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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

THE PEOPLE, Plaintiff and Respondent, v. MARTIN MANUEL TERAN, Defendant and Appellant.	B235793 (Los Angeles County Super. Ct. No. BA377496)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert Shuit, Judge. Affirmed as modified.

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Matthew Alger, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Yun K. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

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An information, dated April 19, 2011, charged Martin Manuel Teran with the July 19, 2010 murder of Rudolph Casey Galaz in violation of Penal Code section 187, subdivision (a)[1], and specially alleged that during commission of the offense a principal was armed with a firearm within the meaning of section 12022, subdivision (a)(1). Teran pleaded not guilty to the charge and denied the special allegation. During trial, the People presented evidence to support their theory that Teran, whose relationship with Galaz had soured over money or a woman or both, aided and abetted in the killing of Galaz by asking a friend to shoot him. Teran, in turn, presented evidence to support a theory of self-defense. The trial court instructed the jury on first and second degree murder, voluntary manslaughter based on imperfect self-defense and justifiable homicide based on self-defense. The jury found Teran guilty of second degree murder and found true the special allegation under section 12022, subdivision (a)(1), that a principal was armed with a firearm during commission of the offense. The court sentenced Teran to a state prison term of 16 years to life, consisting of 15 years to life for the second degree murder, plus one year for the arming enhancement. Teran timely appealed.

On appeal, Teran contends that (1) the trial court erroneously denied his motion to suppress, pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*), his statements to sheriff's detectives in two conversations; (2) the trial court, relying on the coconspirator exception to the hearsay rule, erroneously admitted an out-of-court statement by the shooter; (3) the trial court erroneously failed to instruct the jury sua sponte on voluntary manslaughter based on heat of passion; and (4) his trial counsel's failure to object to testimony from a sheriff's detective that Teran had refused to consent to a search of his apartment constituted ineffective assistance of counsel. According to Teran, the judgment should be reversed and the matter remanded for a new trial because these issues, independently or collectively, prejudiced his case. We disagree with Teran's contentions. The People contend the judgment should be modified to include a mandatory court security fee and court facilities assessment and, as modified, affirmed.

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[1] Statutory references are to the Penal Code unless otherwise noted.

We agree and thus modify the judgment to include a court security fee and court facilities assessment. As modified, we affirm the judgment.

DISCUSSION

1. *The Trial Court Correctly Denied Teran's Motion to Suppress*

a. *Factual background*

About midnight on July 19, 2010, sheriff's deputies received reports of gunshots fired on South Gerhart Avenue. Two deputies arriving at the scene found Galaz lying dead in the street. (According to expert testimony, a gunshot wound to the neck, with the bullet entering through the back of the neck and exiting from the tip of the chin, caused Galaz to bleed to death from the jugular vein.) Teran was standing outside of his apartment building holding a garden hose and watering down the sidewalk. A woman was standing next to him. Teran was using soap, and the water was bloody, leading one of the deputies to believe that Teran was trying to wash away Galaz's blood. Deputies smelled gun smoke in the stairwell leading to Teran's apartment, and blood lined the sidewalk from where Teran was standing to the location of Galaz's body. Teran turned off the water and stood by a patrol car with the woman, as requested by one of the deputies. Teran told the deputy that he had been renovating an apartment on the first floor of the apartment building, using water from a hose to clean the area, when he heard gunshots. He came out to the street with his hose and saw two men leaving the area.

The deputies secured Teran and the woman in separate patrol cars while they continued their investigation. According to one of the deputies, they "secured [Teran] inside the patrol car for the safety of the scene." He was not told that he was under arrest, nor was he handcuffed or searched. About 5:00 a.m. a sheriff's detective, who had arrived on the scene, opened the door of the patrol car where Teran had been seated, and Teran exited the car. Teran stood at the back of the car with the detective, who said to Teran, "Okay, Martin, you're not under arrest, you know, right now? . . . We're just down here talking." Teran responded, "Yes, sir." As he spoke with the detective, Teran appeared "nonchalant," stating that about five days prior the people who lived in a downstairs apartment in his building had been evicted and he had been hired to clean it.

He said that he was cleaning the apartment, using a hose, when he heard a loud blast and came outside with the hose. Teran asked if he could use a restroom, and the detective said that he would try to find one after he spoke with the woman who was in another patrol car. The detective placed Teran back in the patrol car while he spoke with the woman.

Later that day, about 1:00 p.m., after Teran had been taken to the sheriff's station, detectives advised him of his *Miranda* rights. Teran said that he did not wish to speak to the detectives, and they left the station. Teran then was placed in a jail cell. Several hours later, he told the watch commander that he wanted to speak to the detectives. About two hours later, the detectives had the following exchange with Teran:

"[Detective One]: Okay, all right. Earlier we wanted to interview you and you said you wanted to have a lawyer, right?

"Teran: I guess that wouldn't be possible in your presence.

"[Detective One]: Well, you called or you contacted the lieutenant in the jail, asked us to come back and talk to you?

"Teran: Yes. Yes, I did.

"[Detective One]: Okay. So you want to talk to us now?

"Teran: Yeah. To inquire if I do talk to you, a lawyer can't be present, no counsel can be present, you need to have a one-on-one with me. Correct?

"[Detective One]: What do you mean?

"Teran: I would like to talk to you, but there isn't a legal counsel that can sit here with me when we talk?

"[Detective Two]: Not right now.

"[Detective One]: Not right now, no. This is your opportunity to give your side.

"Teran: Yeah. Gentlemen, I can't do this. I have been to prison before. I can't do it no more. So, you ready? My friend, his name is Robert Mejia[] . . . . The gentleman that was shot in front of my home, that's his cousin. His cousin's name is Casey. Casey. Don't know his last name."

Teran then told the detectives that a few days before the shooting Galaz had been "aggravating" him and his friends, carrying a knife and threatening to harm them. Galaz stabbed at Teran's door with the knife and threw a rock at Teran's window, breaking it. Teran guessed that Galaz was angry at him because of a woman. Teran asked a friend, the shooter, to "watch [his] back[,]" and the friend said Galaz had threatened him as well and he could get a gun. Teran called his friend and asked the friend to come to his apartment with a gun to protect him. The friend came to Teran's apartment with a gun, either the day before or the day of the shooting. According to Teran, Galaz came to the apartment on the night of July 18, 2010 to confront him. At Galaz's prompting, Teran went downstairs to talk to Galaz, who swung the door open, jarring Teran and causing him to fall backwards. Teran was scared and told his friend, who was in the stairwell behind Teran, to "[h]it [Galaz] or get him." The friend shot Galaz, who fell backwards onto the sidewalk—a version of the shooting that was inconsistent with the expert testimony that Galaz had been shot from behind in the back of his neck. Teran retrieved a hose to look "busy." Teran told the detectives that he had lied at the scene because he was "hiding and covering up a murder" and protecting his friend, the shooter. Teran did not know where the shooter went after firing at Galaz. Teran admitted to using water from the hose and soap to wash Galaz's blood off the sidewalk.

Later in the interview, Teran stated, "I'm going to say it's endless. It's endless. I'm going to prison, and I'll have to deal with this kind of—that's why I need a lawyer. Yeah. Could visit the never ending. Deal with the pushy Hispanic aggressive. They have to tax you. They have to—whether I stay home, whether I go to prison. I don't want to live anymore now. Now you can send me to the mental hospital. Because I'm . . . in here, no matter where it is, I'm a nice and genuine guy. I'm American like you guys. And it just never fails. I'm going to have [to] cross a path where someone has got to take advantage of my kindness and my generosity." Teran then continued to speak with detectives, talking about the woman who was standing next to him after the shooting and the shooter, and explaining that he now was telling detectives the truth even though he had told a different story at the scene. Teran gave three additional statements to the

detectives, including a reenactment at the crime scene, all in which he reiterated that Galaz had acted aggressively toward him and one in which he stated that after the shooter had fired once he told the shooter to "[g]o get [Galaz]" to "make sure" "[i]t's done."

b. *Statements at the crime scene*

Focusing largely on the four-plus hours he sat in the patrol car, Teran contends the trial court should have suppressed his statements to the sheriff's detective after he was let out of the car because he was in custody at the time and thus the detective should have informed him of his *Miranda* rights before speaking with him. We disagree.

"'In applying *Miranda* . . . one normally begins by asking whether custodial interrogation has taken place. "The phrase 'custodial interrogation' is crucial. The adjective [custodial] encompasses any situation in which 'a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.'"' [Citation.] 'Absent "custodial interrogation," *Miranda* simply does not come into play.' [Citation.] The test for whether an individual is in custody is 'objective . . . : "[was] there a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest."' [Citations.]" (*People v. Ochoa* (1998) 19 Cal.4th 353, 401.) "'Two discrete inquiries are essential to the [custodial] determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.'" (*Id*. at pp. 401-402.) When a person placed in a patrol car is later removed from the car and questioned, as in this case, the issue is not whether the person was in custody while in the car, but whether he was in custody upon release from the vehicle before being questioned. (*People v. Thomas* (2011) 51 Cal.4th 449, 477.) "'In reviewing constitutional claims of this nature, it is well established that we accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence. We independently determine from the undisputed facts and the facts properly found by the trial court whether the challenged statement was illegally obtained.' [Citation.]" (*Id*. at p. 476)

Under this authority, we conclude Teran was not in custody when questioned outside the patrol car by the detective. Teran voluntarily spoke to the deputies upon their arrival at the scene. He then was placed in the patrol car for his safety and to secure the scene while the deputies searched for the shooter and the gun used to kill Galaz, a search that continued for a number of hours because the deputies did not find either the shooter or the weapon. Teran was not handcuffed or otherwise restrained while in the car, nor had he been searched before entering the vehicle. After arriving at the scene, the detective allowed Teran to exit the vehicle and told him that he was not under arrest. Standing with Teran by the back of the patrol car, the detective asked Teran whether he had witnessed the shooting and what he was doing when the shooting occurred. Teran told the detective essentially the same version that he had relayed to the deputies, namely, that he had been cleaning a downstairs apartment and using a hose with water when he heard a loud blast. The detective placed Teran back in the patrol car so that he could speak to the woman and locate a restroom as Teran had requested. Given Teran's voluntary conversation with the deputies shortly after the shooting, the detective's allowing Teran to exit the patrol car before questioning him, the lack of restraint, the nonconfrontational nature of the detective's conversation with Teran and the detective's statement to Teran that he was not under arrest, a reasonable person in Teran's situation would not have believed that he was under arrest or in a situation tantamount thereto. The length of time Teran was detained in the patrol car simply was a result of the time the detective arrived on the scene and the need for the deputies to secure the area while they searched for the shooter and the weapon, not an indication, as Teran contends, that he was in custody when released from the vehicle.

In any case, even if Teran should have been informed of his *Miranda* rights before being questioned outside of the patrol car, the trial court's failure to suppress Teran's statements was harmless beyond a reasonable doubt. (See *People v. Thomas*, *supra*, 51 Cal.4th at p. 498 [*Miranda* error not reversible if harmless beyond a reasonable doubt].) Teran's statements made to the detective were substantially the same as those he gave to the deputies shortly after the shooting—statements that Teran does not contend

should have been suppressed. Thus, suppression of Teran's statements to the detective would not have altered the evidence before the jury, which still would have heard that, at the scene of the shooting, Teran said that he had been cleaning a downstairs apartment and using a hose for water when the shooting occurred about midnight on July 19, 2010.

c. *Statements at the sheriff's station*

Teran also contends the trial court should have suppressed his statements to the detectives made while he was in custody at the sheriff's station on July 19, 2010 because he had invoked his *Miranda* rights earlier that day and did not change his mind and waive them before speaking to the detectives. Again, we disagree.

A suspect invoking the right to counsel under *Miranda* must do so "unambiguously." (*Davis v. United States* (1994) 512 U.S. 452, 459.) If a suspect makes an ambiguous or equivocal statement concerning the right to counsel, or makes no statement, detectives need not end the interrogation or ask clarifying questions as to whether the suspect is choosing to waive *Miranda* rights. (*Id*. at pp. 461-462.) In other words, "if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning. [Citation.]" (*Id*. at p. 459.)

While at the sheriff's station, Teran's inquiry to the detectives about whether a lawyer could be present was not an unambiguous invocation of the right to counsel. Earlier that day, Teran had told detectives that he did not wish to speak to them, but later summoned them to return to the station to talk to him. Although in speaking with the sheriff's detectives, he inquired about the presence of counsel, and one detective told Teran that he had the opportunity to give his version of the shooting, Teran did not stop talking or indicate that he chose not to proceed with the conversation when the detectives told him counsel could not be present at that time. On the contrary, he was undeterred by the detectives' statements that counsel could not be present if he wished to speak with them as he had requested: Teran asked the detectives if they were ready and then launched into his version of the shooting. At no time during the conversation did Teran

stop and inform the detectives that he wanted counsel. Indeed, he referred to counsel during the remainder of the interview only once and only *after* he had related his version of the shooting and was expressing his need for a lawyer because he was "going to prison" and would "have to deal" with people with whom he had had trouble. Under these circumstances, the trial court did not err by denying the motion to suppress Teran's statements to detectives while at the station on July 19, 2010.

2. *The Trial Court, Relying on the Coconspirator Exception to the Hearsay Rule, Properly Admitted the Shooter's Statement*

Teran contends that the trial court erred by allowing Galaz's cousin to testify that he heard the shooter say "I'll smoke him" in reference to Galaz. Although Teran does not contest the existence of a conspiracy between him and the shooter, he maintains that the shooter's statement, which is hearsay, does not fall within the coconspirator's exception to the hearsay rule under Evidence Code section 1223 because no evidence demonstrated that the statement was made in furtherance of their conspiracy. We disagree.

Although hearsay evidence generally is inadmissible (Evid. Code, § 1200), "[e]vidence of a statement offered against a party is not made inadmissible by the hearsay rule if: [¶] (a) The statement was made by the declarant while participating in a conspiracy to commit a crime or civil wrong and in furtherance of the objective of that conspiracy; [¶] (b) The statement was made prior to or during the time that the party was participating in that conspiracy; and [¶] (c) The evidence is offered either after admission of evidence sufficient to sustain a finding of the facts specified in subdivisions (a) and (b) or, in the court's discretion as to the order of proof, subject to the admission of such evidence." (Evid. Code, § 1223.) "A conspiracy is an agreement between two or more persons, with specific intent, to achieve an unlawful objective, coupled with an overt act by one of the conspirators to further the conspiracy. [Citation.] The conspiracy itself need not be charged in order for Evidence Code section 1223's hearsay exception to apply to statements by coconspirators. [Citations.] Further, only prima facie evidence of a conspiracy is required to permit the trial court to admit evidence under Evidence Code

section 1223; the conspiracy may be shown by circumstantial evidence and the agreement may be inferred from the conduct of the defendants mutually carrying out a common purpose in violation of a penal statute. [Citations.]" (*People v. Gann* (2011) 193 Cal.App.4th 994, 1005-1006.) "[W]hether statements made are in furtherance of a conspiracy depends on an analysis of the totality of the facts and circumstances in the case. [Citations.]" (*People v. Hardy* (1992) 2 Cal.4th 86, 146.) We review a trial court's admission of evidence under Evidence Code section 1223 for abuse of discretion. (*People v. Sanders* (1995) 11 Cal.4th 475, 516.)

According to the evidence, Teran and the shooter met with Galaz's cousin on the evening of July 18, 2010 before the shooting and informed him that they were feuding with Galaz, who had thrown a rock at Teran's apartment window. Teran and the shooter asked Galaz's cousin to make sure that Galaz did not come back to the apartment. During the conversation, the shooter repeated several times in reference to Galaz, "'Oh, I fear for my life. I'll smoke him. I'll smoke him.'" Given the shooter's statement "I'll smoke him" was made after Teran had called the shooter to his apartment and asked him to bring a gun for the purpose of dealing with Galaz, the statement was in furtherance of the conspiracy between Teran and the shooter to kill Galaz. Contrary to Teran's contention, although the shooter made the statement to Galaz's cousin, rather than to Teran, his coconspirator, it nonetheless did further the conspiracy. The statement, made in Teran's presence, reinforced the plan between the shooter and Teran to deal with Galaz and assured Teran that the shooter was on board with the plan. Indeed, during the same conversation, Teran said that, if Galaz's cousin did not prevent Galaz from returning, Teran and the shooter would take care of Galaz. (*People v. Williams* (1997) 16 Cal.4th 635, 681 [coconspirator's statement that he went to the house to "'shoot it up'" was in furtherance of conspiracy as trial court could reasonably conclude that it reassured other conspirators of his participation]; *People v. Luparello* (1986) 187 Cal.App.3d 410, 448-449 [conspirator's statement to victim's acquaintance that he had people to "'take care'" of victim was in furtherance of conspiracy].)

3. *Teran Is Not Entitled to Reversal of the Judgment on the Ground that the Trial Court Failed to Instruct the Jury on Heat of Passion Voluntary Manslaughter*

The trial court instructed the jury on self-defense as a defense to murder and voluntary manslaughter based on imperfect self-defense. Teran did not request, and indeed informed the court that he did not want, instructions on the lesser included offense of voluntary manslaughter based on heat of passion. Nevertheless, on appeal, Teran maintains that, despite his representations at trial, the court erred by failing to instruct the jury sua sponte on voluntary manslaughter based on heat of passion. We need not decide whether the evidence warranted such an instruction because any error was both invited and harmless. (See *People v. Horning* (2004) 34 Cal.4th 871, 904-907.)

"'[A] defendant may not invoke a trial court's failure to instruct on a lesser included offense as a basis on which to reverse a conviction when, for tactical reasons, the defendant persuades a trial court not to instruct on a lesser included offense supported by the evidence. [Citations.] In that situation, the doctrine of invited error bars the defendant from challenging on appeal the trial court's failure to give the instruction.' [Citation.]" (*People v. Horning*, *supra*, 34 Cal.4th at p. 905; see also *People v. Barton* (1995) 12 Cal.4th 186, 198 ["when the trial court accedes to the defendant's wishes [regarding instruction on a lesser included offense], the defendant may not argue on appeal that in doing so the court committed prejudicial error, thus requiring a reversal of the conviction"].) Here, before instructing the jury, the trial court gave counsel the opportunity to put on the record any requests for or objections to instructions that had been discussed in a jury instruction conference. The court specifically asked Teran's trial counsel, "I believe we have some other instructions we had discussed and you were going to think about them." Counsel responded, the "defense is not going to ask for [CALCRIM] 522 [provocation effecting the degree of murder] or [CALCRIM] 570 [voluntary manslaughter based on heat of passion as a lesser included offense to murder]." This dialogue between the court and counsel demonstrates that counsel made a considered decision not to have the jury instructed on voluntary manslaughter based on heat of passion. The court and counsel discussed the instructions in conference, counsel

took time to consider whether he wanted the court to give them and then told the court the defense was rejecting them. "The record [thus] shows that defendant's 'lack of objection to the proposed instruction was more than mere unconsidered acquiescence.' [Citation.]" (*Horning*, at p. 905; see also *People v. Hardy*, *supra*, 2 Cal.4th at p. 184.) As a result, Teran cannot complain on appeal about the court's failure to instruct on voluntary manslaughter based on heat of passion.

In any case, if error, it was harmless. "[I]n a noncapital case, error in failing sua sponte to instruct, or to instruct fully, on all lesser included offenses and theories thereof which are supported by the evidence must be reviewed for prejudice exclusively under [*People v.*] *Watson*. A conviction of the charged offense may be reversed in consequence of this form of error only if, 'after an examination of the entire cause, including the evidence' [citation], it appears 'reasonably probable' the defendant would have obtained a more favorable outcome had the error not occurred[.]" (*People v. Breverman* (1998) 19 Cal.4th 142, 178, citing *People v. Watson* (1956) 46 Cal.2d 818, 836.)

Teran maintained that the killing of Galaz was justifiable self-defense. He argued that the jury could not convict him of murder, and the court instructed on voluntary manslaughter based on imperfect self-defense in the event it determined Teran's actions in self-defense were unreasonable under the circumstances. "Once the jury rejected [Teran's] claims of reasonable and imperfect self-defense, there was little if any independent evidence remaining to support [a] further claim that he killed in the heat of passion, and no direct testimonial evidence from [Teran] himself to support an inference that he *subjectively* harbored such strong passion, or acted rashly or impulsively while under its influence for reasons unrelated to his perceived need for self-defense." (*People v. Moye* (2009) 47 Cal.4th 537, 557.) On the contrary, the evidence established that Teran summoned the shooter to his apartment, asked the shooter to bring a gun and told him to "hit" or "get" Galaz. The evidence did not show that Teran directed the shooter to fire at Galaz because Teran was """obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection, and from such passion rather than from judgment."

[Citations.]' [Citation.]" (*Id*. at p. 550 [subjective prong of voluntary manslaughter based on heat of passion requires that accused "killed while under 'the actual influence of a strong passion' induced by such provocation"].) Indeed, the jury rejected Teran's claim that his actions toward Galaz were necessary to protect him from Galaz and found that Teran had acted with malice to support a second degree murder conviction. "Moreover, the jury having rejected the factual basis for the claims of reasonable and unreasonable self-defense, it is not reasonably probable the jury would have found the requisite *objective* component of a heat of passion defense (legally sufficient provocation) even had it been instructed on that theory of voluntary manslaughter." (*Id*. at pp. 550, 557 [to satisfy objective prong of voluntary manslaughter based on heat of passion, victim's conduct must be sufficiently provocative that it would cause an ordinary person of average disposition to act rashly or without due deliberation and reflection].) In other words, having found that Teran did not act in reasonable or unreasonable self-defense, it is not likely the jury would have concluded that Teran acted with the passion required to provoke a reasonable person to act rashly under the circumstances. Thus, it is not reasonably probable that Teran would have received a more favorable outcome had the trial court instructed the jury on voluntary manslaughter based on heat of passion.

4. *Teran's Ineffective Assistance of Counsel Claim Does Not Merit Reversal of the Judgment*

During trial, the People elicited testimony from one of the sheriff's detectives that he obtained a warrant to search Teran's apartment because Teran had refused to consent to the search. Teran argues that his trial counsel's failure to object to this evidence constituted ineffective assistance of counsel because the trial court would have sustained an objection and, absent an objection, the People used Teran's exercise of his Fourth Amendment right to refuse to consent to the search as evidence of consciousness of guilt. We disagree that Teran has established ineffective assistance of counsel.

"'"[T]he right to counsel is the right to the effective assistance of counsel."' [Citation.] 'The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that

the trial cannot be relied on as having produced a just result.' [Citation.] 'A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.' [Citation.]" (*In re Valdez* (2010) 49 Cal.4th 715, 729.) "To make the required showings, [defendant] must show that his attorney's 'representation fell below an objective standard of reasonableness' 'under prevailing professional norms' [citations] and 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome' [citation]. 'This second part of the *Strickland* test "is not solely one of outcome determination. Instead, the question is 'whether counsel's deficient performance renders the result of the trial unreliable or the proceeding fundamentally unfair.' [Citation.]" [Citation.]' [Citation.]" (*Ibid.*)

In evaluating counsel's performance, "'except in those rare instances where there is no conceivable tactical purpose for counsel's actions,' claims of ineffective assistance of counsel generally must be raised in a petition for writ of habeas corpus based on matters outside the record on appeal. [Citations.] The rule is particularly apt when the asserted deficiency arises from defense counsel's failure to object. '[D]eciding whether to object is inherently tactical, and the failure to object will rarely establish ineffective assistance.' [Citations.]" (*People v. Salcido* (2008) 44 Cal.4th 93, 172.)

Although generally testimony from a police officer that a defendant refused to consent to a search is inadmissible (*People v. Wood* (2002) 103 Cal.App.4th 803, 807-809), Teran's trial counsel had a conceivable tactical reason for failing to object

when the People elicited testimony from the sheriff's detective that Teran had refused to consent to a search of his apartment. At the time the People elicited the testimony from the detective, the jury already had heard a recording of Teran's interview with police detectives while in custody on July 19, 2010. During that interview, which Teran initiated, he admitted that he had refused permission for the detectives to search his apartment and explained that he had not wanted the detectives to find "[a]nything incriminating," including the shooter "hiding. The gun left behind. The glass pipes. The weed. . . . I mean, I don't know if [the shooter] was hiding up there. . . . [¶] [¶] I mean, I wouldn't know if he left and hid the gun behind. So I had a fear of that. Where did he go? What happened to the gun?" Because the jury already knew that Teran had refused to consent to a search of his apartment when the People elicited that testimony from the police detective, Teran's trial counsel could have made a tactical decision not to object to the evidence. As a result, Teran's ineffective assistance of counsel arguments fails.[2]

5. *The Judgment Must Be Modified to Include a Court Security Fee and a Court Facilities Assessment*

At sentencing, the trial court mentioned a court security fee, but imposition of the fee is not reflected in the minute order from the sentencing hearing or in the abstract of judgment. The court did not impose a court facilities assessment. Imposition of a $30 court security fee, pursuant to section 1465.8, subd. (a)(1), and a $30 court facilities assessment, pursuant to Government Code section 70373, subdivision (a)(1), is mandatory after a conviction. (*People v. Woods* (2010) 191 Cal.App.4th 269, 272.) Based on Teran's conviction for second degree murder, we order the judgment modified

[2] In his reply brief, Teran contends that admission of his own statements regarding the search was error as well and thus that his trial counsel could not have had a tactical reason for failing to object to the detective's testimony that he refused to consent to the search. Teran, however, cites no authority suggesting that a defendant's admission that he refused permission to search always is inadmissible, and the authority on which he does rely relates only to the testimony of a police detective, in no way foreclosing admission of evidence from the defendant himself.

to include a $30 court security fee and a $30 court facilities assessment. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 186-187.)

DISPOSITION

The judgment is modified to include a court security fee of $30 and a court facilities assessment of $30. As modified, the judgment is affirmed. The trial court is directed to forward a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.