Filed 3/13/12 P. v. Vega CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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. ABUNDIO VEGA, Defendant and Appellant.	B229402 (Los Angeles County Super. Ct. No. VA115026)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael L. Schuur, Judge. Affirmed.

The Defenders Law Group, Paul Richard Peters and Lawrence R. Young, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

Abundio Vega, convicted of six counts of committing a lewd act upon a child under the age of 14 years (Pen. Code, § 288, subd. (a)) and three counts of oral copulation with a person under the age of 14 years (Pen. Code, § 288a, subd. (c)(1)), appeals his convictions, contending that the trial court failed to instruct the jury on reasonable doubt. As Vega fails to demonstrate error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Because the issue raised by Vega on appeal is unrelated to the evidence in the case, a recitation of the factual background of the matter is unnecessary to resolve the appeal. Vega was tried by jury. The trial court instructed the jury prior to deliberations on November 4, 2010.

The record includes two transcripts of the proceedings in which the court instructed the jury. One, dated December 21, 2010, and filed with this court in January 2011, does not include CALCRIM No. 220, the instruction defining reasonable doubt. The other transcript, dated July 12, 2011, and filed in this court on July 15, 2011, reflects that the trial court did read the instruction to the jury. CALCRIM No. 220 was included in the packet of written jury instructions provided to the jury.

DISCUSSION

Confronting the discrepancy between the two reporter's transcripts, Vega contends that absence of CALCRIM No. 220 from the first transcript means that the trial court did not instruct the jury with CALCRIM No. 220. The supplemental reporter's transcript, however, indicates that the instruction was read aloud to the jury, and the clerk's transcript shows it included in the jury instructions presented to the jury in written form. Vega argues that while the difference between the two reporter's transcripts could be the result of the court reporter recognizing an error, it could also reflect efforts "to cover up the failure to give" CALCRIM No. 220. Vega contends that because the earlier transcript

was more closely contemporaneous to the trial and was not corrected until later, "the defense must presume that the first transcript is the correct one and that this vital instruction was never given."

This court may not presume that the trial court erred or that a discrepancy between transcripts signifies efforts to conceal error. We are required to presume that courts and court reporters follow the applicable law and regularly perform their duties. (Evid. Code, § 664 ["It is presumed that official duty has been regularly performed"]; *People v. Wader* (1993) 5 Cal.4th 610, 661 [Evid. Code § 664 presumption applies to court reporters].) We may not reverse judgments based on speculation that an error may have occurred. It is the appellant's "burden to provide a record on appeal which affirmatively shows that there was an error below, and any uncertainty in the record must be resolved against" him. (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 549.) Here, Vega has demonstrated a difference between the original transcript and the transcript later generated in response to this court's order for the production of the transcript of the date in question—an order we issued in response to Vega's request that the record be augmented. As the record on appeal does not affirmatively show that the jury was not instructed with CALCRIM No. 220, Vega has not presented a record on which we can find the error he claims has occurred.

Even if the trial court did neglect to read CALCRIM No. 220 aloud, moreover, it is undisputed that the instruction was provided to the jury in written form for its use during deliberations. We presume that the jurors were guided by the written copies they received. (*People v. Osband* (1996) 13 Cal.4th 622, 687.) While we, like the California Supreme Court, "emphasize the importance of trial judges reading jury instructions with care" (*id*. at p. 688), any error in the oral recitation of the instructions when the relevant instructions were provided to the jury in writing was harmless under any standard. (See *id*. at pp. 687-688.)

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.