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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JEAN CARLOS CANDELARIA,

Defendant and Appellant.

B271365

(Los Angeles County
Super. Ct. No. BA404664)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig Elliott Veals, Judge. Affirmed.

Eric E. Reynolds, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Following a jury trial, defendant, Jean Carlos Candelaria, was convicted of assaulting a peace officer (Pen. Code, § 245, subd. (c)) and two counts of evading an officer with willful disregard for the safety of people or property (Veh. Code, § 2800.2, subd. (a)). The trial court found defendant had two prior serious or violent felonies (Pen. Code, §§ 667, subds. (a) & (b)-(i)) and imposed a 35-year-to-life state prison sentence.

Defendant's appointed appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) requesting we independently review the entire record to determine if there are any arguable issues on appeal. We notified defendant he could independently brief any contentions he wanted to have considered. Defendant filed a supplemental brief arguing his trial attorney was ineffective because she: (1) failed to subpoena the partner of one of the testifying officers; (2) conceded to the jury that he was guilty of the evading offenses; and (3) did not file a motion to examine the personnel file (for exculpatory or impeachment information) of the officer who testified to the assault. We affirm the judgment.

BACKGROUND

The People offered the testimony of Los Angeles Police Officer Josue Pena to support an evading offense which occurred on November 8, 2012. Pena and his partner initially intended to stop defendant because his vehicle had improperly tinted windows and no license plate; and because defendant failed to stop at a stop sign. Defendant however fled from the officers, committing multiple Vehicle Code violations along the way. He

was arrested after he collided with other vehicles at an intersection.

Culver City Police Officer Jason Salazar provided the sole testimony regarding evading and assault offenses that occurred on November 24, 2013. At approximately 4:00 a.m., he and his partner responded to a radio call of a suspicious person attempting to open car doors on Hannum Avenue. When Salazar reached the scene, he observed defendant sitting alone in the rear passenger seat of a Chevrolet Trailblazer. Salazar believed defendant may have been the person reportedly attempting to burglarize vehicles. Salazar stopped his car in front of the Trailblazer and shined spotlights to illuminate it.

As the officers were exiting the patrol car, defendant began to move around inside the Trailblazer. Salazar yelled, "Police, don't move, let me see your hands." Defendant climbed into the driver's seat, turned on the headlights, started the vehicle, and suddenly accelerated toward Salazar. The officer jumped to the curb. Defendant sped by Salazar and, as he did so, his right-side mirror passed within one foot of the officer.

A police pursuit ensued wherein defendant committed multiple traffic infractions. Defendant escaped after entering a parking structure and abandoning his vehicle. Defendant's fingerprints were found on the interior and exterior of the car.

DISCUSSION

Ineffective Assistance of Counsel

““A criminal defendant is guaranteed the right to the assistance of counsel by both the state and federal Constitutions.

[Citations.] ‘Construed in light of its purpose, the right entitles the defendant not to some bare assistance but rather to *effective* assistance.’ [Citations.] It is defendant’s burden to demonstrate the inadequacy of trial counsel. [Citation.] [The California Supreme Court has] summarized defendant’s burden as follows: “In order to demonstrate ineffective assistance of counsel, a defendant must first show counsel’s performance was “deficient” because his “representation fell below an objective standard of reasonableness . . . under prevailing professional norms.” [Citations.] Second, he must also show prejudice flowing from counsel’s performance or lack thereof. [Citation.] Prejudice is shown when there is a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.”” [Citation.] [¶] Reviewing courts defer to counsel’s reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” [Citation.] Defendant’s burden is difficult to carry on direct appeal, . . . : “Reviewing courts will reverse convictions [on direct appeal] on the ground of inadequate counsel only if the record on appeal affirmatively discloses that counsel had no rational tactical purpose for [his or her] act or omission.” [Citation.]’ [Citation.] If the record on appeal ““sheds no light on why counsel acted or failed to act in the manner challenged[,] . . . unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation,’ the claim on appeal must be rejected,” and the ‘claim of ineffective assistance in such a case is more

appropriately decided in a habeas corpus proceeding.’ [Citation.]” (*People v. Vines* (2011) 51 Cal.4th 830, 875-876.)

Subpoena of Officer Baskaron. Based on the arguments of the prosecutor and defense counsel, it appears Baskaron was Salazar’s partner. The record does not provide an explanation of why Baskaron was not subpoenaed by the defense. We cannot rule out the possibility that defense counsel was concerned Baskaron’s testimony would incriminate defendant. In any event, counsel made the tactical decision to argue to the jury that the reason the prosecutor did not have Baskaron testify may have been because Baskaron would have damaged the People’s case. We cannot say there was no satisfactory explanation for defense counsel’s decision not to subpoena Baskaron. And, defendant has not explained (nor can he on this cold appellate record) what Baskaron’s testimony would have been and how it may have altered the result of the trial.

Concession of Guilt. Again we are provided with no explanation for defense counsel’s concession to the jury that defendant was guilty of the evading offenses. Defendant does not identify any weaknesses in the prosecution’s evading evidence and, indeed, we note that the November 24 charge was fortified by the fact that it was captured on video (which was played for the jury). It is not irrational for a defense attorney to concede certain charges that cannot be reasonably disputed in order to bolster the credibility of a defense mounted against other charges. (See *People v. Gurule* (2002) 28 Cal.4th 557, 611-612; see also *People v. Samayoa* (1997) 15 Cal.4th 795, 845-846.) Although defendant claims his attorney disregarded his instruction to refrain from making the concession, he points to nothing in the record to support that assertion. The record does

not demonstrate it was unreasonable for defense counsel to concede guilt on the evading offenses, or that there may have been a different result if she had adopted another strategy.

Motion for Production of Exculpatory/Impeachment Evidence. It is difficult to conclude defense counsel was incompetent for failing to file such a motion as the record does not address what information defense counsel had about Salazar's history with the police department. What we do know is counsel solicited testimony that Salazar was a sworn police officer for less than 18 months, suggesting his personnel file was likely not extensive.

In addition, there is nothing in the record that gives the impression defendant's proposed motion would have yielded information that could have altered the outcome of the trial. (See *In re Avena* (1996) 12 Cal.4th 694, 730 [trial counsel cannot be deemed ineffective for failing to file a motion to discover personnel records where habeas petitioner fails to show what counsel would have discovered had he made the motion].) In fact, even if we were to assume complaints about the officer's conduct would have been discovered, we have no information indicating witnesses related to those complaints would have been available and willing to testify, or what their testimony would have been. (See *People v. Medina* (1995) 11 Cal.4th 694, 773 [claim of ineffective assistance of counsel cannot be established by mere speculation about testimony of potentially available witnesses].)

Under these circumstances, defendant has not satisfied his burden of demonstrating either the ineffectiveness of his trial attorney, or that his trial attorney's alleged mistakes prejudiced his case.

Appellate Counsel's Wende Request

Pursuant to *Wende, supra*, 25 Cal.3d 436, we examined the record to determine if there are any arguable issues on appeal. Based on that independent review, we have determined there are no arguable issues on appeal. Defendant's appointed counsel has fully satisfied his responsibilities under *Wende*.

DISPOSITION

The judgment is affirmed.

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KUMAR, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.