As distinct recollections are lost, people "begin to rely on information . . . they pick up from other people" and become more susceptible to using "external information to help them fill in the gaps." Children under six are very susceptible to developing a genuine but mistaken belief in a false memory.

Several relatives and family friends testified that they had observed Sage either during the summer of 2006 or shortly after the family returned from the 2008 RV trip, and that she seemed normal and happy. Hailey's grandmother, Carol H. (Carol), described defendant as a "caring grandfather."

Defendant's daughter Amanda M. (Amy) testified that in 2001, defendant and Mary would babysit Rylie and Amy's daughter, Hailey, when she and Michelle went out for a night or weekend. Once, in 2004, after Amy had given the girls a bath, wrapped Rylie in a towel, and sent her to another room to be dressed, she heard Rylie yell, "Don't touch me like that Auntie," apparently meaning Amy. When Michelle came to look, Rylie was alone in the bedroom, and Amy was still in the bathroom helping Hailey.

Defendant testified in his own defense. He denied ever attempting to have Rylie touch his penis or put it in her mouth, and denied ever sleeping in the same bed with her or showing her any kind of adult video. Defendant denied ever having touched Rylie in a sexual manner in the hot tub. He acknowledged teaching her how to wipe herself after she went to the bathroom, and once when she complained of pain he put some baby oil on

her hands and told her to put it on her "cookie." Defendant denied ever applying baby oil onto any part of Rylie's body other than her hands.

Defendant also denied ever touching Sage in a sexual manner or asking her to touch him. Defendant denied that the RV trip was his idea claiming that he, Mary and D. all planned it together.

Since there was not enough room for five to sleep in the RV, defendant bought a tent for D. to use. She did not sleep in the tent but instead on an air mattress on the floor of the RV. No one slept in the tent other than defendant and Sage. At first defendant slept with Mary in the bedroom of the RV, but because D. slept later than the others, defendant switched places with her after a few days. T. slept on the couch, and a fold-down table was made into a bed for Sage.

Defendant claimed that Sage asked several times to sleep in the tent, but he was usually too tired after a day of driving to set it up. Two or three times he agreed, started to set up the tent, but Sage would change her mind before it was completely assembled. Defendant and Sage slept in the tent the night of June 27, 2008. Defendant claimed that Sage slept through the night and that he did not touch her in a sexual way.

At the next campsite, on June 30, D. told defendant that Sage had hurt her foot and did not want to sleep in the tent. Tired from driving and setting up camp, defendant became angry with Sage when she failed to give him a good explanation, and he called her a "baby" and a "loser," and signed an L on his forehead. He denied calling her a "bitch." D. and Mary confronted defendant about his language to Sage, and soon Sage began accusing him of touching her inappropriately.

After the family returned to California, D., T. and Sage stayed in the RV until July 13 or 14, 2008, when defendant intentionally provoked an argument with D. and told them to leave.

DISCUSSION

I. Jurisdiction

Defendant contends that California had no jurisdiction over the crimes committed against Sage outside the state, and that the trial court erred in denying his motion to dismiss count 3 on that ground.

"Whenever a person, with intent to commit a crime, does any act within this state in execution or part execution of that intent, which culminates in the commission of a crime, either within or without this state, the person is punishable for that crime in this state in the same manner as if the crime had been committed entirely within this state." (§ 778a, subd. (a).) "Under this provision, California has territorial jurisdiction over an offense if the defendant, with the requisite intent, does a preparatory act in California that is more than a de minimis act toward the eventual completion of the offense. [Citation.]" (*People v. Betts* (2005) 34 Cal.4th 1039, 1047 (*Betts*).)

The prosecution must prove the preparatory act by a preponderance of evidence. (*Betts*, *supra*, 34 Cal.4th at p. 1053.) "We will uphold a trial court's determination on factual issues if supported by substantial evidence and review its legal determinations independently. [Citation.]" (*Id*. at p. 1055.) The prosecution's theory of jurisdiction was based upon defendant's preparatory acts of purchasing the tent in California for the RV trip with the intent to isolate Sage from the others and thereby have the opportunity to molest her.

Defendant argues that there was insufficient evidence that he formed the intent to molest Sage before leaving California because the trip was jointly planned by defendant and Mary; that Mary had invited D. and her children, and there was no evidence of who packed the tent for the trip. Defendant further argues that at most, the evidence showed that once the tent was pitched, defendant took advantage of the opportunity provided. Defendant also sets forth in detail the factual background of *Betts*, suggesting that because those facts were "dramatically different" from the facts in this case, the evidence suggesting that he formed his intent in California was inadequate.

"When we decide issues of sufficiency of evidence, comparison with other cases is of limited utility, since each case necessarily depends on its own facts. [Citation.]" (*People v. Thomas* (1992) 2 Cal.4th 489, 516.) Nothing in *Betts* suggests that facts must be identical or even similar to support a judgment.

Moreover, defendant has understated the evidence against him, which supports the conclusion that in California he intentionally created his opportunity to molest Sage on the trip. In testimony cited by respondent, defendant admitted that he purchased the tent and sleeping bags a day or two before the trip began. Although defendant claimed that he bought the tent because D. wanted to sleep under the stars, he purchased a three-person tent, two sleeping bags and two air mattresses, and D. either never used the tent or used it once. This evidence supports the theory that defendant sought to create an environment where Sage would be isolated from the rest of the family and alone with defendant.

Finally, defendant's past acts of molestation support an inference that he formed his intent to molest Sage prior to leaving California. (See *Betts, supra*, 34 Cal.4th at p. 1056.) Not only had defendant previously molested Sage, he had molested Rylie inside a tent on an air mattress in his home. This fact provides further circumstantial evidence of defendant's intent when he purchased the tent and air mattresses in preparation for the RV trip.

We conclude that substantial evidence supported the prosecution's theory that defendant intended to molest Sage during the RV vacation, that he took steps to further his plan by purchasing the tent to provide a private environment for the attack, and that he eventually completed the assault. The trial court did not err finding jurisdiction within this state.

II. Juror Misconduct

Defendant contends that the trial court erred in denying his motion for new trial, based upon alleged juror misconduct. Defendant contends that by her comment, Juror No. 1 brought in specialized information in the form of her expertise on the subject of repressed memory.

In defendant's motion for new trial, two defense attorneys submitted declarations stating that after the verdict Juror No. 1 told them she had made several statements during deliberations regarding repressed memory. They also stated that Juror No. 1 explained that the reason Rylie was able to testify about facts she had not remembered in 2002 was due to repressed memory, a common condition. One of the attorneys stated that he "was informed" that three jurors changed their votes to guilty after a discussion of repressed memory.

"It is not improper for a juror, regardless of his or her educational or employment background, to express an opinion on a technical subject, so long as the opinion is based on the evidence at trial. Jurors' views of the evidence, moreover, are necessarily informed by their life experiences, including their education and professional work. . . ." (*In re Malone* (1996) 12 Cal.4th 935, 963 (*Malone*).) "'Indeed, lay jurors are expected to bring their individual backgrounds and experiences to bear on the deliberative process.' [Citation.] That they do so is both a strength of the jury system and a weakness that must be tolerated. [Citation.]" (*People v. Yeoman* (2003) 31 Cal.4th 93, 161 (*Yeoman*).) "A juror, however, should not discuss an opinion explicitly based on specialized information obtained from outside sources. Such injection of external information in the form of a juror's own claim to expertise or specialized knowledge of a matter at issue is misconduct. [Citations.]" (*Malone*, *supra*, at p. 963.)

Counsel's description of Juror No. 1's explanation amounts to no more than her evaluation of Rylie's testimony based upon her opinion. Misconduct is not established where "[n]o indication exists that the juror . . . did anything but express a personal opinion." (*People v. Riel* (2000) 22 Cal.4th 1153, 1219.) Moreover, it is not misconduct for a juror to use his or her experience or training to express that opinion, so long as she does not assert a "'claim to expertise or specialized knowledge of a matter at issue.' [Citation.]" (*Yeoman*, *supra*, 31 Cal.4th at p. 161.) For example, in *People v. Leonard* (2007) 40 Cal.4th 1370, 1414, it was not misconduct when a juror "relied on his personal experience with firearms to form an opinion about the accuracy of the murder weapon, and . . . mentioned his experience to the other jurors when expressing his views during

deliberations." Similarly, there was no misconduct when jurors related their own experiences with drugs in evaluating the defendant's drug use. (*Yeoman, supra,* at p. 162.) Further, misconduct did not clearly appear from the explanation of the term "sociopath" by a juror who was a nurse, precipitating a discussion about how the term might apply to the defendant, although it was not used at trial. (*Id.* at p. 160.) Finally, it was not improper for a juror to express "negative opinions on the reliability of . . . polygraph evidence, based on her own professional study of psychology." (*Malone, supra,* 12 Cal.4th at p. 963.)

At trial, counsel agreed that Juror No. 1 held a Master's degree in psychology, but there is no indication in the record that she injected external information into the deliberations in the form of her own claim to expertise or specialized knowledge, or even that she claimed to have any expertise in repressed or recovered memory. We conclude that there was no misconduct.

In order to prevail on a motion for new trial based on juror misconduct, defendant must show both misconduct and prejudice. (*In re Carpenter* (1995) 9 Cal.4th 634, 653.) Regardless if Juror No. 1's comment had amounted to misconduct, there is still the requirement of prejudice. "[W]hen misconduct involves the receipt of information from extraneous sources, the effect of such receipt is judged by a review of the entire record, and may be found to be nonprejudicial. The verdict will be set aside only if there appears a substantial likelihood of juror bias. Such bias can appear in two different ways. First, we will find bias if the extraneous material, judged objectively, is inherently and substantially likely to have influenced the juror. [Citations.]" (*Ibid*.) "'Application of this "inherent prejudice" test obviously depends upon a review of the trial record to determine the prejudicial effect of the extraneous information.' [Citation.]" (*People v. Danks* (2004) 32 Cal.4th 269, 305.) "[W]e do not reverse unanimous verdicts because there is *some* possibility the juror was improperly influenced. Rather, the likelihood of bias under the inherent prejudice test 'must be *substantial*.' [Citation.]" (*Ibid*.)

We find nothing inherently prejudicial in an opinion that memories may have been repressed and later remembered. Such an opinion is no more likely to cause bias than

simply forgetting events and later recovering the memory when it is triggered by a sight, smell, or event -- a common human experience. Further, as such an opinion does not pertain to the issue of defendant's guilt, is not inherently likely to have influenced any juror. (See *People v. Cabrera* (1991) 230 Cal.App.3d 300, 304-305 [juror's retranslation of "touch" to "push"].)

Because we find no inherent likelihood of prejudice, "we look to the nature of the misconduct and the surrounding circumstances to determine whether it is substantially likely the juror was actually biased against the defendant. [Citation.]" (*In re Carpenter*, *supra*, 9 Cal.4th at p. 653.)

First, we reject defendant's claim that the declarations submitted to the trial court established that at least three jurors were influenced by the comment. The declarations merely hinted as such with the cryptic statement that the declarant "was informed" that three jurors changed their verdicts to guilty sometime after the discussion of repressed memory. Further, as respondent points out, evidence of the jurors' reasoning is inadmissible to show how the comment affected them. (See *People v. Lewis* (2001) 26 Cal.4th 334, 388-389; Evid. Code, § 1150, subd. (a).)[3] We also reject defendant's suggestions that the jury might have applied the comment to its evaluation of Sage's testimony. The comment was restricted to Rylie's memory. We decline to assume that the jurors were confused or so lacking in intelligence that they could not distinguish between the two victims.

Defendant identifies no testimony by Rylie that might have consisted of repressed or recovered memories. Instead, defendant argues that prejudice is shown by inconsistencies in the memories of Rylie, her mother Michelle and grandmother, Sandra.

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3 Evidence Code section 1150, subdivision (a), provides: "Upon an inquiry as to the validity of a verdict, any otherwise admissible evidence may be received as to statements made, or conduct, conditions, or events occurring, either within or without the jury room, of such a character as is likely to have influenced the verdict improperly. No evidence is admissible to show the effect of such statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined."

There were many inconsistencies in the witnesses' recollection, as might be expected after nearly nine years.[4] Rylie did not remember many details by the time of trial, and testified that her memory of the events had not improved over the years. It is understandable that she would forget some details of events that occurred so many years before trial when she was three and a half years old. Defendant's expert, Dr. Esplin, opined that very young children had "fragile" memories that eroded over time, and that what they might believe to be memories could come from information heard from others. Although the juror's comment suggested why Rylie may have lost certain memories, it did not contradict anything in the testimony of Rylie or Dr. Esplin.

We find no merit to the suggestion that the juror's comment might have led any other juror to ignore or discount the conflicting memories of Rylie, Michelle, and Sandra in evaluating their testimony, particularly since Rylie did not claim to have recovered lost memories, and repressed or recovered memory was not an issue in the case. At most, the comment may have created sympathy for Rylie. The jury was instructed, however, that it must not be influenced by sentiment, conjecture, sympathy, or passion. "It is fundamental that jurors are presumed to be intelligent and capable of understanding and applying the court's instructions. [Citation.]" (*People v. Gonzales* (2011) 51 Cal.4th 894, 940; see also *People v. Lewis, supra*, 26 Cal.4th at p. 390.) Nothing in the record indicates that the jurors ignored that instruction. While there always exists the possibility that a juror was affected by the comment, we find no substantial likelihood that any juror

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[4] We do not set forth the instances of inconsistent memories listed by defendant, as defendant has mischaracterized much of the evidence summarized. For example, defendant's assertion that Rylie made two false molestation claims is an inference not reasonably drawn from the evidence cited. Rather, Carol testified that while Rylie was in the bathtub, she said, "Don't touch me there, Grandma." Carol replied, "Rylie, I'm not anywhere near you." Amy testified on another occasion that she had just given Rylie a bath, and was kneeling at the tub helping Hailey, when she heard Rylie say from the other room, "Don't touch me like that Auntie." One could reasonably infer that Rylie was either playing a game or repeating something she had heard, rather than making claims of molestation; or the incidents could merely be another example of inconsistent memories, as the "two" claims may have been a single incident remembered differently by two witnesses.

was improperly influenced by it, and thus conclude that had the comment amounted to misconduct no prejudice resulted.

III. Confidential Juror Records

Defendant contends that the trial court erred in denying his petition to unseal juror identification information, brought under Code of Civil Procedure section 237, which provides that such information shall be sealed after the verdict in a criminal trial, and may be unsealed upon application establishing good cause. (Code Civ. Proc., § 237, subds. (a)(2), (b).) Defendant's petition was supported with defense counsel's declarations describing Juror No. 1's comment and explanation regarding "repressed memory." The trial court found that the declarations were insufficient to make a prima facie showing of good cause to unseal juror information, and denied a hearing on the petition.

We review for abuse of discretion the trial court's ruling that the declarations were insufficient to make a prima facie showing of good cause to unseal juror information. (*Townsel v. Superior Court* (1999) 20 Cal.4th 1084, 1096; *People v. Carrasco* (2008) 163 Cal.App.4th 978, 991.)[5] We uphold the court's exercise of discretion unless it was arbitrary or capricious. (*People v. Santos* (2007) 147 Cal.App.4th 965, 978.)

To demonstrate good cause for the release of juror identification information pursuant to Code of Civil Procedure section 237, subdivision (b), a defendant must "set[ ] forth a sufficient showing to support a reasonable belief that jury misconduct occurred." (*People v. Rhodes* (1989) 212 Cal.App.3d 541, 552; accord *People v. Jefflo* (1998) 63 Cal.App.4th 1314, 1321, fn. 8.) Further, the misconduct alleged must be "'of such a character as is likely to have influenced the verdict improperly.'" (*People v. Jefflo*,

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5 Defendant asks that we apply a de novo standard of review because abuse of discretion was the standard applied to the trial court's inherent power to seal and unseal juror information prior to the enactment of Code of Civil Procedure section 237. (See *People v. Jones* (1998) 17 Cal.4th 279, 317.) Nothing in the statute, however, indicates a legislative intent to dilute the trial court's inherent power to protect jurors. (*People v. Tuggles* (2009) 179 Cal.App.4th 339, 382.) Indeed, our Supreme Court reviewed the legislative intent in enacting the statute and found it to be fully consistent with the trial court's inherent power. (*Townsel v. Superior Court*, *supra*, 20 Cal.4th at p. 1096.) We thus deny defendant's request to apply a stricter standard of review.

supra, at p. 1322.) A petition to disclose juror identification information must be supported by more than mere speculation and may not be used as a "'fishing expedition[]' by parties hoping to uncover information to invalidate the jury's verdict." (*People v. Rhodes*, *supra*, 212 Cal.App.3d at p. 552.)

We have previously concluded that the comment made by Juror No. 1 did not amount to misconduct and that it was not likely to have improperly influenced the jury. For the same reasons, we find nothing arbitrary or capricious in the finding that defendant had not shown good cause to disclose juror information. The trial court thus did not abuse its discretion in denying defendant's petition.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST