

Motion to unseal juror information in the trial court based on *Wheeler* issue to be raised on appeal

[ATTORNEY]
Attorney at Law, [SBN]
[ADDRESS]
[TELEPHONE]
Attorney For Appellant

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF [COUNTY NAME]

THE PEOPLE OF THE STATE OF CALIFORNIA,)
) [3/5] DCA No. _____
Plaintiff and Respondent,) [COUNTY] No. _____
)
vs.)
)
[APPELLANT’S NAME],)
)
Defendant and Appellant.)
_____ /

**APPELLANT’S PETITION TO UNSEAL JUROR IDENTIFYING
INFORMATION CONTAINED IN AUGMENTED REPORTER’S
TRANSCRIPT OF VOIR DIRE (Code Civ. Proc., §237, subd.(b))**

TO THE HONORABLE [NAME], JUDGE PRESIDING, AND TO THE DISTRICT
ATTORNEY OF [COUNTY NAME] COUNTY:

Appellant [APPELLANT NAME] applies to this court pursuant to section 237,
subdivision (b) of the California Code of Civil Procedure for an order unsealing juror
identifying information pertaining to jury selection, including but not limited to the
reporter’s transcript of voir dire which has been prepared as an augmentation in this case.

Appellant has not set a motion date in this petition, because section 237, subdivision (b) states that this court shall determine upon review of this petition whether to set a hearing on the petition and, if it deems a hearing, appropriate, shall set a hearing.

Good cause exists for this application as set forth here and in the declaration of appellant's attorney [YOUR NAME]. First, the requested augmented reporter's transcript of jury selection, which was ordered sealed by this court and the Court of Appeal pursuant to Code of Civil Procedure section 237, subdivision (b), is essential to an appellate determination of a challenge to this court's denial of a challenge to the trial prosecutor's use of a peremptory challenge to eliminate the only Black prospective juror. When a *Wheeler* (*People v. Wheeler* (1978) 22 Cal.3d 258) challenge is raised on appeal, the propriety of the trial court's denial of such a motion is determined by reviewing the questioning of that juror and other jurors to determine whether the trial judge fulfilled his duty to scrutinize the prosecutor's proffered race-neutral reasons for the exercise of the peremptory challenge and to determine the good faith of those reasons in light of the questioning and responses of other jurors and prospective jurors. (See, e.g., *People v. Crittenden* (1994) 9 Cal.4th 83, 115; *People v. Fuentes* (1991) 54 Cal.3d 707, 718; *People v. Hall* (1983) 35 Cal.3d 161, 167-168; *People v. Avit* (1995) 35 Cal.App.4th 94, 105, 108; *People v. Tapia* (1994) 25 Cal.App.4th 984; *People v. Gonzales* (1989) 211 Cal.App.3d 1186, 1193.) If the burden of justification is not sustained as to any of the questioned peremptory challenges, the presumption of their validity is rebutted, the court must dismiss the jury thus far selected, the venire must be quashed, and jury selection must begin anew to vindicate the complaining party's right to a fair jury selection process.

(*People v. Wheeler, supra*, 22 Cal.3d at p. 282; accord *People v. Montiel* (1993) 5 Cal.4th 877.) Without juror identifying information, the requisite evaluation cannot be made by appellant's counsel or the reviewing court. In fact, presumably pursuant to this court's instructions, neither the clerk's minutes nor the reporter's transcript of the hearing at which the prosecutor expressed his reasons for excusing the only Black prospective juror, disclose the name of that juror. Appellant thus asks, in addition, that the identity of that juror be disclosed so that appellant can obtain meaningful appellate review of the *Wheeler* issue in this case.

For all the foregoing reasons, appellant respectfully requests that the identities of the jurors in the reporter's transcript of voir dire be revealed to permit meaningful appellate review of appellant's *Wheeler* challenge.

Dated: _____

Respectfully submitted,

[YOUR NAME]
Attorney For Appellant

DECLARATION OF [YOUR NAME]

I, [YOUR NAME], declare as follows:

1. I am appointed appellate counsel for [APPELLANT'S NAME] in [Third/Fifth] District Appeal No. _____.

2. I have reviewed the appellate record filed in this case. [DESCRIBE MOTIONS OR OTHER WORK SO FAR, e.g., On [DATE], I filed an augmentation application to add the reporter's transcript of voir dire to the appellate record in this case. That motion was made, because the appellate record showed that a *Wheeler* motion had been made to challenge the prosecutor's use of a peremptory challenge to dismiss the only Black prospective juror, who was unnamed in the clerk's minutes and reporter's transcript of the hearing on this issue. Without the disclosure of the identities of the Black prospective juror and the other jurors in connection with voir dire, I cannot obtain for appellant meaningful review of this Court's ruling on the *Wheeler* motion, an important constitutional issue. To make a complete record on this issue, I would need a reporter's transcript of voir dire showing the questioning pertaining to the juror in question and other jurors to establish that the prosecutor's reasons for excusing the juror in question were not appropriate and that the juror was excused on the basis of racial bias rather than valid, non-discriminatory reasons. I have reason to believe that a comparison of that jurors' questioning and responses, once he is identified, with those of other, non-Black jurors might tend to undermine the validity of the prosecutor's reasons for removing that unnamed juror as mentioned at [PAGE NUMBERS] of the reporter's transcript. The prosecutor stated on the record a concern with the fact that the unnamed Black juror had

to work to support his family. However, that reason appears to be suspect under the case law and may turn out to be improper in light of the information revealed during voir dire about other jurors.

3. Code of Civil Procedure section 237 requires that an application be made to the trial court in the first instance when a party seeks to unseal juror identifying information. Civil Procedure Code section 237, subdivision (b) requires that a party show good cause to unseal juror identifying information. In this case, appellant's counsel cannot present an adequate record to support a challenge to the trial court's denial of the defense *Wheeler* motion without disclosure of the jurors' identities contained in the voir transcript to enable appellant's counsel and the appellate court to determine which juror was the Black juror in question and what questions were asked of and what answers were given by other jurors. If such information is not made available, then appellant will be denied meaningful appellate review of a challenge to the denial of the defense *Wheeler* motion. I therefore respectfully request that this court file an order requiring the court reporter to identify the jurors referred to in reporter's transcript of voir dire and to file the reporter's transcript with that information as an augmentation with the Court of Appeal.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this [DATE], at [CITY], California.

[YOUR NAME]