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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

THE PEOPLE, Plaintiff and Respondent, v. ROBIN KYU CHO, Defendant and Appellant.	B259120 (Los Angeles County Super. Ct. No. BA354153)

APPEAL from a judgment of the Superior Court of Los Angeles County, Curtis B. Rappe, Judge. Affirmed.

Leslie Ann Boyce, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael C. Keller, Deputy Attorney General, and John Yang, Deputy Attorney General, for Plaintiff and Respondent.

In May of 2003, two adults and a child were found shot to death in the bathroom of an apartment. Investigators discovered fragments of a latex glove on tape that had been used to bind one of the victim's wrists and mouth. Although DNA evidence was extracted from the glove fragments, no suspects were identified. Five years after the murders were committed, the Los Angeles Police Department received information indicating that defendant Robin Cho, a resident of the apartment building where the crimes had occurred, was a possible contributor to the DNA found on the glove fragments. Cho was eventually charged with three counts of murder.

At trial, the prosecution theorized that Cho had entered the apartment with the intent to commit a theft, and killed the victims in the course of that crime. The primary evidence of guilt was the DNA extracted from the glove fragments. The jury found Cho guilty of one count of first degree murder, and two counts of second degree murder.

On appeal, Cho contends the trial court erred in admitting evidence that showed he had lost substantial sums of his investors' money and forged a check. Cho also contends the prosecution committed discovery violations by failing to disclose evidence in a timely manner, and that numerous other evidentiary errors occurred throughout trial. We affirm.

FACTUAL BACKGROUND

A. Summary of the Crimes and the Investigation

1. Discovery of the victims and the initial stages of the investigation

Byung and Charis Song lived in an apartment building in the Koreatown section of Los Angeles with their two-year-old son Nathan, and their four-year-old son, who was then in kindergarten. Byung[1] owned a garment factory and a retail clothing store in downtown Los Angeles. At some point in 2002, Charis began working as a bookkeeper at the factory, and the family hired Eun Min to care for Nathan during the day.

On the afternoon of Monday, May 5, 2003, Charis's mother, Cosmos Chang, traveled to the Songs' apartment to visit Nathan. After knocking on the door and receiving no answer, Cosmos let herself into the apartment and waited for Min and Nathan to return. Cosmos noticed the door to the bathroom of the master bedroom was closed, and that the lights were on. She opened the bathroom door and saw Charis's body on the floor. Cosmos then entered the bathroom, and saw the bodies of Nathan and Min in the bathtub. She immediately called 9-1-1.

Los Angeles Police Department Detective Robert Bub, one of several officers who assisted in the investigation, observed that all of the victims appeared to have been shot at close range, and that tape had been wrapped around Charis's wrists and mouth. While removing the tape from Charis, LAPD criminalist Eucen

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[1] Because this case involves several members of the Song family, we frequently refer to the family members by their first name for the sake of clarity only. No disrespect is intended.

Fu found a set of keys inside Charis's hands. Fu also found fragments of a latex glove stuck to the residue of the tape. Fu recovered four pieces of latex from the tape binding Charis's mouth, and one piece from the tape binding her wrists. The fragments were submitted for DNA testing.

Detective Bub and other officers assisting in the investigation did not observe any signs of forced entry, nor did they detect any ransacking within the apartment. Bub found an unopened jewelry box in the walk-in closet of the master bedroom that contained several pieces of jewelry. Another officer found a luggage bag that contained three certificates of deposit, each in the denomination of ten thousand dollars. The officers also observed a black trash bag in a second bathroom of the apartment that was covering a blue bath mat.

LAPD Detective Brian McCartin, the lead detective on the case, focused his investigation on Charis's husband Byung Song. Over the course of several interrogations, Byung initially claimed he had a good marriage with Charis, but later admitted he was having affairs with multiple women.

On May 8, 2003, McCartin conducted a walk-through of the apartment with Byung, and asked him to identify anything that was missing, or looked out of place. Byung told McCartin that nothing appeared to be missing, but that he did not recognize the black plastic bag lying on the floor of the second bathroom. Other officers who were present at the walk-through observed that Byung "appeared to be grieving," and had not engaged in any suspicious conduct.

On May 16, 2003, the LAPD received a typewritten, photocopied letter with the following message: "Song's husband have a young girl friend. [*Sic*.] That's why they had argument so

much. [*Sic*.] HE SENT HER TO NEW YORK LAST MONTH AND WILL BE BACK IN JULY. HUSBAND HIRED GUYS FROM KOREA TO BE FREE FROM WIFE AND GUYS WENT TO KOREA LAST WEEK. I do not know how much he paid for this service to guys from Korea. To find out more, call Scott Song & Jay Lee." Investigators attempted to determine the identities of the two people named in the letter, but were unsuccessful.

LAPD criminalists extracted a palm print from the black plastic bag found in the second bathroom, and determined it was a match for Byung. Criminalists also extracted two DNA profiles from the latex glove fragments that had been found in the tape used to bind Charis. One of the profiles was consistent with Charis's DNA. No match was found for the other profile. Byung was excluded as a possible contributor.

Officers conducted surveillance on Byung for approximately one month, and also conducted searches of his business and electronic records. No evidence was found linking him to the murders, and no other suspects were identified.

2. New investigation focusing on Robin Cho

In 2008, the LAPD received a lead from the California Department of Justice reporting a possible match between the DNA found on the latex glove fragments and Robin Cho.[2] At the time the murders were committed, Cho had been living with his wife and two children in an apartment located on the first floor of the same building where the Songs had lived.

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[2] The record indicates Cho had pleaded guilty to a non-violent felony in 2008, and was required to provide a DNA sample as part of his plea deal.

a. Police interrogations of Robin Cho

On March 16, 2009, Detective McCartin, LAPD Detective George Shamlyan and Jay Paik, an employee of the district attorney's office who served as a Korean translator, conducted two interrogations of Robin Cho. During the first interrogation, which occurred at approximately 9:00 a.m., Detective McCartin told Cho the police had recently decided to reopen the investigation, and intended to contact everyone who had lived at the apartment building in May of 2003. The officers did not inform Cho he was a suspect, or that he had been linked to the crime through DNA evidence.

Cho initially stated that the only thing he could remember from the day of the murders (May 5, 2003) was coming home in the evening, and seeing that the police had blocked access to the building. Cho mentioned, however, that he had kept a daily diary during that time period that might help refresh his memory. Cho explained that his lawyer had advised him to keep the diary because "so many people" had been "harass[ing and] . . . threaten[ing]" him about his failure to repay them money he owed to them. Although Cho could not recall what he did that day, he said that his normal daily routine in 2003 involved driving his younger son to school in the morning, going to work at about 9 or 10 a.m. and then picking his son up from school at around 2:30 p.m.

Later in the interview, Cho recalled more information about what he had done on the day of the murders, explaining that he believed he had traveled to his brother's dental office in Granada Hills, and then returned around lunchtime before picking up his son at school. Cho also recalled traveling to his insurer, 21st Century Insurance Company, at around noon that

day to renew his auto insurance. Cho believed that after paying his insurance, he had picked up his son at school, and then went to his friend's store to play cards, which he did every Monday. Cho recalled that, on that particular day, the card game broke early because one of the players had to leave to celebrate a family birthday. When Cho returned to the house at 6:00 or 7:00 p.m., he found the police restricting access to the parking garage.

Cho stated that the Songs' parking spaces at the apartment building were located directly next to his parking space. Cho said he had seen the husband a couple of times, and that he had seen the wife several times, but had never talked to her. Cho also said he stored a pull cart for his golf clubs in his parking space area. He explained that he normally left the cart outside his apartment, and sometimes left his golf glove on the cart to dry. The officers then asked whether he ever used "plastic gloves." Cho said he wore plastic gloves when opening his car door, and when cleaning the car and the house, because he had sensitive hands that were irritated by the "oil and stuff." Cho claimed that he had stored these plastic gloves in a box next to his golf cart. Cho described the gloves as being similar to the one's that "doctor's wear," like a "latex glove."

After completing the interview, the officers drove Cho to his wife's office to interview her about the murders. While waiting for Cho's wife, Paik had a brief conversation with Cho, informing him that the police intended to interview everyone who was living at the apartment building in 2003. In response to these comments, Cho stated: "Did anybody allege something about me? Like somebody sending a letter, alleging me as someone who did it?" After Paik said no, Cho explained: "Because I have been

accused wrongfully so many times in the past like taking tens of thousands of dollars . . . ."

Later that evening, at approximately 8:00 p.m., Detectives McCartin, Shamlyan and Paik interrogated Cho again. At the beginning of the interview, Detective McCartin told Cho his DNA had been found at the crime scene, and that they believed he had committed the murders. Cho denied involvement in the crimes, asserting that he did not know how his DNA could have gotten into the Songs' apartment. The officers, however, repeatedly told Cho the DNA evidence could not be refuted, and that he and his family would be better off if he admitted to the crime. Cho maintained his innocence throughout the interview, claiming that he was not at the apartment building on the day the crimes had occurred.

After Cho refused to admit any role in the offense, the officers asked him to describe what he remembered doing on the day of the murders. Cho said he took his son to school in the morning, and returned home for breakfast. He then drove to meet a woman to discuss a "money matter." Cho explained this woman contacted him every day about her money. Cho recalled that after meeting with the woman, he went to a coin and stamp store to try to sell some stamps that were in his collection. He then traveled to his brother's dental office, arriving around 11:30 a.m. After leaving his brother's office, he went to the post office, and then to a "TJ Maxx" to look at golf shoes. Cho then went to 21st Century Insurance, where he paid his auto insurance, and then went to a fast food restaurant for a drink, which he accidentally spilled on himself. Cho returned home at approximately 2:00 p.m. to change his shirt, then went to pick up his son at school. He dropped his son off at his wife's work and

went to his friend's office to play cards, returning home around 7:00 p.m.

Detective McCartin questioned how Cho could recall so much information about a single day that had occurred almost six years ago. Cho explained that he had reviewed the entry of the daily diary he had kept in 2003. Detective McCartin, who had also reviewed the diary, noted that the entry for May 5, 2003 did not contain many of the details Cho had shared, including his trip to TJ Maxx and the fact that he had gone to a fast food restaurant for a drink. Detective McCartin also noted that the entry for that day was far more detailed than other days in the diary. At the conclusion of the interrogation, Cho was placed under arrest.

That same day, the officers also conducted another interrogation of Byung Song, whom Detective McCartin still considered to be a possible participant in the crimes. Detective McCartin attempted to elicit a confession by telling Byung that Cho had said Byung paid him to commit the crimes. Byung denied any role in the killings.

b. Discovery of a typewriter in the home of Cho's mother

After Cho was identified as a suspect, the police searched his mother's house and recovered a Brother typewriter. An LAPD criminalist found that the typewriter's daisy wheel (the mechanism containing the letter keys that imprint the paper) had the same typeface that had been used to write portions of the anonymous tip letter police had received in 2003.

B. Summary of Information and Pretrial Motion Regarding Evidence of Cho's Prior Financial Misconduct

On August 28, 2009, the district attorney for the County of Los Angeles filed an information charging Cho with three counts of murder (Pen. Code, § 187, subd. (a).) The information also included special allegations asserting that Cho had caused the death of each victim by personally and intentionally discharging a firearm. (Pen. Code, § 12022.53, subd. (d).) The information was later amended to allege that the charged offenses fell "within the meaning of the multiple murder special circumstance" set forth in Penal Code section 190.2, subdivision (a)(3).

Prior to trial, the prosecution filed a motion seeking to "admit evidence of [Cho's] prior charged acts of fraud to prove his motive for the killing in this case." The prosecution alleged that "[f]rom at least 1998 to 2002, [Cho] had convinced friends and acquaintances to invest large sums of money in a [fictitious] company." Cho had allegedly issued contracts promising investors they would receive monthly interest payments on their principal. According to the prosecution, however, the contracts amounted to a "Ponzi scheme" in which Cho used the money obtained from new investors to pay off earlier investors. The prosecution asserted that while Cho was able to make interest payments to his investors for several years, his scheme began to "unravel" in 2002, causing investors to demand their money back. Approximately one week prior to the murder, Cho allegedly forged a check to an investor in the amount of $65,000, which later bounced. As a result of these acts, Cho had been charged with "ninety seven counts of fraud and theft." In June of 2008, he pleaded guilty to one count of violating Corporations Code section 25110 (selling an unqualified and unregistered security), and one

count of violating Penal Code section 487, subdivision (a) (grand theft), with a special enhancement for losses exceeding $200,000.

The prosecution argued that the evidence regarding Cho's "Ponzi scheme" was admissible under Evidence Code section 1101[3] because it showed he "was in dire and immediate need of money to conceal his [financial] crimes," thereby giving him "a motive to break into the Songs' apartment . . ." According to the prosecution's theory of the case, "Cho's freedom was in peril because his impending insolvency would uncover his Ponzi scheme and, inevitably, lead to criminal prosecution. An immediate influx of cash was Cho's only method to keep his Ponzi scheme concealed and to preserve his freedom. Simply put, Cho was desperate and resorted to a burglary . . . to attempt to solve his problems." The prosecution also argued the admission of such evidence was not overly prejudicial because his financial crimes were far less egregious than the charged offenses of murder.

In response to the prosecution's motion, Cho filed a motion in limine seeking to exclude "the introduction and testimony of any evidence related to [his] prior fraud convictions." Cho contended that evidence showing he had had "engaged in fraudulent activity" between 1998 and 2002 was not admissible to show "an intent and motive" to kill the three victims found inside the apartment. As explained by Cho: "The facts do not support the inferential reasoning process that the prosecution would have the jury engage in with this evidence. Instead the links in the chain of the prosecution's reasoning process are so weak that to introduce this evidence would be to invite the jury to engage in unfounded speculation and highly prejudicial

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[3] Unless otherwise noted, all further statutory citations are to the Evidence Code.

testimony. [*Sic*.] The People never had a motive for these crimes, especially burglary." Cho contended that the sole purpose of the evidence regarding his past financial crimes was not to prove motive, but rather to show he was also capable of committing a murder.

At the motion hearing, the prosecution clarified that the evidence of Cho's prior financial dealings was intended to show he was under "serious major financial pressure and problems and this was significantly disrupting his life." The prosecution argued the evidence also showed numerous people were pressuring Cho to repay them, which was causing him to act "desperate" and "irrational." In opposition, Cho's defense counsel introduced a disposition report from Cho's prior criminal case indicating that it was unclear whether the conduct he had engaged in qualified as a "Ponzi scheme." Cho's counsel argued that because there were unresolved factual disputes regarding his prior criminal conduct, allowing the prosecution to introduce such evidence in the current case would complicate the trial, and distract the jury from the pertinent issues. Cho's counsel also argued there was no evidence the perpetrator of the killings had entered the apartment to conduct a robbery, and that the prosecution's theory was irrational and speculative. According to counsel, the sole purpose of the evidence was "character assassination."

The court agreed with Cho in part, explaining that allowing evidence of the entire "fraud" case would be "very time consuming" and "get[] the jury distracted from the murders." The court further explained, however, that it would allow the prosecution to introduce evidence of Cho's financial distress "without raising the issue of fraud. . . [What] I think is relevant

to the case is the amount of pressure he's under. . . . If investor after investor said I want my money back . . . that conveys to the jury . . . with quite a bit of force, the pressure that he was under to come up with his money. . . . [T]hat certainly suffices [the prosecution's] argument about motive. . . ." The court later clarified: "[W]hat I'm allowing is simply that he's going to be permitted to show that these people placed money with the defendant and they were still owed this money and they were putting pressure, rightfully or wrongly, on him to return it."

C. Trial Evidence

1. Testimony regarding the crime scene and cause of death

At trial, numerous officers testified about their observations at the crime scene, including the fact that there were no signs of forced entry or ransacking inside the apartment. Detective McCartin testified about his prior investigation of Byung Song, and his interrogations of Cho, which were played for the jury.

The medical examiners who performed autopsies on each of the victims testified about the circumstances of the deaths. The examiners concluded that Eun Min had died of two gunshot wounds, one to her chest and one to her head; that Nathan Song had died of a single gunshot wound to his chest; and Charis Song had suffered two gunshots to the head, one of which was fatal.

Paul Delhauer, a crime scene reconstruction expert, testified that based on the positioning of the victims and their recorded body temperatures, he believed Min and Nathan had been shot simultaneously, and that Charis had then been killed a half hour to an hour later. Delhauer also testified that the crime

scene did not show any signs of burglary or robbery, noting that no items had been removed from the home and nothing appeared to have been searched. He further testified that although it was possible the murders were the result of an interrupted burglary, the circumstances of the victims' death suggested "somebody wanted one of these two women [Charis Song or Eun Min] dead. Whether it was one or the other I could not say." Delhauer also posited, however, that the crime scene was inconsistent with a professional "hit."

2. Expert testimony regarding the physical evidence

The prosecution also called numerous experts to testify about the physical evidence that had been recovered during the investigation.

a. DNA evidence

Two experts testified about the DNA that had been extracted from the latex glove fragments found in the tape used to bind Charis's mouth and wrists. Nick Sanchez, an LAPD criminalist specializing in DNA analysis, testified that he had labeled the five glove fragments A through E, and then compared them against DNA samples taken from Charis, Byung and Cho. Sanchez also sent samples A, B and C to an outside laboratory for additional testing.

Sanchez tested samples A, B, D and E, but excluded sample C because it was covered in blood, which might skew the results of the particular type of DNA test he was conducting. Sanchez found that samples A and B contained a major and a minor DNA profile, and that samples D and E were found to have equal amounts from two donors. Sanchez explained that all of the DNA

evidence found in the four samples was consistent with either Charis or Cho's DNA, and that the only reasonable conclusion was that there were only two contributors in each of the four samples. He acknowledged, however, that it was not scientifically possible to rule out the possibility of a third contributor. Byung was excluded as a possible donor of all four samples.

Sanchez testified that the major profile in sample A was consistent with Charis Song's DNA at a random probability rate of 1 in 240 trillion. The minor profile in sample A, which yielded a more limited DNA profile, was consistent with Cho at a random probability rate of 1 in 353 individuals. On sample B, Sanchez testified that the major profile was again consistent with Charis. As to the minor profile, Sanchez stated that if no assumptions were made as to the number of contributors, which he described as "the most conservative estimate" possible, the minor profile was consistent with Cho at a random probability rate of 1 in 358,000. If however, Sanchez assumed only two contributors, and that Charis was the other contributor, the minor profile was 383 million times more likely to occur if Cho was the second contributor as opposed to a person chosen at random.

On samples D and E, Sanchez stated that assuming the presence of only two contributors, and that one contributor was Charis, the DNA evidence in both samples was 700 million times more likely to occur if Cho was the other contributor opposed to a person selected at random. If no assumptions were made regarding the number of contributors or that Charis was the other contributor, the DNA was consistent with Cho at a random probability rate of 1 in 175,000.

Angela Butler, a serologist at the Serological Research Institute, testified that she had conducted DNA testing on samples A through C. On Sample C, the fragment that was covered in blood, Butler recovered a single female profile that was consistent with Charis at a random probability of 1 in 229 quadrillion. Butler explained that when a sample contains an overwhelming contribution from one donor, it may "mask" or "overwhelm" another profile that is present, which could have occurred with Sample C given the presence of Charis's blood.

Butler testified that sample A included a mixture of at least two individuals, with Charis being consistent as one contributor at a random probability rate of one in five quintillion. Cho was also consistent as a contributor, but only at a random probability rate of 1 in 50, which Butler described as statistically insignificant for purposes of DNA testing. As to sample B, Butler found Charis and Cho were each possible contributors, and that the random "chance that both of them would be similarly included is approximately one in 319 million."

b. Fingerprint evidence

Ruben Sanchez, a fingerprint expert for the City of Los Angeles, testified that in 2003, he had examined a fingerprint extracted from the black trash bag found on the floor of the apartment, and determined that it matched the fingerprint of Byung Song. Under LAPD policies, however, a fingerprint could only be classified as a "match" if three examiners agreed on the finding. Pursuant to those policies, two other criminalists verified Sanchez's finding that the print on the bag matched Byung.

Sanchez testified that in 2003, he had also examined a partial print found on the tape used to bind Charis, and concluded that it "could possibly be" a match with Byung. After making this determination, Sanchez asked his supervisor, Marilyn Downs, to review the print. Although Downs concurred with his findings, two other examiners concluded there was insufficient evidence to make an identification. Downs then recommended that they send the prints to Casey Wertheim, an FBI expert on fingerprinting, who concluded the print did not match Byung.

Sanchez testified that he had re-examined the fingerprint on the tape shortly before trial, and found that it was inconclusive as to whether it matched Byung. Sanchez explained that this classification was not available when he had made his initial determination in 2003: "Back in 2003 we didn't have inconclusive. It was either I.D. or no make. Now we have inconclusive. And inconclusive means that it can be him but there is not enough . . . to say positively it is him." Marilyn Downs testified that she had also re-examined the print shortly before trial, and found it inconclusive.

David Wetzke, a fingerprint expert at Foray Technologies, testified that the fingerprint on the tape could not be identified as having been left by Byung. The prosecution also called Casey Wertheim and several other fingerprint experts, all of whom concluded the fingerprint did not qualify as a match with Byung.

c. Evidence regarding the typewriter

William Lever, an LAPD criminalist specializing in "questioned documents," testified that he had conducted a comparison of the anonymous tip letter law enforcement had

received in 2003, and the Brother typewriter investigators had found in the home of Cho's mother in 2009. Lever explained that the tip letter appeared to be a photocopy, and that the first two paragraphs of the letter had been produced using a typewriter with "Brougham Brother 10" typeface. The third paragraph, which was misaligned with the other two paragraphs and had a different font, appeared to have been produced using a computer. Lever concluded that this evidence indicated the author had constructed the letter by cutting and pasting multiple documents together, and then making a photocopy.

Lever testified that the typewriter found in the home of Cho's mother had a daisy wheel with "Brougham Brother 10" typeface, the same typeface used in the first two paragraphs of the tip letter. Lever stated that Brougham Brother 10 was one of "several" typefaces that Brother offered. Lever also testified that because the tip letter was a photocopy, he could not determine whether the daisy wheel found in the Cho's mother's typewriter was in fact the same daisy wheel that had been used to write the tip letter. Lever stated that he had also examined the "typing impressions" left in the ribbon of the typewriter, and found no impressions that matched the wording of the tip letter. Lever noted, however, that it was easy to replace a typewriter ribbon.

Jan Lake, a product specialist from Brother International Corporation, testified that the sequencing of the serial numbers of the typewriter found in the home of Cho's mother indicated that the machine was built in June of 1995. On cross-examination, Lake noted that a "call taker" at the company had initially misidentified the typewriter as having been manufactured in 2005.

3. Witness testimony related to Cho's financial dealings

The prosecution called several witnesses who provided testimony related to Cho's financial dealings. Daniel Sung testified that in 2002 and 2003, he had frequently played golf with a group of people that included defendant Cho. Sung stated that at some point in 2002, Cho had tried to convince Sung to invest with him. Although Sung chose not to invest with Cho, several people in his golf group had done so. Sung recalled that Cho failed to pay some of the golfers their money back, which caused the group to stop playing with Cho. Sung also recalled that he had attended a meeting at a motel with Cho and several people in his golf group at some point in 2002. Sung said the group had argued with Cho about "lost money." Sung also recalled hearing discussion of a "bankruptcy" and "lost houses."

Donna An testified she had met Cho in 1998, and given him money to invest for her. Under their contract, Cho agreed to pay An a certain amount of monthly interest on her principal. An asserted that Cho made these interest payments for several years, which induced her to invest more. In 2002, however, Cho stopped paying An, and she asked for her principal back. Beginning in September of 2001, An began calling Cho regularly about the "money issues." An estimated that she called Cho ten times about her money. She also recalled that on one occasion, she and several other investors had traveled to Cho's home to confront him about their unpaid principal. An said she had consulted a lawyer about the issue, and that several investors had written a letter complaining about their unpaid funds. An testified she had invested approximately $500,000 with Cho, and was still owed approximately $200,000.

Jung An, the sister-in-law of Donna An, testified that she began investing with Cho in July of 2001, and had invested approximately $165,000. Jung An stated that she initially received "some money back as profit," but that Cho eventually stopped paying her. Between September of 2002 and April of 2003, Jung An called Cho several times to discuss the money she was owed, and also went to his house multiple times. She also attended meetings with Cho at other locations, sometimes with other investors, all of whom were seeking to recover money they had invested with him. Jung An said her brother, who was a lawyer, helped her draft letters to Cho threatening to bring a lawsuit about the unpaid funds. Jung An also testified that she called Cho on the day the murders had occurred, but did not meet with him that day. A couple of days after the murders, Jung An met Cho at a fast food restaurant and asked if he was scared about what had happened. Cho did not respond.

Jung An also described two instances in which Cho had written checks to her that bounced. At some point in 2002, Cho gave Jung An a check for $192,000, which reflected her total principal plus profits, but requested that she wait a couple of months before depositing it. Jung An waited until the appropriate date to make the deposit, but the check still bounced. In April of 2003, Cho gave Jung An another check for $65,000, which was drawn on an account of Cho's brother, Kyu Cho. When Cho wrote Jung An the check, he claimed that he was "using the same checking account with his brother." The check eventually bounced.

Cho's brother, Kyu Cho, testified that in 2003, he was living with his sister and mother in an apartment located in the same building where the murders occurred. Kyu Cho stated that

in April of 2003, he made a police report that a check had been stolen from him. Kyu Cho further stated that the police later contacted him to report they had recovered the check, which had been made out to Jung An in the amount of $65,000. Kyu Cho testified that although Robin Cho's signature was on the check, he believed his brother had told Jung An not to cash it.

LAPD Detective Sharen Stallworth testified that he had investigated Kyu's report of a stolen check in 2003. Stallworth stated that Kyu claimed he had not authorized anyone to use his checks, or to sign his name to his checks.

4. Evidence regarding Byung and Charis Song's whereabouts on the day in question

The prosecution also called several witnesses to testify about Byung and Charis's location on the day of the murders. Don Ahn, an employee of Byung in 2003, testified that during the work day, Byung regularly traveled between his garment factory and his retail clothing store, which was about a five-minute drive. Ahn testified that in May of 2003, Charis had been working at the factory as a bookkeeper. According to Ahn, on the day of the murders, Byung arrived at the factory at approximately 9:00 a.m. Ahn said Byung was only absent from the factory that morning for about an hour, and had returned before lunch. Byung remained at the factory from lunch until about 3:00 p.m.

Julia Pyon, another of Byung's employees who had worked in the garment factory in 2003, testified that on the day of the murders, Byung made several trips between the factory and his retail clothing store. Pyon stated that each trip lasted only five to ten minutes. That afternoon, Pyon went sample shopping with Byung at a local mall. They left the factory at approximately 3:30 p.m., and continued shopping at the mall until

approximately 5:30 p.m. Pyon stated that Byung had acted normal during that time.

Another former employee, Kyung Yim, testified that on the morning of May 5, 2003, Charis Song had arrived at the factory in the morning, and then left to make a police report about her purse, which she had lost days earlier. Surveillance video from the Songs' apartment building showed Charis arriving in the parking garage at approximately 10:30 a.m. The manager of the apartment building testified that she received a call the morning of May 5, 2003 from a woman who said she needed a key to her apartment because her purse had been stolen from her at a church. Shortly after the manager received the call, Charis arrived at the office and asked for a key. The property manager checked a key out to Charis at approximately 10:45 a.m. Two days after Charis's murder, police retrieved her purse from the church that she regularly attended.

5. Closing argument

At closing argument, the prosecutor reminded the jury that the People were not required to prove Cho's motive for committing the crime, explaining: "All that matters is he did the murder" and that his "DNA was found on the gloves used by the killer." The prosecutor also noted, however, that the evidence suggested Cho did have a motive to commit the crime, which involved the financial pressure he was under to pay back numerous investors: "[T]wo women . . . testified in this trial about how they gave him money to invest and they did not get it back and so on. . . . That is not to say [Cho] is a bad person. The evidence of motive that he had this financial responsibility and owed these people money is not so that I can indirectly and very

sleazily suggest to you [Cho] is a bad person, that he didn't pay them money, therefore, he kills people. That's not the purpose. It's to show potential motive. It's to show pressure, it's to show what was going on in his life. [¶] . . . [¶] Robin Cho was desperate at the time of these murders. So what's [Cho's] motive if you want motive? If you need a motive? He's got a family to take care of. . . . And he's got these investors and people hounding him and business meetings and coming to his house. Is that the motive that's pushing [Cho] over the edge?"

Cho's counsel argued that the evidence suggested the killings were the result of a hit, and had not been committed during the course of a burglary. Defense counsel emphasized that the prosecution had failed to identify any reasonable motive for the crime, and provided no direct evidence linking Cho to the crime other than the DNA on the latex gloves. Counsel also argued the DNA evidence was not persuasive, asserting that testing on three of the five fragments was of virtually no statistical value. Counsel also noted the DNA experts had been unable to rule out the possibility there was a third person's DNA on the gloves.

6. Verdict and sentencing

The jury found Cho guilty of first degree murder as to Charis Song (count one), and second degree murder as to Eun Min (count two) and Nathan Song (count three). The jury also found true the special allegations asserting Cho had personally and intentionally discharged a firearm, resulting in death or great bodily injury. (See § 12022.53, subd. (d).) After proceedings on the penalty phase, the jury returned a sentencing

verdict of life imprisonment without the possibility of parole (LWOP).

Cho was subsequently sentenced to life in prison without parole, plus an additional sentence of 105 years to life in prison, which consisted of the following: (1) LWOP as the base term for count one, plus 25 years to life for the firearm enhancement; (2) 15 years to life as the base term for count two, plus 25 years to life for the firearm enhancement; and (3) 15 years to life as the base term for count three, plus 25 years to life for the firearm enhancement.

DISCUSSION

A. Any Error in Admitting Evidence of Cho's Prior Financial Misconduct Was Harmless

Cho argues the trial court erred in admitting evidence "of the Ponzi scheme" that he allegedly engaged in, "and [the] bad acts stemming from [the scheme]." According to Cho, "[t]he evidence of [his] past offenses [was] a dominant part of the [case] against [him]," and should have been excluded under Evidence Code sections 1101 and section 352.

1. Summary of the evidence admitted regarding Cho's financial dealings

Before addressing Cho's claim, we first clarify what evidence the court actually admitted regarding his prior financial misconduct. Contrary to Cho's suggestion, the trial court did not permit the prosecution to introduce evidence showing Cho had engaged in a "Ponzi scheme," that he had committed fraud against his investors or that his actions had resulted in a criminal conviction. Instead, the court permitted a far narrower category of evidence, only allowing the prosecution to introduce

testimony that "people [had] placed money with [Cho][,] [that] they were still owed this money and they were putting pressure, rightfully or wrongly, on him to return it."

Pursuant to this ruling, the prosecution elicited witness testimony showing that: (1) Cho had promised his investors he would pay them a certain rate of interest on their principal investment; (2) Cho successfully made these payments for several years, but stopped making them toward the end of 2002; (3) once the payments stopped, investors began pressuring Cho to repay them their principal by calling his home, visiting his apartment and using the services of a lawyer; (4) Cho ultimately failed to repay all the money he owed to his investors, resulting in losses totaling over $200,000; (5) in an attempt to appease investor Jung An, Cho wrote her a check for $192,000 which bounced when she tried to deposit it; (6) acting without his brother's authorization, Cho also wrote Jung An a second check against his brother's account in the amount of $65,000, which also bounced. None of the witnesses referred to Cho's acts as a "Ponzi scheme" or as fraud, and the jury was not informed of his prior criminal conviction.

2. Summary of applicable law

Evidence Code section 1101, subdivision (a) "prohibits admission of evidence of a person's character, including evidence of character in the form of specific instances of uncharged misconduct, to prove the conduct of that person on a specified occasion."[4] (*People v. Ewoldt* (1994) 7 Cal.4th 380, 393 (*Ewoldt*).)

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[4] The text of section 1101, subdivision (a) states: "Except as provided in this section and in Sections 1102, 1103, 1108, and

Subdivision (b) clarifies, however, that "the admission of evidence that a person committed a crime, civil wrong, or other act [is permitted] when relevant to prove some fact (such as motive, opportunity, intent, preparation, [or] plan. . .) other than his or her disposition to commit such an act." (§ 1101, subd. (b).) Thus, under subdivision (b), evidence of prior "bad acts" (*People v. Falsetta* (1999) 21 Cal.4th 903, 913) or prior "crimes other than those currently charged" (*People v. Scheer* (1998) 68 Cal.App.4th 1009, 1017-1018 (*Scheer*)), is admissible "when it is logically, naturally, and by reasonable inference relevant to prove some fact at issue, such as motive, intent, preparation or identity.'" (*People v. Thompson* (2016) 1 Cal.5th 1043, 1114 (*Thompson*).) When introduced to prove motive, there must be a "nexus or direct link . . . between the prior [misconduct] and the charged offense." (*People v. Walker* (2006) 139 Cal.App.4th 782, 804; see also *Thompson, supra*, 1 Cal.5th at p. 1115 ["The existence of a motive requires a nexus between the prior crime and the current one'"].)

Because evidence of prior misconduct may '"'"be highly inflammatory, such evidence must not contravene other policies limiting admission, such as those contained in Evidence Code section 352.'" [Citations.] Under Evidence Code section 352, the probative value of a defendant's prior acts must not be substantially outweighed by the probability that its admission would create substantial danger of undue prejudice, of confusing

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1109, evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion."

the issues, or of misleading the jury. [Citations.]" (*People v. Davis* (2009) 46 Cal.4th 539, 602.)

"'We review for abuse of discretion a trial court's rulings on relevance and admission or exclusion of evidence under Evidence Code sections 1101 and 352.' [Citation.]" (*Davis, supra,* 46 Cal.4th at p. 602.) "[T]he erroneous admission of prior misconduct evidence does not compel reversal unless a result more favorable to the defendant would have been reasonably probable if such evidence were excluded." (*Scheer, supra,* 68 Cal.App.4th at pp. 1018-1019; see also *People v. Malone* (1988) 47 Cal.3d 1, 22 ["error in admitting other-crimes evidence" is subject to the harmless error standard set forth in *People v. Watson* (1956) 46 Cal.2d 818 (*Watson*)].)

3. Any error in admitting evidence regarding Cho's financial misconduct was harmless

At trial, the prosecution argued that the evidence regarding Cho's financial misdeeds was relevant to show a possible motive for the murders. Specifically, the prosecution theorized that the pressure Cho's investors were placing on him to repay their principal induced him to enter the Songs' apartment with the intent to commit a theft, and that he then committed the murders in the course of that crime. Cho argues the court should have excluded the evidence because there was not a sufficient "nexus" between his prior financial misdeeds, which involved losing his investors' money and writing bad checks, and the charged crime of murder. Cho contends that because there was no evidence a theft (or attempted theft) occurred at the Songs' apartment, there was no basis to allow evidence showing Cho had a financial motive to commit such a crime. Cho further contends that under section 352, whatever minimal probative value the

evidence may have had in proving motive was substantially outweighed by the probability of undue prejudice.

We need not resolve whether the trial court erred in admitting evidence of Cho's prior financial misconduct because even if we assume that an error occurred, there is no reasonable probability the jury would have reached a more favorable verdict had the evidence been excluded. (See *People v. Fuiava* (2012) 53 Cal.4th 622, 671 [even if "the testimony should have been excluded . . ., any error was harmless under the [*Watson*] standard. . . . There is no reasonable probability the jury would have reached a more favorable verdict had the trial court struck [the testimony]"].)

As the district attorney repeatedly emphasized during closing argument, the primary evidence of Cho's guilt consisted of DNA that was extracted from the rubber glove fragments found on the tape wrapped around Charis's wrists and mouth. The prosecution called two experts who testified that DNA from several of the glove fragments was consistent with Cho's DNA. As summarized above, LAPD criminalist Nick Sanchez testified that: (1) in each of the four glove samples he tested, the DNA was comprised of only two contributors; (2) Charis was consistent as a contributor in each sample, including in one sample at a random probability rate of one in 1 in 240 trillion; and (3) Cho was also consistent as a contributor in every sample. Sanchez further testified that if it was assumed there were only two contributors to each sample, and that one contributor was Charis (assumptions which Sanchez described as the only reasonable conclusion), Cho's DNA was consistent with sample B at a random probability of one in 383 million, and on samples D and E at random probability rate of 1 in 700 million. Sanchez also

stated that even if no assumptions were made as to the number or identity of contributors, which he described as the most conservative estimate possible, the DNA evidence in sample B was consistent with Cho at a random probability rate of 1 in 385,000, and the DNA in samples D and E was consistent with Cho at a random probability rate of 1 in 175,000.

Angela Butler, a forensics expert at a private laboratory, provided similar testimony, stating that samples A and B consisted of two contributors, that Charis and Cho were both consistent as contributors and, with respect to sample B, that the random "chance that both of them would be similarly included" was approximately one in 319 million. Both experts also concluded that Byung Song was not a possible contributor to any of the DNA samples.

The persuasiveness of Sanchez and Butler's DNA testimony was heightened by multiple factors. First, Cho did not call a DNA expert to dispute any aspect of their findings. (See *People v. Jackson* (2013) 221 Cal.App.4th 1222, 1241 [erroneous admission of evidence found harmless based primarily on "DNA evidence connecting defendant to the crime, which was not disputed by defendant's own expert"].) Second, the evidence at trial showed that Cho resided in the building where the murders occurred, that Cho's parking space in the building was located directly next to Charis's parking space and that Cho had previously spoken to Charis. Thus, the jury was informed not only that Cho's DNA was consistent with the DNA found in the glove fragments at random probability rates ranging from 1 in 175,000 to 1 in 700 million, but also that he had a preexisting connection to the location of the crime, and knew one of the victims. Third, Cho never provided any exculpatory theory as to how his DNA could

have ended up in the Songs' apartment. Indeed, he specifically denied having ever been inside their apartment.

In addition to the DNA evidence, the transcripts of Cho's May 26, 2009 police interrogations showed that he provided inconsistent and suspicious answers regarding his whereabouts on the day of the murders. During his interview on the morning of May 26, 2009, which occurred before he knew he was a suspect, the only activities Cho could remember doing on the day of the murders included dropping his son off at school, traveling to his brother's dental office, making an insurance payment at his insurer's local office, picking his son up from school and then attending a card game with friends in the evening. During Cho's second interview on the night of May 26, 2009, he was told that his DNA had been found at the crime scene. After receiving this information, Cho provided numerous additional details regarding his whereabouts on the date of the murders that he had not mentioned in his first interview. Cho claimed, among other things, that he had met with a woman that morning to discuss a "money matter," and then traveled to a stamp collector shop, the post office and TJ Maxx. He also recalled spilling a drink on himself at a fast food restaurant, and then going home to change his shirt before picking up his son at school.

When Detective McCartin asked Cho why he was able to recall so many details about a day that had occurred more than six years ago, Cho stated that he had reviewed the entries in a daily journal he had been keeping at that time. After Detective McCartin noted that several of the newly-provided details were not reflected in the journal entry, Cho claimed the information had just "popped into his head." Cho also admitted he was not able to recall what he had done on the days immediately before

and after the murders, and that his journal entry on the date corresponding to the day of the murders was far more detailed than any other entries. Cho was not able to explain any of these discrepancies.

The prosecution also provided circumstantial evidence connecting Cho to the tip letter authorities had received shortly after the murders, which indicated that Byung Song had committed the crimes. While talking to interpreter Paik on the day of his interrogations, Cho abruptly inquired whether the police had received a letter accusing him of committing the crime. At the time he made this statement, the police had not yet informed the public about the tip letter. Moreover, during a search of Cho's mother's house, officers recovered a typewriter that matched the make, font and font-size of the typewriter that had been used to generate portions of the letter.

The testimony regarding Cho's financial misconduct, on the other hand, played only a minimal role in the prosecution's case. At closing argument, the district attorney explained that the evidence of Cho's financial dealings had been introduced solely to show a possible motive for the crimes. The district attorney further emphasized, however, that the People were not required to prove why Cho had committed the crimes, and that his underlying motivations were not material to the question of guilt.

The evidence was also of minimal prejudicial effect. "The factors affecting the prejudicial effect of uncharged acts [generally] include whether the uncharged acts resulted in criminal convictions and whether the evidence of uncharged acts is stronger or more inflammatory than the evidence of the charged offenses." (*People v. Zepeda* (2001) 87 Cal.App.4th 1183, 1211 [citing *Ewoldt, supra,* 7 Cal.4th at pp. 404-405].) Regarding

the first factor, our Supreme Court has noted that in some cases, the prejudicial impact of prior misconduct evidence is "increased if the uncharged acts did not result in a criminal conviction. This is because the jury might be inclined to punish the defendant for the uncharged acts regardless of whether it considers the defendant guilty of the charged offense and because the absence of a conviction increases the likelihood of confusing the issues, in that the jury will have to determine whether the uncharged acts occurred." (*People v. Quang Minh Tran* (2011) 51 Cal.4th 1040, 1047 (*Tran*).)

Applying those factors here, we conclude there is little risk that the evidence of Cho's prior misconduct resulted in the type of undue prejudice that sections 1101 and 352 are intended to protect against. The nature of the Cho's misconduct, losing his investors' money and writing bad checks, was significantly less inflammatory than the testimony regarding the charged crimes, which involved the shooting deaths of two adults and a two-year-old child. Given the substantial disparity between the seriousness of Cho's prior misconduct and the charged offenses, there is minimal risk that the jury inferred Cho's actions toward his investors showed he had the disposition to commit a triple homicide, or "that the jury's passions were inflamed by the evidence of defendant's uncharged offenses." (*Ewoldt, supra,* 7 Cal.4th at p. 405; *Tran, supra*, 51 Cal.4th at p. 1047 ["The potential for prejudice is decreased . . . when testimony describing the defendant's uncharged acts is no stronger or more inflammatory than the testimony concerning the charged offense"].)

Although the jury was not told that Cho's actions toward his investors had resulted in a conviction, the trial court's

limitations on the prior misconduct evidence prohibited the prosecution from disclosing that his acts were criminal or even fraudulent in nature. (See *Zepeda, supra*, 87 Cal.App.4th at p. 1212 [trial court minimized prejudicial effect of prior misconduct evidence by excluding evidence "establish[ing] defendant had committed a previous drive-by shooting," but allowing evidence he had been involved in a prior "gang-related incident" in which a shooting occurred].) Moreover, to the extent the jurors inferred or suspected his financial acts qualified as crimes, it is unlikely they would have been inclined to punish him for these nonviolent acts by convicting him of a triple murder.[5]

Given the highly incriminating evidence of guilt, in particular the unopposed expert DNA testimony, and the minimal relevance or prejudicial effects of the evidence regarding Cho's prior financial misconduct, we find no reasonable probability the jury would have reached a different result if the court had excluded the evidence.[6]

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[5] It is also unlikely that the evidence of Cho's prior financial misconduct confused the relevant issues by causing the jury to believe it "had to determine whether the uncharged offenses had occurred." (*Ewoldt, supra,* 7 Cal.4th at p. 405.) As noted above, the district attorney specifically told the jury that the prior misconduct evidence was only relevant to show a possible motive for the crimes, that the People were not required to prove any such motive and that his reasons for committing the murders were ultimately immaterial to the question of guilt. (See *People v. Hollie* (2010) 180 Cal.App.4th 1262, 1277 ["arguments of counsel" relevant to determining the prejudicial effect of prior misconduct evidence].)

[6] Cho's opening appellate brief and his reply brief do not contain any discussion addressing whether the trial court's

B. The Trial Court Did Not Err in Admitting Evidence Related to the DNA Testing

Cho argues the trial court should have excluded the expert testimony of Angela Butler, a DNA analyst at the Serological Research Institute (SERI), and all other evidence regarding the SERI DNA testing.[7] Cho contends such evidence should have been excluded because the prosecution did not provide the defense with the results of SERI's testing until after the trial had begun. According to Cho, such conduct violated Penal Code sections 1054.1 and 1054.7, which require a prosecuting attorney to disclose various categories of evidence obtained during the investigation at least "30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred." (Pen. Code, § 1054.7.)

The record shows that prior to and during trial, the parties had numerous discussions with the court regarding when SERI would complete its DNA testing. During these discussions, Cho's counsel expressed concern about the timing, but never requested

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decision to admit evidence of his financial misconduct can be deemed harmless. In his opening brief, Cho argues only that the court erred, and asserts without further discussion that the error was necessarily prejudicial. The Attorney General's respondent's brief, in contrast, contains several pages arguing that any error in admitting the evidence was harmless. Cho, however, elected not to respond to this argument in his reply brief. Instead, his reply brief argues only that the "cumulative effect" of the "myriad [of] errors" set forth in his opening brief warrants reversal regardless of whether "any individual error constituted reversible error."

[7] Cho has not challenged the admission of evidence regarding DNA testing conducted by the LAPD criminalists.

that the court delay the trial until the testing was completed. Cho's counsel never asserted that the prosecution had violated the criminal discovery statutes by failing to provide the results of SERI's testing before trial, or otherwise object to the admission of the DNA testing on that basis.

The record also discloses that the prosecutor gave Cho's counsel the results of SERI's DNA testing as soon as it was completed. Under Penal Code section 1054.1 subdivision (f), "the prosecutor must disclose to the defense relevant written, recorded, or reported statements 'of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case,' as well as 'the results of . . . scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.' (§ 1054.1, subd. (f).)" (*People v. DePriest* (2007) 42 Cal.4th 1, 38.) As Cho summarizes in his appellate brief, section 1054.7 generally requires that such disclosure occur at least 30 days before trial. Cho's brief, however, omits reference to additional language in section 1054.7 clarifying that "[i]f the material and information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately. . . ." Cho has cited no evidence indicating that the prosecution failed to turn over the DNA results as soon as they became available. He has therefore failed to establish the prosecution violated the criminal discovery statutes, which are the only legal authority he has cited in support of his challenge to the admission of SERI's DNA testing.

C. The Trial Court Did Not Err in Allowing the Testimony of Multiple Fingerprint Experts

Cho argues the trial court erred by allowing numerous fingerprint experts to testify as to whether Byung Song's fingerprint matched a partial print found on the tape used to bind Charis's wrists. The prosecution introduced the testimony of 10 fingerprint experts, including three private experts, all of whom either excluded Byung as the source of the print, or testified that there was insufficient evidence to make such a determination. Cho argues the prosecution's decision to call so many different experts to "disprove . . . that the . . . print on the . . . tape was a match to . . . Byung" was "annihilation by expert—based improperly on the cumulative power of repetitive evidence." According to Cho, the prosecution's "massive assault of cumulative experts—intended to undermine defendant's theory of third party culpability—caused irremediable prejudice to defendant Cho."

At trial, Cho did not object to any of the prosecution's fingerprint experts based on the cumulative nature of their testimony. Generally, "a challenge to the admission of evidence is not preserved for appeal unless a specific and timely objection was made below." (*People v. Anderson* (2001) 25 Cal.4th 543, 586; see also Evid. Code, § 353, subd. (a).) Because Cho never objected to the admission of any of this testimony on the basis of its cumulative nature, he has forfeited the issue on appeal.

Even if Cho had preserved his claim, it is clear no error occurred. Prior to trial, Cho filed a motion seeking to introduce evidence that Byung Song was culpable for the crimes, and then pursued this strategy at trial. The initial fingerprint analysis LAPD criminalists conducted in 2003 provided some support for

Cho's theory. In 2003, LAPD criminalist Ruben Sanchez concluded the print found on the tape used to bind Charis was a possible match for Byung. His supervisor, Marilyn Downs, concurred with that conclusion. At trial, however, Sanchez and Downs both testified that they had re-examined the print shortly before the trial, and determined there was insufficient evidence to conclude the print was a match to Byung. Given Cho's defense strategy, and the findings that Sanchez and Downs made in 2003, we find no abuse of discretion in the trial court's decision to allow numerous other experts to testify that the fingerprint found on the tape used to bind Charis did not match Byung.

D. The Trial Court Did Not Err in Admitting Evidence Related to the Typewriter Found in the Home of Cho's Mother

Cho argues the trial court made several errors with respect to evidence regarding the typewriter that investigators found in the home of Cho's mother.

1. Background facts

After Cho became a suspect in the case, authorities found an electric Brother typewriter in his mother's home. LAPD criminalist William Lever determined that the typeface of the typewriter's daisy wheel matched the typeface that had been used to write portions of the tip letter police had received in 2003, which accused Byung Song of hiring hitmen to kill his wife. The prosecution sought to introduce the typewriter as circumstantial evidence that Cho had authored the anonymous letter.

During a hearing on May 1, 2012, defense counsel moved to exclude any evidence related to the typewriter, explaining that the prosecution had recently disclosed the typewriter's serial

number indicated it was manufactured in 2005, two years after the tip letter had been written. The prosecutor, however, argued that the typewriter was still relevant because the daisy wheel on the device was interchangeable with all Brother typewriters, including those manufactured prior to 2003. The prosecutor posited the jury could reasonably infer that sometime after the writing the letter, Cho had removed the daisy wheel from a Brother typewriter manufactured prior to 2003, and then placed it in the typewriter found in his mother's house. The court ruled that it would allow the evidence, explaining that the manufacturing date of the typewriter went to the weight of the of the evidence, rather than its admissibility.

The day the prosecution intended to call an expert who was to testify about the manufacturing date of the typewriter, Cho's counsel told the court that the prosecutor had recently informed him of newly-discovered evidence showing the typewriter was manufactured in 1995, rather than in 2005. Cho's counsel objected to the admission of this newly-acquired evidence, asserting that it conflicted with the information the prosecutor had previously provided.

In response, the prosecutor explained to the court that his investigator had initially spoken with a secretary at the Brother Corporation who indicated the serial number on the machine showed it was made in 2005. The prosecutor subsequently spoke with a more knowledgeable employee of the company who said the secretary was mistaken, and that the serial number showed the machine was manufactured in 1995. The prosecutor further explained that he had notified defense counsel of this newly-acquired information immediately after it was discovered, several days earlier.

The trial court then asked Cho's counsel to clarify the nature of his objection. Although Cho's counsel acknowledged he had "received notice" of the newly-acquired evidence days earlier, he nonetheless believed the prosecution had committed a "discovery violation." The court, however, expressed doubt as to whether a discovery violation had occurred: "[The prosecutor] gives you erroneous information. I don't know how that's a discovery violation. That's just a mistake. Then as soon as he learns the information that he proposes to put[] on he tells you. [¶] . . . [¶] So how can that be a discovery violation? I mean, if he waits a month that's a discovery violation but if he gives it to you as soon as he knew it I don't see a discovery violation. It might be a problem of you not having adequate time to prepare." The court then inquired whether Cho's counsel wanted a continuance to investigate the issue further, and to prepare an adequate cross-examination of the prosecution's typewriter expert. After further discussion, the court granted Cho a one week continuance, and ordered the prosecution's typewriter witness to return the following Monday.

2. Cho has failed to establish that a discovery violation occurred

Cho argues the trial court should have excluded evidence that the typewriter was manufactured in 1995, asserting: "The late discovery blindsided the defendant and caused irreparable damage. Defense counsel had rightfully relied on the earlier evidence provided by the prosecutor just one week earlier which unequivocally stated that defendant's mother's typewriter was not even in existence at the time the letter was typed." Cho asserts the prosecution's actions violated "the letter and purpose

of [the criminal discovery statutes] in surprising defense counsel in trial and undermining his ability to present a defense."

This argument is without merit. As discussed above in relation to the DNA testing, although the criminal discovery statutes generally require the prosecutor to disclose statements of expert witnesses who he or she intends to call at trial at least thirty days before trial (see §§ 1054.1, subd. (f); 1054.7), section 1054.7 specifically provides that if the evidence "becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately. . . ." Cho does not dispute the prosecutor informed him of the newly-acquired evidence regarding the typewriter's manufacturing date as soon the prosecutor discovered the information. Moreover, the court granted Cho additional time to investigate the newly-discovered evidence, and to prepare an adequate cross-examination of the prosecutor's expert.

3. The trial court did not err in declining to exclude the typewriter evidence under Evidence Code section 352

Cho also argues the trial court abused its discretion in declining to exclude all evidence related to the typewriter under Evidence Code section 352. Cho contends that because the prosecution failed to identify any evidence directly establishing that the typewriter found in his mother's house was the "particular typewriter . . . used to type the tip letter," the court should have categorically excluded all evidence related to the typewriter. According to Cho, the fact that the typewriter found in his mother's house had the same typeface that was used to write the first two paragraphs of the tip letter was of "no probative value. It was merely window dressing. . . An equally

strong case could have been made against anyone who had access to a Brother typewriter six years following the murder."

Cho is correct that the prosecution only introduced circumstantial evidence that the typewriter found in his mother's home was the same machine used to write the anonymous tip letter. Specifically, the "Brother Brougham 10" typeface of the daisy wheel in the typewriter was the same typeface used to write the first two paragraphs of the tip letter. The prosecution's expert, William Lever, explained that "Brother Brougham" was one of "several" typefaces Brother used in its electric typewriters, and that the number "10" indicated the number of characters the daisy wheel printed per inch. Lever further explained that Brother Brougham typefaces came in different sizes, including "10's and 12's and some foreign machines are 15's." Lever acknowledged, however, that he was not able to determine whether the daisy wheel found in the typewriter at Cho's mother's house was the same one used to write the tip letter because the letter had been photocopied, which made it impossible to detect whether the letters' characters bore identifying "wear" marks from the daisy wheel that might have been detected in the original document.

Although circumstantial in nature, the prosecution's typewriter evidence was not devoid of "probative value." The evidence was relevant to show Cho had access to a typewriter that had the same typeface and spacing size as the typeface used to write portions of the tip letter, suggesting Cho may have authored the letter. The probative value of this evidence was heightened by the fact that during Cho's police interrogation, he asked officers whether they had received a letter accusing him of committing the crime, suggesting he may have had knowledge

that a tip letter was written. The fact that the prosecution's evidence did not directly prove the typewriter found in his mother's home was the same machine used to write the tip letter affected the weight of the prosecution's evidence, but did not render the evidence "irrelevant."

Moreover, although Cho asserts the typewriter evidence was overly "prejudicial" within the meaning of section 352, he has failed to identify any form of possible prejudice beyond that which "'naturally flows from relevant, . . . probative evidence." (*People v. Johnson* (2013) 221 Cal.App.4th 623, 636.) The "'prejudice' referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues.'" [Citation.]" (*Ibid.* [citing and quoting *People v. Karis* (1988) 46 Cal.3d 612, 638].) Cho's access to a particular type of typewriter is not the type of evidence that would tend to invoke an "emotional bias" against him.

4. Rosemary Sanchez did not make a material misstatement during her testimony about the typewriter

Cho next asserts that Rosemary Sanchez, a former LAPD officer who assisted in the search of Cho's mother's house in 2009, falsely testified that the police discovered the typewriter during a search executed in 2003. Cho contends Sanchez's erroneous assertion the typewriter was found in 2003, rather than in 2009, was "consequential because the defense theory refuting the relevance of the typewriter depends on the remoteness of time between the 200[9] confiscation and the 2003 murders."

The record shows, however, that Sanchez did not testify that the police found the typewriter in 2003, rather than in 2009.

During Sanchez's testimony, the prosecutor asked her the following question: "Back in 2003 what was your assignment?" Sanchez responded that she was "assigned to Robbery Homicide Division, the cold case section." The prosecutor then asked Sanchez: "At some point did you help out other detectives such as Brian McCartin, who is in court here today, by assisting with search warrants that were being served?" Sanchez replied "yes," and went on to testify that the typewriter was found during a search of the home of Cho's mother.

Although Sanchez was asked where she was assigned in 2003, she was never asked, nor did she ever state, when the search of Cho's mother's house was conducted. If Cho's counsel believed that the structure of the prosecutor's questions may have confused the jurors into believing Sanchez performed the search in 2003, counsel could have objected, or otherwise sought clarification as to the timing of the search on cross-examination.

E. The Trial Court Did Not Abuse its Discretion by Failing to Exclude Portions of the Interrogation Transcript Referencing the Strength of the DNA Evidence

Cho argues the trial court erred by failing to exclude portions of his interrogation in which the interviewing officers characterized the DNA evidence as "irrefutable." During the second interrogation of Cho, Detective McCartin informed the defendant his DNA had been found at the crime scene. Detective McCartin and Detective Shamlyan then repeatedly asserted that the DNA evidence was "irrefutable," and constituted "scientific fact" of his guilt. Cho's appellate brief cites approximately 20 instances during the interrogation when Detectives McCartin or Shamlyan made statements indicating the DNA evidence could

not be refuted, and that it conclusively proved Cho had committed the murders. According to Cho, the admission of these "repetitive opinion statements" was improper under section 352 because they presented his guilt as "indisputable," and "imbedded the infallibility of DNA evidence into each juror's mind."

At trial, the court rejected these arguments, explaining that the jury would understand the officers interviewing Cho were not "experts" testifying as to the validity of the DNA evidence. The court further explained that the officers' statements actually aided Cho's defense, showing that even after being confronted with DNA evidence, he "s[at] there very calmly and [said] I didn't do this at least a hundred times."

Cho does not appear to dispute that the portions of the interrogation he now challenges, which show how he responded to the officers' questions about the DNA evidence, were relevant to the issue of his guilt. He argues, however, that under section 352, the probative value of such evidence was substantially outweighed by the probability that the jurors would improperly infer from the officers' statements that the DNA evidence provided irrefutable proof that he had committed the murders.

The court acted within its discretion in concluding there was not a substantial danger that the jurors would treat the officers' statements as probative evidence of the reliability and accuracy of the DNA testing. At trial, Detective McCartin testified that, when questioning suspects, officers frequently use "abrasive" methods. He also stated that interrogating officers "lie" to suspects "all the time," and that there are no "requirements or regulations" that preclude the use of these "ruses and techniques." Detective McCartin also admitted that

during this particular investigation, he had attempted to induce an admission from Byung by falsely informing him that Cho had implicated him in the murder.

Given Detective McCartin's statements, and the voluminous expert testimony that was presented on the DNA issue, the trial court could reasonably conclude the jury was "intelligent enough to understand" the officers' characterization of the DNA evidence was an interrogation technique, and not actually probative of the DNA evidence's accuracy or trustworthiness.

F. The Trial Court Did Not Err in Declining to Declare a Mistrial Based on Questions that Referenced the Anonymous Tip Letter

1. Background facts

Following Cho's first interrogation, Detectives McCartin and Shamlyan transported Cho to his wife's office. While waiting for Cho's wife to arrive, Cho began to have a conversation with interpreter Paik in Korean. Paik informed Cho that Detective McCartin intended to re-interview everyone who was living at the apartment complex in 2003. In response, Cho stated: "Did anybody allege something about me? Like somebody sending a letter, alleging me as someone who did it." When Paik said "no," Cho responded: "[B]ecause I have been accused wrongfully so many times in the past like taking tens of thousands of dollars . . . ."

At trial, the jury was played a recording of this conversation, and was also provided with a transcript. After the recording had been played, the prosecutor asked Detective Shamlyan the following question about the exchange between

Cho and Paik: "Now, on page 3 . . . . where [Cho] asks did anybody allege something about me, like somebody sending a letter, at that point was it public information that someone sent a letter saying [Byung] was the real killer because he had a girlfriend?" Defense counsel objected, asserting the question misstated the evidence. The court sustained the objection, and the prosecution attempted to rephrase the question: "[O]n page 3[,] . . . . when [Cho] asked did anybody allege something about me, like somebody sending a letter alleging me as someone who did it? . . . . At that point was it public information that someone sent a letter saying Byung Song was the killer . . . was that public information at that time?" Defense counsel again objected, saying: "Its' being taken out of context 352. Submit."

After the court called the attorneys to a sidebar conference, Cho's counsel moved for a mistrial, arguing that the manner in which the prosecution had structured his questions "was an intentional way of trying to say that [Cho] wrote this anonymous letter . . . [Cho] said did someone write a letter about me, not [did someone write a letter about] Byung Song, and it's taken out of context and that's not right." Defense counsel later clarified: "It's the way he did it: he asked that question and then goes right into the other letter."

The court denied the motion, explaining that the fact Cho had asked whether the police had received a letter accusing him of the crime was relevant to the case. The court further explained the defense "could answer" the inference the prosecution was trying to raise—that Cho's comment suggested he had written the tip letter—"by pointing out that the [tip letter] wasn't about [Cho]," and that Cho had not actually mentioned a letter about Byung.

Following the sidebar, the prosecutor again asked Detective Shamlyan whether it was publicly known that authorities had received a tip letter when Cho made his statement to Paik. Detective Shamlyan responded no. On cross-examination, Cho's counsel elicited testimony from Detective Shamlyan confirming that, immediately after Cho had asked whether the authorities had received a letter accusing him of the crime, Cho explained to Paik that people had previously made false accusations against him about "taking tens of thousands of dollars." Detective Shamlyan also admitted that Cho's comments suggested his statement about a letter was made in reference to the false accusations that had previously been made against him. Detective Shamlyan also acknowledged the tip letter contained no reference to Cho.

2. The court did not err in denying the motion for mistrial

Cho argues the trial court should have declared a mistrial, asserting that the "prosecution introduced Cho's question out of context and, instead, juxtaposed it to the unresolved anonymous tip letter—suggestive of a correlation. Without the proper context it suggested [Cho] was informed of the 2003 tip letter which, according to detectives, had not been made public knowledge."

We find no error. The prosecution's questions did not misrepresent the content of the statements that Cho made to Paik, nor did the prosecution's questions misrepresent the content of the tip letter regarding Byung Song. The prosecution simply asked Detective Shamlyan whether the police had publicly released information about the tip letter at the time Cho asked whether authorities had received a letter accusing him of the

crimes. There is nothing "taken out of context" in this question. The information the prosecution was seeking to elicit from the witness was relevant to show Cho made an unsolicited comment about whether the police had received a letter accusing him of committing the crime at a time when the public had not been informed of the existence of the tip letter. Defense counsel, in turn, had the opportunity on cross-examination to show Cho's statement regarding the letter was immediately followed by another statement in which he explained that people had wrongfully accused him of other misdeeds in the past. Moreover, the jury heard a recording of the conversation, and was provided a transcript of it. The jury was therefore fully aware of the circumstances under which Cho made his statement regarding the letter. The inferences to be drawn from those statements were for the jury to decide.

G. The Admission of Cho's Inflammatory Statement to Interpreter Paik was Harmless

Cho argues the court erred in admitting an inflammatory statement set forth in the final page of the transcript of his second interrogation. The final four lines of the transcript, which is over 200 pages long, state:

SCOTT PAIK: Your playing word games with me.
ROBIN CHO: I'm not playing word games.
SCOTT PAIK: And you're acting as a, . . ., you know in Korean you're older than me. I wanted to give you respect earlier. You're bullshit. Okay?
ROBIN CHO: You are a fucking bastard aging through your butthole."

At trial, Cho's counsel asserted that the transcript erroneously attributed the last statement to Cho, and alleged that Paik had actually made that statement to Cho. The court concluded it was unnecessary to determine who had made the statement because the statement had no "relevance whatsoever to guilt," and should be excluded regardless of who had made it. The court then ordered the prosecution to "take it out." Prior to playing the jury an audio recording of the interrogation, the prosecutor informed the court he had made all the appropriate redactions on the "juror's copies." Despite the court's instructions and the prosecution's representations, the transcript appearing in the record, which is marked as an exhibit and is presumably the version provided to the jury, includes the disputed statement, and attributes it to Cho.

Based on the evidence in the record, we cannot determine whether it was Cho or Paik who actually made the disputed statement. However, even if the transcript accurately reflects that Cho was the one who made the statement, the trial court determined the statement was irrelevant, and should have been redacted. In light of the court's ruling, it was error to provide the jury a copy of the transcript that included the statement.

The erroneous admission of evidence is generally reviewed under the harmless error standard set forth in *Watson, supra,* 46 Cal.2d 836. (*People v. Partida* (2005) 37 Cal.4th 428, 439 ["Absent fundamental unfairness, state law error in admitting evidence is subject to the traditional *Watson* test"[8]].) "Under

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[8] In this case, Cho has not asserted, nor is there any basis to conclude, that the admission of the statement at issue here resulted in fundamental unfairness in the proceedings. We therefore apply the *Watson* harmless error standard.

Watson, reversal is required if it is reasonably probable the result would have been more favorable to the defendant had the error not occurred.' [Citation.]" (*People v. Perez* (2005) 35 Cal.4th 1219, 1232.)

In this case, it is not reasonably probable that the outcome would have been different had the statement at issue been excluded. The statement, perhaps best described as a colorful insult, had nothing to do with any factual issue relevant to the case. Moreover, the prosecution did not reference the statement at closing argument, or at any other time in the trial. We find it highly unlikely that a single insult Cho made at the end of a long and combative interrogation, and which was never even referred to by the prosecution in the jury's presence, affected the jury's determination of guilt.

That is especially true given the voluminous evidence that the prosecution presented to the jury. Cho's trial lasted approximately six and a half weeks. The prosecution called over 80 witnesses, including almost two dozen expert witnesses. The prosecution's case focused primarily on the DNA evidence, but also relied on other physical evidence as well as inconsistencies in Cho's statements to police. Given the sheer volume of probative evidence presented at trial, and the trivial nature of Cho's statement to Paik, it is not reasonably probable the jury would have acquitted Cho, or found him guilty of a lesser offense, had this single statement been excluded from the interrogation transcript.

H. The Trial Court Did Not Err in Admitting Photographic Evidence

Cho argues the trial court erred in admitting three categories of photographs that contained images of: (1) the victims' bodies; (2) the parking area of the apartment where Cho lived in 2009; (3) Byung Song visiting the gravesite of his wife and child.

1. The trial court did not err in admitting photographs of the victims

a. Factual background

Prior to trial, defense counsel objected to the admission of any photographs of the victims, explaining that Cho was not challenging the cause of death, and that the photographs would therefore only serve to inflame the jury. Counsel asserted that photographs of the two-year-old victim were particularly inflammatory. In response, the prosecutor explained that he was only seeking to introduce photographs of the autopsy, which he described as "standard coroner photos that show entry and exit and pathway wounds." The court directed the parties to meet and confer regarding the specific photographs the prosecution intended to introduce at trial, and provide the court with copies of each photograph.

After jury selection, the parties revisited the issue of the victim photographs. Defense counsel re-asserted his objection to the images, arguing that "[t]here is no relevance to the jury seeing any of the victims" because the "defense is not quarreling with cause of death." Counsel asserted the photographs were very graphic and extremely prejudicial, emphasizing that "there

is no reason why anyone should see . . . pictures of a little boy dead in a bathtub and naked on a coroner's slab table."

The prosecutor, however, argued that the photographs were "highly relevant to show what occurred and specifically how it occurred." The prosecutor further explained that the crime reconstruction expert would be providing "a lot of testimony about how these individuals were killed and it's my position that . . . is circumstantial evidence showing that it was not the husband. The husband is not going to march his nanny and son into a bathtub and shoot them at certain angles for someone who wants to get out of an unhappy marriage."

After reviewing the photographs, the trial court noted that they were "fairly clean," and unlikely to have any greater effect on the jury than being "told that one of the victims is a two-and-a-half-year-old child. So . . . I don't see that the photos add anything to that. . . . [T]here is not blood or anything. [¶] . . . [¶] So I don't see any undue prejudice. You're not going to look at this and just gasp from seeing a lot of blood and gore. . . . Where he was shot didn't really disfigure him much. I mean, there is nothing visually horrible to look at in these photos in my opinion. . . . I think the people are correct. It does show the circumstance that he wants to illustrate for the jury and I don't see a lot of repetition here."

b. Cho has failed to establish the court abused its discretion in admitting the autopsy photographs

Cho asserts the trial court abused its discretion by admitting the photographs of the victims, contending that whatever probative value they had was substantially outweighed by their potential for undue prejudice. (See Evid. Code, § 352.) "'"[T]he admission of photographs of a victim lies within the

broad discretion of the trial court when a claim is made that they are unduly gruesome or inflammatory. [Citations.] The court's exercise of that discretion will not be disturbed on appeal unless the probative value of the photographs clearly is outweighed by their prejudicial effect. [Citations.]' [Citation.]'" (*People v. Cage* (2015) 62 Cal.4th 256, 283 (*Cage*).)

"'As a rule, the prosecution in a criminal case involving charges of murder or other violent crimes is entitled to present evidence of the circumstances attending them even if it is grim.' [Citation.] Photographs and other graphic evidence are not rendered 'irrelevant or inadmissible simply because they duplicate testimony, depict uncontested facts, or trigger an offer to stipulate.' [Citation.]" (*People v. Thomas* (2012) 53 Cal.4th 771, 806.) "'[T]he jury [is] entitled to see the physical details of the crime scene and the injuries defendant inflicted on his victims.' [Citation.]" (*Cage, supra*, 62 Cal.4th at p. 283.) Our Supreme Court has "consistently upheld the introduction of autopsy photographs disclosing the manner in which a victim was wounded" to prove, among other things, the circumstances of the crime and "the question of premeditation and deliberation." (*Ibid.*)

As summarized above, in this case the trial court reviewed each of the photographs, and concluded that they were not overly gruesome. The court explained that the autopsy images merely depicted the wounds the victims had suffered, which would help establish the circumstances of the crime and assist the testimony of the medical examiners and the crime reconstruction expert. The court further concluded the photographs were not repetitive.

Cho does not address any of the court's findings regarding the photographs. He nonetheless contends there are two reasons

the court should have excluded the photographs. First, he asserts the photographs were irrelevant because the cause of death was not disputed. As discussed above, however, it is well-established that "prosecutors . . . do not have to forgo use of photographic evidence 'merely because the defendant . . . stipulates to a fact.' [Citation.]" (*Cage, supra*, 62 Cal.4th at p. 283.)

Second, Cho argues the photographs were overly prejudicial because the record shows that one of the jurors became emotional after seeing an image of the two-year-old victim. Cho does not cite any legal authority in support of his assertion that the reaction of a single juror is sufficient to show the trial court abused its discretion in admitting a photograph. "'[V]ictim photographs and other graphic items of evidence in murder cases always are disturbing.' [Citation.]" (*People v. Heard* (2003) 31 Cal.4th 946, 976.) That is especially true where, as here, the victim is a young child. The fact that one juror had an emotional reaction to a photograph is, standing alone, insufficient to demonstrate the trial court abused its discretion.

2. The trial court did not abuse its discretion in admitting photographs of the garage area of the apartment where Cho lived in 2009

a. Background facts

During the testimony of an officer who had aided in the search of Cho's apartment in 2009, the prosecutor asked the witness whether she had taken pictures of the area where Cho parked. Defense counsel objected, explaining: "I object to any photographs of the parking structure of [Cho's] [current] apartment location. It's years after and there is no relevance . . ."

Counsel further explained that during Cho's interrogation, he told officers that in 2003, he kept plastic gloves and other cleaning products in his parking area. According to defense counsel, the photographs the prosecution was attempting to introduce were not relevant to disprove those statements because they had been taken "three, four years later. . . . [It] has nothing to do with the . . . parking structure [Cho used at the time the murders occurred.]."

In response, the prosecution argued that the transcript of Cho's interrogation showed he had told officers he kept plastic gloves in the parking area of the apartment where he lived in 2003, and that he wore the gloves when opening his car door because his hands were sensitive to "oil and stuff." The prosecutor further asserted that the photographs from 2009, which showed he did not keep plastic gloves or any other items near his car, was relevant to prove his prior statements about needing to wear gloves when opening his car door were not truthful: "[T]his is his car, this is it at the time of the arrest. This is his garage. [¶] . . . [¶] [T]he jury has the right to decide if this man has such a strong allergy and is so adamant about using these materials that he would keep them in his car to this present day." The court allowed the photographs, explaining "the objection, I think, goes to the weight, not the admissibility. I understand your argument, but you know, this is really a jury issue. I don't see any undue prejudice. You have all kinds of explanations for it."

During the cross-examination of the officer who had searched Cho's apartment, defense counsel elicited testimony clarifying that the photographs were from Cho's apartment and parking space in 2009, and that the officer had not taken any

similar photographs of Cho's apartment and parking space at the location where the murders occurred in 2003.

b. Cho has failed to establish the court abused its discretion

On appeal, Cho renews the arguments he presented at trial, asserting: "These are pictures of a different car and different garage than that used by defendant and his family in 2003. The prosecutor's purpose was to show the jury that there were no signs of latex and supplies as a defense posited for the circa 2003 site. However, this is a circa 2009 site—in a different location. It is irrelevant and should been excluded." According to Cho, the photographs served no purpose other than to confuse the jury into believing he did not keep cleaning products or latex gloves near his car in 2003.

As the appellant, Cho has "'the burden to affirmatively demonstrate error.' [Citation.]" (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 549.) Cho has provided no argument in response to the prosecution's assertion that the pictures from 2009 cast doubt on the defendant's prior statements that he kept plastic gloves near his car in 2003 because he had sensitive hands, and wore gloves whenever he opened his car door. Cho's explanation for why he wore plastic gloves and his statements about where he stored them were highly relevant facts in light of the glove fragments that were found in the tape that bound Charis's wrists. The trial court did not abuse its discretion in concluding that the pictures from 2009 were relevant to show Cho may not have been truthful in describing why he had latex gloves in 2003, and where he stored them at that time.

Nor can we conclude that the court erred in finding the probative value of the 2009 photographs, however minimal, was not "'substantially' outweighed by the probability of a 'substantial danger' of undue prejudice." (*People v. Holford* (2012) 202 Cal.App.4th 758, 770.) Photographs of Cho's parking area is not the type of evidence that would "tend[] to evoke an emotional bias against the [him]." (*Ibid.*) To the extent Cho is asserting the 2009 photographs might have confused the jury into believing the images depicted his parking space in 2003, counsel addressed that issue through cross-examination of the testifying officer, who clarified the photographs were of the parking area where he lived in 2009, and that she had not taken any similar photographs of the parking area in the apartment where Cho had lived in 2003.

3. Cho has forfeited his challenge to the admission of photographs of Byung Song visiting the gravesite of his wife and child

During trial, the prosecutor introduced a series of photographs showing Byung Song visiting the gravesite of Charis and his deceased son. Although Cho did not did not object to the admission of the gravesite photographs at trial, he now argues that "[t]hese pictures were improperly used to manipulate the emotions of the jury and as such caused undue prejudice to defendant. No other legitimate purpose could possible [*sic*] be served by the introduction of these gravesite photographs. Under Evidence Code section 352, the prejudicial impact of the photographs far outweighed any possible probative value."

"'"[Q]uestions relating to the admissibility of evidence will not be reviewed on appeal in the absence of a specific and timely objection in the trial court on the ground sought to be urged on appeal."'" (*People v. Waidla* (2000) 22 Cal.4th 690, 717.) Because

Cho did not object to the gravesite photographs at trial, he has forfeited any claim that they were improperly admitted under section 352. (See *People v. Hinton* (2006) 37 Cal.4th 839, 893, fn. 19 [failure to object at trial to evidence under section 352 waives claim].)

I. Cho Has Failed to Establish a Brady Violation

Cho alleges that the prosecution committed a "*Brady* violation" (*Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*)) when it failed to provide the defense a written note that Cho gave to Detective McCartin during his interrogation.

1. Factual background

During Detective McCartin's testimony, the prosecution played a video of Cho's interrogation. After playing a portion of the video, the prosecutor asked Detective McCartin the following question: "On the video there is . . . one part where [Cho] writes down something and says do you want me to write it down and then you talked about it what did he write down?" [*Sic*.] Detective McCartin responded that Cho wrote "I didn't do it." On cross-examination, defense counsel asked McCartin: "Where is that letter or what he wrote down I didn't do it?" [*Sic*.] Detective McCartin replied: "I believe it's still in evidence." Defense counsel then asked Detective McCartin why the note was "never turned over to the defense."

The prosecutor objected to the question for lack of foundation, at which point defense counsel indicated he had never been given a copy of the written note, which elicited another objection from the prosecution. The court directed the attorneys to proceed, explaining that they could "take that [issue]

up separately." Defense counsel then continued to question Detective McCartin about the note, asking him what it said. Detective McCartin confirmed that the note said: "I did not do it. . . I did not do it or I didn't do it." The parties did not revisit the issue of the note again at any point in the proceedings.

2. Cho has failed to establish a Brady violation

Although Cho did not raise the issue below, he now asserts that the prosecution's failure to turn over the handwritten note that McCartin referred to in his testimony qualified as a *Brady* violation.

Under *Brady*, the prosecution is "require[d] to disclose evidence that is favorable and 'material' to the defense." (*City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 7.) "'There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.' [Citation.] Prejudice, in this context, focuses on 'the materiality of the evidence to the issue of guilt and innocence.' [Citation.] Materiality, in turn, requires more than a showing that the suppressed evidence would have been admissible [citation], that the absence of the suppressed evidence made conviction 'more likely' [citation], or that using the suppressed evidence to discredit a witness's testimony 'might have changed the outcome of the trial' [Citation.] A defendant instead 'must show a "reasonable probability of a different result."' [Citation.]" (*People v. Salazar* (2005) 35 Cal.4th 1031, 1043.) "Defendant has the burden of showing materiality." (*People v. Hoyos* (2007) 41 Cal.4th 872, 918, disapproved of on

other grounds in *People v. McKinnon* (2011) 52 Cal.4th 610 and *People v. Black* (2014) 58 Cal.4th 912.)

Even if we assume the prosecution did withhold the written note that Cho gave to McCartin,[9] Cho has failed to show how this evidence was "material" within the meaning of *Brady*. During his interrogation, which the jury heard and was given a transcript of, Cho repeatedly denied any involvement in the crime. Given these oral denials of guilt, it is not reasonably probable that a contemporaneously-written note containing an additional denial of guilt would have altered the outcome of the trial.

J. Cho's Ineffective Assistance of Counsel Claims Cannot Be Resolved on Direct Appeal

Finally, defendant raises two claims for ineffective assistance of counsel. First, he contends his trial counsel provided ineffective assistance by failing "to put on an adequate defense to the DNA evidence." More specifically, he contends his counsel should have called a DNA expert to testify in his defense, and that counsel's failure to do so was "rooted in financial rather than tactical reasons." Second, Cho contends his trial counsel provided ineffective assistance by failing to call a fingerprint expert to rebut the numerous experts who testified that the fingerprint found on the tape used to bind Charis's wrists did not match Byung Song.

"On direct appeal, a conviction will be reversed for ineffective assistance only if (1) the record affirmatively discloses

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[9] Cho has cited no evidence establishing that the prosecution actually withheld the note, and we have found nothing in the record that would allow us to make that determination.

counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation. All other claims of ineffective assistance are more appropriately resolved in a habeas corpus proceeding." (*People v. Hung Thanh Mai* (2013) 57 Cal.4th 986, 1009.) In this case, the record does not show why Cho's counsel chose not to call a DNA or fingerprint expert, nor can we determine whether there might have been a tactical reason not to call either type of expert. Cho's ineffective assistance claims are therefore more appropriate for resolution in a habeas proceeding.[10]

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[10] Cho's appellate brief also asserts a general claim for "prosecutorial misconduct," which encompasses much of the same conduct that underlies his other claims. For example, Cho asserts the prosecutor's misconduct included, among other things: the admission of evidence of Cho's prior financial misdeeds; late production of evidence related to the DNA testing and the typewriter; the admission of prejudicial photographs; the admission of statements officers made at Cho's interrogation regarding the strength of the DNA evidence; and submitting an interrogation transcript to the jury that misattributed an inflammatory statement to Cho. As explained above, we have found no error with respect to any of those claims except the last one, which we deem harmless. We therefore reject Cho's derivative claim that these acts, whether considered individually or cumulatively, constitute prosecutorial misconduct.

Cho's prosecutorial misconduct claim also references other forms of conduct that are not specifically raised in his other claims, which include asking "leading questions" to witnesses, and requesting the jury to draw unreasonable inferences from the trial evidence. Cho's brief, however, contains no legal analysis showing how these acts qualify as prosecutorial misconduct. His brief, for example, does not cite or discuss any legal authority

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.

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showing that the conduct he complains of actually qualifies as a form of prosecutorial misconduct. Instead, he simply describes the disputed conduct, and asserts that it qualifies as prosecutorial misconduct. These conclusory assertions do not constitute reasoned legal argument, nor are they sufficient to affirmatively demonstrate error. (See, e.g., *In re S.C.* (2006) 138 Cal.App.4th 396, 408 ["To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. . . . Hence conclusory claims of error will fail"].)