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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. JOHN REED, Defendant and Appellant.	A171601 (Alameda County Super. Ct. No. 175169)

Defendant John Reed appeals from the trial court's denial of his petition for resentencing pursuant to Penal Code[1] section 1172.6 following an evidentiary hearing. He argues there was insufficient evidence to establish beyond a reasonable doubt that he was the actual killer. We affirm.

I. BACKGROUND

A. Preliminary Hearing

The following testimony was presented at Reed's preliminary hearing in November 2014.

On October 27, 2013, J.F. attended the Raiders game in Oakland. After he was kicked out of the stadium for smoking a cigarette, he stood in the BART parking lot next to his friend's truck and drank a beer while listening to the game on the radio. When he heard what he thought were firecrackers,

[1] Undesignated statutory references are to the Penal Code.

he looked in that direction and saw a man on the corner and a black four-door car with the front passenger window rolled down next to the man. The man was about 20 yards from J.F. J.F. saw only one person in the black car—someone in the driver's seat. He could not be sure there was only one person in the car because "there could have been someone in the back seat crouched down. So I'm not going to . . . say for sure there was only one. It's just that flash in my memory there's only one that I remember seeing."

J.F. soon realized the sounds were gunshots. Initially, the black car was not moving but after the gunshots stopped it quickly turned and sped away. J.F. approached the person on the corner, who had fallen to the ground. He thought the gunshots came from the black car, testifying that "[t]here was nobody else around that I saw in the proximity of where the sound came from, that would just be my opinion that it had to be from that car from the situation that I saw." He did not see anyone else near the corner other than the driver of the black car and the man who fell to the ground. Oakland police sergeant Robert Rosin identified the victim as Damon Jones, whose nickname was Mone. The parties stipulated Jones died from multiple gunshot wounds. Sergeant Rosin testified the shooting occurred on the corner of 72nd Avenue and Hawley Street.

S.M. lived on 72nd Avenue down the block from the BART parking lot. She stood in front of her building talking with another woman and two men were nearby. Because it was "a bad area," she was "always on alert," and when she saw a black Nissan Maxima drive by on 72nd Avenue she made eye contact with the driver, who she identified as Reed. The car continued driving down 72nd Avenue—a one-way street—in the direction of the BART station. A few moments later, Reed walked up the street from the direction the black car had gone. He told the two men he was looking for his cousin,

Mone. S.M. described Reed as aggressive, nervous, and sweating. Reed stood there for five to ten minutes before he walked back down 72nd Avenue towards Hawley Street. Minutes after Reed walked away, S.M. heard gunshots coming from down the block closer to the stadium. After Reed had walked away, S.M. did not see the black car again and did not recall any other black cars driving down 72nd Avenue before she heard the gunshots. S.M. did not see a passenger in the black car. When asked if there was anybody in the back seat, she testified she did not see anyone in the car except for Reed. While it did not mean no one else was in the car, she did not see anyone else.

A.C. also stood on 72nd Avenue near the group of people. Reed[2] approached, alone, and said he was looking for his cousin, Mone. Reed gave the group his phone number and asked them to call if they saw Mone, and he offered to pay them if they did so. Reed then walked away towards the direction of the BART station. Minutes before Reed walked up to the group, A.C. had seen a four-door black car drive by and thought it was Reed in the car. A.C. did not see anyone else in the car. After Reed walked away down 72nd Avenue, A.C. saw him stop at the driver's side of the same black car. A.C. looked away and while he did not see Reed get in the car, he saw the car pull away seconds later. The car drove towards Hawley Street and stopped at the corner of 72nd Avenue and Hawley Street. A couple of seconds after the car drove away, A.C. heard gunshots. A.C. did not know if the gunshots came from the black car, but they came from the general direction of the corner. A.C. testified the shots could have been coming from Reed's car

[2] A.C. knew Reed because they were both from West Oakland and had served jail time together.

"because that was the only car that was there and there was no one else there."

Sergeant Rosin testified that seven 9-millimeter casings were found at the scene. When Reed was arrested, police recovered two 9-millimeter firearms in his bedroom.[3]

B. Charges and Conviction

In 2017, Reed was charged by amended information with murder (§ 187, subd. (a); count one) and three counts of possession of a firearm by a felon (§ 29800, subd. (a)(1); counts two through four). The information also alleged multiple sentencing enhancements, including that Reed personally used a firearm, and prior strike convictions. Reed pled no contest to voluntary manslaughter (§ 192, subd. (a)) and admitted personally using a firearm (§ 12022.5, subd. (a)) in exchange for a 21-year prison sentence and dismissal of the balance of the information. In 2018, the court sentenced Reed to 21 years in prison.

C. Changes to Homicide Law and Section 1172.6

Effective 2019, "the Legislature amended the law of homicide, eliminating several theories of liability based on imputed malice." (*People v. Patton* (2025) 17 Cal.5th 549, 556 (*Patton*).) The amendments were " 'to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.' " (*People v. Lewis* (2021) 11 Cal.5th 952, 959 (*Lewis*).) Subsequent legislation clarified that relief under section 1172.6—the current resentencing statute—extends to manslaughter and attempted murder under the natural and

[3] We do not consider portions of Sergeant Rosin's testimony to which the trial court sustained objections. (See § 1172.6, subd. (d)(3).)

probable consequences doctrine. (*People v. Glass* (2025) 110 Cal.App.5th 922, 926; *Patton*, at p. 558.) As a result, malice may no longer be imputed to a homicide defendant solely because they participated in another crime. (*Patton*, at p. 558.)

A defendant seeking relief from a murder or manslaughter conviction under a theory disallowed by these amendments may petition the trial court to vacate the conviction and for resentencing on any remaining counts. (§ 1172.6, subd. (a).) To do so, the petitioner must first file a facially sufficient petition stating that, among other allegations, he could not presently be convicted of murder due to the 2019 amendments. (§ 1172.6, subds. (a), (b)(1)(A); *Patton*, *supra*, 17 Cal.5th at pp. 558–559.) Second, if the petition is facially sufficient, the court holds a hearing to determine whether the petitioner has made a prima facie case for relief. (§ 1172.6, subd. (c); *Patton*, at p. 559.) Finally, if a prima facie showing is made, the court proceeds to an evidentiary hearing at which the People have the burden of proving beyond a reasonable doubt that the petitioner is guilty under the amended law. (§ 1172.6, subds. (c),(d); *Patton*, at p. 559.)

D. Reed's Resentencing Petition

In July 2023, Reed filed a form petition for resentencing pursuant to section 1172.6.[4] By checking boxes, Reed alleged, as relevant here: an information was filed against him that allowed the prosecution to proceed under a theory of felony murder, murder under the natural and probable consequences doctrine, or other theory under which malice is imputed to a person based solely on that person's participation in a crime; he accepted a

[4] The form petition identified former section 1170.95. At the time Reed filed his petition, former section 1170.95 had been renumbered as section 1172.6 without substantive change. (*People v. Emanuel* (2025) 17 Cal.5th 867, 880, fn. 4.)

plea offer in lieu of trial at which he could have been convicted of murder; and he could not presently be convicted of murder due to changes made to sections 188 and 189. After reviewing Reed's petition, the trial court appointed him counsel.

In their brief response to the petition, the People conceded that Reed made a prima facie showing of eligibility for relief under section 1172.6. They explained that Reed was found guilty by plea agreement and there was "no mechanism outside of 'factfinding' that allows the court to deny [Reed's] eligibility for relief." The People maintained that Reed "was the actual killer or perpetrator in the underlying offense," but stated that "*People v. Lewis* (2020) 43 Cal.App.5th 1128[5] suggest[ed] he [was] entitled to an evidentiary hearing." The People asserted that, if the court concluded Reed made a prima facie case, they would rely on the entire record of conviction to prove he was not entitled to relief.

In his reply, Reed asserted that the prosecution correctly conceded that he was entitled to an evidentiary hearing. Further, he contended the evidence presented at the preliminary hearing did not prove beyond a reasonable doubt that he was ineligible for resentencing. Specifically, he argued that no one testified they saw him shoot the victim, or even witnessed the shooting as it occurred. Additionally, no one testified that Reed was the only person in the car. Based on this, he argued the prosecution could not prove beyond a reasonable doubt that he was guilty of murder.

In August 2024, the trial court conducted a hearing on Reed's petition. At this hearing, the court set a briefing schedule and scheduled another

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[5] The People likely meant to cite *Lewis*, *supra*, 11 Cal.5th 952, the Supreme Court's opinion reversing the appellate court decision cited in their brief.

hearing in September 2024. Presumably, the court issued an order to show cause.[6] Subsequently, the People filed a return, arguing that Reed was prosecuted under the theory that he was the actual perpetrator so his petition for resentencing must be denied. The People set forth testimony from the 2014 preliminary hearing, summarized *ante*. They argued Reed was ineligible for resentencing because he was guilty of murder under a theory still valid after the 2019 amendments, that is, because he was the actual killer. Reed did not submit further briefing.

In September 2024, the trial court conducted an evidentiary hearing pursuant to section 1172.6, subdivision (d). The court explained this case was an "odd fit" because there was no "affirmative evidence of multiple actors" where the defendant was convicted under a theory of implied malice. It needed to determine whether there was proof beyond a reasonable doubt that the "theory clearly is there was a sole actor" and Reed was "the actual killer." Based on the evidence presented at the preliminary hearing, the court determined that the People proved beyond a reasonable doubt, based on reasonable inferences, that Reed was responsible for the killing. Accordingly, the court denied Reed's petition for resentencing.

II. DISCUSSION

Reed argues there was insufficient evidence to establish beyond a reasonable doubt that he was the actual killer.

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[6] The record does not contain an order to show cause or the transcript from the August 2024 hearing. Based on the trial court's minutes, the People's subsequent brief titled "return to order to show cause why resentencing relief should not be granted" (capitalization and boldface omitted), and the court later conducting an evidentiary hearing pursuant to section 1172.6, subdivision (d), we presume the court issued an order to show cause. (See § 1172.6, subds. (c), (d).)

A. General Legal Principles and Standards of Review

Resentencing pursuant to section 1172.6 applies, as relevant here, to manslaughter convictions after a plea offer is accepted at which the defendant could have been convicted of murder. (§ 1172.6, subd. (a).) After a facially sufficient petition is filed, the trial court must hold a hearing to determine whether the petitioner has made a prima facie case for relief. (§ 1172.6, subd. (c); *Patton*, *supra*, 17 Cal.5th at p. 559.) While this inquiry is " 'limited,' " it is not "simply duplicative of the facial inquiry." (*Patton*, at p. 562.) At this stage, the court may not reject the petition's factual allegations on credibility grounds unless they are refuted by facts in the underlying record of conviction. (*Id.* at p. 563; *Lewis*, *supra*, 11 Cal.5th at pp. 970–971.) In *Lewis*, the Supreme Court cautioned that "[i]n reviewing any part of the record of conviction at this preliminary juncture, a trial court should not engage in 'factfinding involving the weighing of evidence or the exercise of discretion.' " (*Lewis*, at p. 972; accord, *Patton*, at p. 563.) Following *Lewis*, the Supreme Court in *Patton* held that at the prima facie stage, a court may rely on "unchallenged, relief-foreclosing facts within a preliminary hearing transcript to refute conclusory, checkbox allegations." (*Patton*, at p. 564.) This does not "constitute impermissible judicial factfinding." (*Ibid.*) If the petitioner makes a prima facie showing, the trial court holds a hearing to determine whether to vacate the conviction and to recall the sentence. (*Id.* at p. 559.) At this hearing, evidence may be presented and the burden of proof is on the prosecution to prove, beyond a reasonable doubt, that the petitioner is guilty of murder under current law. (*Ibid.*)

The determination whether a petitioner made the requisite prima facie showing of eligibility for relief is reviewed de novo. (*People v. Harden* (2022)

81 Cal.App.5th 45, 52.) A court's decision to deny a petition after holding an evidentiary hearing under section 1172.6, subdivision (d), is reviewed for substantial evidence. (*People v. Davis* (2024) 107 Cal.App.5th 500, 509.) "This means '[w]e " 'examine the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value that would support a rational trier of fact in finding [the defendant guilty] beyond a reasonable doubt.' " ' " (*Ibid.*) " ' "Substantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence." ' " (*Id.* at p. 510.) " 'A reversal for insufficient evidence "is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support' " the [fact finder]'s verdict.' " (*Ibid.*, quoting *People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

B. Prima Facie Showing

By conducting an evidentiary hearing pursuant to section 1172.6, subdivision (d), the trial court necessarily determined that Reed made a prima facie showing of eligibility for relief. (See § 1172.6, subds. (c), (d).) The People argue the record of conviction demonstrates that Reed is ineligible for relief as a matter of law and, therefore, his petition should have been denied at the prima facie stage.[7] In response, Reed argues only that the People forfeited this contention by failing to raise it below.

[7] We observe that the People's initial response to Reed's petition, in which they conceded a prima facie showing, did not discuss the underlying facts of the offense or include the preliminary hearing transcript. Reed's reply brief, however, did summarize the preliminary hearing testimony. Therefore, the information was before the trial court when it made its prima facie determination.

In the trial court, after Reed filed his form petition, the People conceded that Reed made a prima facie showing for relief. But we are not required to adhere to the People's concession. (See *Tun v. Wells Fargo Dealer Services, Inc.* (2016) 5 Cal.App.5th 309, 327 ["we are not bound to follow the meaning of a statute (or the law) conceded by a party"].) Additionally, from their initial response, the People made the same substantive argument they assert on appeal—that Reed was prosecuted under the theory that he was the actual killer and, therefore, was not entitled to relief under section 1172.6. (See *Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 670 [arguments not raised in the trial court are forfeited on appeal].) Moreover, the record demonstrates that the prosecutor made the concession based on *Lewis*, *supra*, 11 Cal.5th 952. There, the Supreme Court held that a trial court may consider the record of conviction to determine whether the petitioner met their prima facie burden. (*Id.* at pp. 957, 970.) In doing so, the court explained that at this stage, "a trial court should not engage in 'factfinding involving the weighing of evidence or the exercise of discretion.' " (*Id.* at p. 972.) The prosecutor interpreted that provision to dictate that because Reed was convicted pursuant to a plea agreement, there was "no mechanism outside of 'factfinding' that" would allow the court to determine his eligibility for relief at the prima facie stage. Therefore, the prosecutor explained the People would rely on the record of conviction, including the preliminary hearing transcript, at the evidentiary hearing.

Shortly after Reed filed his opening brief in this appeal, the Supreme Court issued *Patton*, *supra*, 17 Cal.5th 549. There, the court held that at the prima facie stage, a court may rely on "unchallenged, relief-foreclosing facts within a preliminary hearing transcript to refute conclusory, checkbox allegations," which does not "constitute impermissible judicial factfinding."

(*Id*. at p. 564.) Now, it is settled that a court may rely on a preliminary hearing transcript—at least, unchallenged, relief-foreclosing facts in the transcript—in determining whether a petitioner made a prima facie showing for relief.[8] Accordingly, at the time the People made their concession, the parties and the trial court were without the benefit of *Patton*. Despite the People relying heavily on *Patton* in their respondent's brief, Reed fails to cite or discuss it in his reply brief. For these reasons, we will not apply forfeiture.

In any event, our task as an appellate court is to review the trial court's ruling, not its reasoning. (*People v. Turner* (2020) 10 Cal.5th 786, 807.) " ' "No rule of decision is better or more firmly established by authority, nor one resting upon a sounder basis of reason and propriety, than that a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion." ' " (*Ibid*.) Therefore, irrespective of the trial court's reasoning for denying Reed's petition, we must determine whether that decision was ultimately correct.

Our independent review of the record demonstrates that Reed did not make a prima facie showing for relief. (See § 1172.6, subd. (c).) In *Patton*, the Supreme Court determined that a trial court may properly rely on unchallenged facts in a preliminary hearing transcript to refute conclusory allegations in a form petition regardless of whether the petitioner stipulated

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[8] Before *Patton*, appellate courts disagreed about the record of conviction when a petitioner had been convicted after entering a plea. Some courts held the preliminary hearing transcript was part of the record of conviction and could be reviewed to make the prima facie determination. There were also decisions that rejected use of the preliminary hearing transcript at the prima facie stage. (See *Patton*, *supra*, 17 Cal.5th at pp. 561–562.)

to the transcript as the factual basis of their plea. (*Patton*, *supra*, 17 Cal.5th at p. 564.) Here, the record of conviction, including the preliminary hearing transcript, contains relief-foreclosing facts compelling the conclusion that Reed was convicted under a still valid theory of homicide, that is, he was the actual killer. (See *People v. Strong* (2022) 13 Cal.5th 698, 710 [section 1172.6 relief is unavailable if the defendant was the actual killer].)

The preliminary hearing testimony supports only the theory that Reed was the shooter. The witnesses saw only Reed in the black car. The witness in the parking lot saw only Jones and the black car in the area when he heard gunshots, making him believe the gunshots came from the black car. The witnesses down the block placed Reed as the driver of the black car and testified Reed's car was the only car on the corner when the shooting occurred. No one saw another black car drive down 72nd Avenue—a one-way street going towards Hawley Street and the BART station—during this time. Before the shooting, Reed walked up 72nd Avenue, asked for Mone, appeared nervous, and offered payment for information on Mone's whereabouts. Shortly after Reed walked away in the direction of Hawley Street, he stopped next to the driver's door of the black car, the car drove off and, within minutes, Jones, known as Mone, was shot at the corner. "Although there is no testimony from anyone who saw [Reed] fire the fatal shot[s], there is nothing to suggest that any other person was involved in the incident. The inference that [Reed] acted alone and was the actual killer is uncontradicted and compelling." (*People v. Pickett* (2023) 93 Cal.App.5th 982, 990.) Moreover, that Reed alone was charged with the killing and admitted to personally using a firearm in committing voluntary manslaughter further indicate that he was the sole, direct perpetrator. Therefore, had Reed not resolved his case by plea, the record of conviction conclusively establishes

that the prosecution could not have proceeded under any homicide theory which is no longer valid. (See *People v. Antonelli* (2025) 17 Cal.5th 719, 724 [court may dismiss petition if the record establishes conclusively that the petitioner is ineligible for relief].)

Confronted with a record containing "unchallenged, relief-foreclosing facts" (*Patton*, *supra*, 17 Cal.5th at p. 564), as he did in the trial court, Reed proffers only conclusory allegations and speculation. He asserts there could have been another person in the car. Or there could have been a robbery that none of the witnesses observed. But these are not "specific facts that identify someone else as the direct perpetrator." (*Id.* at p. 567.) Rather, they are "mere latent, speculative possibilities; that is, a hypothetical alternate direct perpetrator cannot be conjured from thin air or a legal conclusion." (*Ibid.*) "[A] section 1172.6 petitioner who, despite having access to counsel upon submission of a facially sufficient petition, offers only conclusory allegations of entitlement to relief, in response to a record of conviction that demonstrates the petitioner's conviction was under a still-valid theory, has not, thereby, made a prima facie showing." (*Id.* at p. 565.) That is the case here.

In sum, Reed was ineligible for section 1172.6 resentencing as a matter of law because the record of conviction demonstrates he was convicted only under a theory that he was the actual killer, which remains a valid theory for murder liability after the 2019 amendments. The trial court, therefore, correctly denied his petition.

C. Sufficiency of the Evidence

Even assuming Reed made a prima facie showing for relief, we conclude that substantial evidence supports the trial court's conclusion that Reed is guilty of murder under current law because he was the actual killer. We

reach this conclusion for substantially the same reasons as stated above. The testimony presented at the preliminary hearing "was substantial circumstantial evidence from which a reasonable fact finder could determine that it was [Reed] who shot and killed [Jones]." (*People v. Davis*, *supra*, 107 Cal.App.5th at p. 510.) There was no testimony presented to support Reed's arguments that there could have been someone else in the car or there could have been a robbery no one witnessed. The testimony which was presented supports only the finding that Reed was the actual killer. Examining the record in the light most favorable to the judgment, substantial evidence exists such that a rational trier of fact could have found as the trial court did. (See *id.* at p. 509.) Because we cannot conclude that upon no hypothesis whatever is there substantial evidence to support the findings, reversal is unwarranted. (See *id.* at p. 510.) Accordingly, the trial court properly denied Reed's petition.

III. DISPOSITION

The September 12, 2024 order denying Reed's petition for resentencing is affirmed.

LANGHORNE WILSON, J.

WE CONCUR:

HUMES, P. J.

BANKE, J.