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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

VALENTIN MAGALLANES et al.,

Defendants and Appellants.

B267655

(Los Angeles County  
Super. Ct. No. BA361451)

APPEALS from judgments of the Superior Court of  
Los Angeles County, James R. Dabney, Judge. Affirmed.

Marta I. Stanton, under appointment by the Court of  
Appeal, for Defendant and Appellant Valentin Magallanes.

Alan S. Yockelson, under appointment by the Court of  
Appeal, for Defendant and Appellant Jorge Aguirre.

Kamala D. Harris, Attorney General, Gerald A. Engler,  
Chief Assistant Attorney General, Lance E. Winters, Senior  
Assistant Attorney General, Jonathan J. Kline and Amanda V.  
Lopez, Deputy Attorneys General, for Plaintiff and Respondent.

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Valentin Magallanes and Jorge Aguirre each pleaded guilty to one count of attempted murder and admitted related sentencing enhancements. On appeal from the judgments entered following their guilty pleas, Magallanes and Aguirre contend the trial court abused its discretion when, prior to sentencing, it denied their motions to withdraw the pleas based on newly discovered information pertaining to the deputy sheriff who had authorized the destruction of evidence in their case. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The Preliminary Hearing*

Two witnesses testified at the preliminary hearing held on May 27, 2010.<sup>1</sup> Harold Cruz testified that in 2007 he was an inmate in Los Angeles County jail and was associated with the Southside gang. On June 15, 2007 Cruz was beaten by seven or eight prisoners while in the laundry room during the daily medication distribution (or “pill call”). Cruz received a five-to-six-inch cut to the face requiring 27 stitches. He believed the beating was retribution for the loss of drugs that had been given to him for distribution by the Southside gang. Cruz did not identify Magallanes as one of the inmates who had attacked him.

Los Angeles County Deputy Sheriff Francis Hardiman, who in 2007 was assigned to the gang unit in the jail, testified

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<sup>1</sup> The preliminary hearing was held following the filing of a criminal complaint that named Magallanes and three codefendants but not Aguirre. Aguirre was initially charged in a separate proceeding. The cases were consolidated on December 16, 2011, at which time the People filed an amended information in this case adding charges against Aguirre.

regarding a series of telephone calls made from the county jail where Cruz was incarcerated. On June 13, 2007 a call took place between two of Magallanes's codefendants in which they discussed the loss of drugs by an individual referred to as "S." Hardiman stated he believed "S" referred to "Serio," a street name of Cruz's. On the call the codefendants stated "S" was "hard candy." Hardiman testified, based on his experience investigating gang activity in the jail, including activities of the Southside gang, if a person was "hard candy," it meant he should be killed.

On June 15, 2007 Magallanes participated in a three-way call with a codefendant and a third individual. Magallanes told the codefendant Serio had been moved to his tier in the jail and asked what action he should take. The codefendant stated Serio was "hard candy" and needed to "get hit." There is reference to the "hit" being retribution for the loss of Southside's drugs. Deputy Sheriff Hardiman testified to "hit" someone meant to kill him.

Ten minutes later a call occurred between Magallanes, another codefendant, Angel Avalos, and a third party. Magallanes asked Avalos if he had "something that we can hit [Serio] with?" Avalos replied he had something and would "take care of it" at pill call. Within a few hours of this call Cruz was attacked in the laundry room.

Deputy Sheriff Hardiman also testified, based on his training, experience and his interactions with the defendants, each defendant was a member of the Southside gang in 2007 and orchestrated the attack on Cruz in furtherance of the gang's interests.

Aguirre's involvement in the attack on Cruz was not addressed at the preliminary hearing because he was not a defendant at the time.<sup>2</sup> Aguirre's counsel stated during argument in the trial court Aguirre was in the laundry room during the attack; and the second amended information alleged, pursuant to the conspiracy to murder Cruz, Aguirre armed himself with a sharp object and Aguirre and/or Avalos attacked Cruz with the knife-like object. The record also refers to a tape recording of a conversation between Aguirre and another inmate during which Aguirre allegedly made an incriminating statement.

## *2. The Destruction of the Shank*

After the June 15, 2007 attack on Cruz, the prison-made knife ("shank") that had been used was recovered and placed with the sheriff's department central property division. Pursuant to standard procedure every six months the central property division sent the investigating officer on the case a form asking whether the evidence should be kept or destroyed. An evidence form was sent to the investigating officer in this case in October 2010. The officer indicated the weapon should be destroyed and returned the form to the evidence lieutenant for approval. The evidence lieutenant at the time was Lieutenant Greg Thompson, who approved destruction of the shank on October 28, 2010. The shank was destroyed on December 22, 2010. In the two months between Thompson's approval and the shank's destruction, counsel for Avalos requested production of the shank for DNA

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<sup>2</sup> It appears from the record Aguirre was indicted by a grand jury, but a copy of the indictment was not included in the record on appeal.

testing; but the shank was destroyed before testing could take place.

During Avalos's 2012 trial, Lieutenant Thompson testified regarding the destruction of the shank. Thompson stated, when he received the form indicating the shank should be destroyed, he confirmed through the sheriff's department's online database of criminal investigations that the case was closed. Based on that information he signed the form authorizing the shank's destruction.

### *3. The Second Amended Information*

In a second amended information filed April 13, 2012 Magallanes and Aguirre were each charged with one count of conspiracy to commit murder (Pen. Code, § 182, subd. (a)(1))<sup>3</sup> and one count of attempted premeditated murder (§§ 664 and 187, subd. (a)). The second amended information specially alleged both offenses had been committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C)), Magallanes had served three separate prison terms for felonies (§ 667.5, subd. (b)) and Aguirre had suffered one prior conviction for a serious felony (§ 667, subd. (a)(1)). On April 13, 2012 Magallanes and Aguirre each pleaded not guilty to both counts and denied the special allegations.

### *4. Entry of the Guilty Pleas*

On March 21, 2013 the parties advised the trial court a plea agreement had been reached. Pursuant to the negotiated agreement, the People moved to amend the second amended

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<sup>3</sup> Statutory references are to this code unless otherwise stated.

information to add an allegation Aguirre had served one separate prison term for a felony (§ 667.5, subd. (b)) and to strike the premeditation allegation in the charge of attempted murder as to both Magallanes and Aguirre. Magallanes and Aguirre agreed to plead guilty to the attempted murder charge with Magallanes to be sentenced to a state prison term of nine years (the upper term) plus 10 years for the criminal street gang enhancement and Aguirre seven years (the middle term), plus 10 years for the criminal street gang enhancement and one year for the prior prison term enhancement.

The deputy district attorney took a formal waiver of constitutional rights from each defendant and asked each defendant if he was pleading guilty “freely and voluntarily today because you believe it is in your best interest to do so?” Both defendants answered affirmatively. The trial court then asked each defendant, “Do you further understand that if you have a change of heart, that you will not be allowed to set aside your plea?” Again, Magallanes and Aguirre answered affirmatively. Magallanes and Aguirre then pleaded guilty to attempted murder and admitted the gang enhancement, and Aguirre admitted a prior prison term. The matter was set for sentencing in June 2013.

##### *5. The Motions To Withdraw the Pleas*

Prior to the sentencing hearing the parties learned Lieutenant Thompson was a defendant in a civil action brought by two sheriff’s deputies who alleged Thompson had been involved in obstructing an investigation by the Federal Bureau of Investigation and covering up an incident involving a white supremacist deputy. The sentencing hearing was continued to allow the parties time to assess the impact of the Thompson

investigation on the case. On August 16, 2013 the district attorney's office filed a notice pursuant to *Brady v. Maryland* (1963) 373 U.S. 83 [83 S.Ct. 1194, 10 L.Ed.2d 215] formally notifying defendants of the allegations against Thompson and the resulting internal investigation by the sheriff's department.<sup>4</sup>

On July 17, 2015 Magallanes moved to withdraw his guilty plea on the ground a recent Court of Appeal decision, *People v. Velasco* (2015) 235 Cal.App.4th 66, had changed the law concerning proof of a criminal street gang enhancement and, as a result, there was insufficient evidence to support Magallanes's admission of the gang allegation. During oral argument on the motion on August 31, 2015, Magallanes's counsel argued for the first time Magallanes "would never [have] pled to this case had he known" of the investigation of Lieutenant Thompson. At that point counsel for Aguirre stated Aguirre also wished to withdraw his plea because he would not have pleaded guilty had he known of the investigation.

The trial court denied the motions to withdraw the guilty pleas, finding the pleas had been knowing and intelligent. The court relied on the fact the defendants knew of the destruction of the shank at the time they pleaded guilty. The court found Lieutenant Thompson's tangential involvement in this case and alleged misconduct in unrelated cases did not constitute good cause for setting aside the pleas. Instead, the court concluded,

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<sup>4</sup> On February 14, 2014 Magallanes moved for production of the personnel records of Lieutenant Thompson pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 and Evidence Code sections 1043 and 1045. Aguirre joined the motion. The trial court denied the motion on August 31, 2015. Magallanes and Aguirre do not challenge that ruling on appeal.

the later discovery of misconduct by Lieutenant Thompson simply caused defendants to have “buyer’s remorse” concerning their pleas. The court agreed to issue a certificate of probable cause (see *People v. Johnson* (2009) 47 Cal.4th 668, 679 “[a] defendant must obtain a certificate of probable cause in order to appeal from the denial of a motion to withdraw a guilty plea, even though such a motion involves a proceeding that occurs *after* the guilty plea”]) and sentenced Magallanes and Aguirre in accordance with their plea agreements. Magallanes and Aguirre filed timely notices of appeal.

## DISCUSSION

### 1. *Governing Law*

A defendant may move to set aside a guilty plea for good cause at any time before the entry of judgment. (§ 1018.)<sup>5</sup> Good cause includes mistake, ignorance, fraud, duress or any other factor that overcomes the defendant’s exercise of free judgment and must be shown by clear and convincing evidence. (*People v. Cruz* (1974) 12 Cal.3d 562, 566; *People v. Breslin* (2012) 205 Cal.App.4th 1409, 1416.) It is not enough that a defendant has concluded he or she wrongly assessed the wisdom of the plea bargain or otherwise has had a change of mind. (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208; *People v. Knight* (1987) 194 Cal.App.3d 337, 344.) “Guilty pleas resulting from a bargain should not be set aside lightly and finality of proceedings

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<sup>5</sup> Section 1018 provides, “On application of the defendant at any time before judgment . . . the court may, . . . for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted. . . . This section shall be liberally construed to effect these objects and to promote justice.”



should be encouraged.” (*People v. Ravaux* (2006) 142 Cal.App.4th 914, 919.) However, “[t]rial courts are expressly directed to give a liberal construction to the provisions of section 1018 in the interest of promoting justice.” (*People v. Superior Court* (1974) 11 Cal.3d 793, 796-797 (*Giron*); accord, *People v. Clancey* (2013) 56 Cal.4th 562, 584.)

A decision to deny a motion to withdraw a guilty plea rests in the sound discretion of the trial court and will be affirmed on appeal unless the defendant can show a clear abuse of discretion. (*Giron, supra*, 11 Cal.3d at p. 796.) We are required to accept the trial court’s factual findings if supported by substantial evidence. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254; see *People v. Archer* (2014) 230 Cal.App.4th 693, 702.)

2. *Denial of Magallanes’s and Aguirre’s Motions To Withdraw Their Pleas Was Within the Trial Court’s Discretion*

Magallanes and Aguirre contend their guilty pleas were based on such faulty or incomplete knowledge that their ability to exercise free judgment was overcome. Specifically, they argue the suspicious timing of the shank’s destruction, six weeks after Avalos had requested its production for testing, coupled with Lieutenant Thompson’s subsequent conviction<sup>6</sup> and lack of

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<sup>6</sup> The record on appeal does not contain any information concerning the investigation into Lieutenant Thompson’s conduct other than a 2013 newspaper article discussing the civil complaint filed against Thompson and others in the sheriff’s department. The parties refer to a federal indictment and Thompson’s conviction but do not provide any details of the criminal case, Thompson’s conviction or prison sentence.

credibility, “gave rise to new avenues of defense and new ways to attack the prosecution’s case.”

Neither *People v. Dena* (1972) 25 Cal.App.3d 1001 nor *People v. Ramirez* (2006) 141 Cal.App.4th 1501, the cases on which Magallanes and Aguirre primarily rely, supports a finding the trial court abused its discretion in this case. In *Dena* the prosecution purposely failed to disclose the time at which a post-booking blood sample had been taken. As a result, the defendant was unable to argue he suffered from diminished capacity due to intoxication at the time of the offense, a potential defense to the specific intent element of the charge of burglary. (*Dena*, at pp. 1006-1007.) After learning the time of the blood draw Dena moved to withdraw his guilty plea. (*Id.* at p. 1007.) The Court of Appeal reversed the trial court’s denial of the motion, holding Dena’s free will had been overcome by the prosecution’s suppression of evidence that “deprived defendant of the right to assert a defense to the charge.” (*Id.* at p. 1009.)

Similarly in *Ramirez*, after defendant had pleaded guilty, defense counsel discovered a previously undisclosed police report that contained potentially exculpatory statements from previously unknown witnesses. (*People v. Ramirez, supra*, 141 Cal.App.4th at p. 1504.) Division Eight of this district held withholding the police report overcame the defendant’s exercise of free judgment in entering his plea because the report “identified new defense witnesses, potentially reduced appellant’s custody exposure, and provided possible defenses to several charges, thereby casting the case against him in an entirely different light.” (*Id.* at p. 1508.)

The circumstances here are far different from those in *Dena* and *Ramirez*. The parties agree the prosecutor in this case

was not aware of the federal investigation of Lieutenant Thompson at the time the pleas were entered. There was no deliberate suppression of favorable evidence, and there can be no argument prosecutorial misconduct interfered with Magallanes's and Aguirre's ability to exercise their free will and independent judgment as occurred in *Dena* and *Ramirez*. Further, unlike the evidence suppressed in *Dena* and *Ramirez*, the information regarding Lieutenant Thompson's misconduct did not have the potential to directly exculpate Magallanes and Aguirre: The newly discovered information did not provide the identities of previously unknown witnesses or support a new defense or theory of innocence.

Magallanes and Aguirre assert only that the investigation of Lieutenant Thompson would have undermined his credibility at trial and an argument the shank was destroyed on purpose would have been more persuasive if they could have demonstrated Thompson "had been arrested or convicted of obstruction and conspiracy." Yet at the time they entered their guilty pleas, Magallanes and Aguirre were fully aware of the salient facts regarding the shank's destruction, including the timing and identity of the officers involved. They could have investigated the incident, seeking additional discovery and developing an argument the shank had been destroyed to hinder their defenses. Instead Magallanes and Aguirre elected to make a deal, limiting their exposure by pleading guilty to reduced charges. The fact they have now discovered evidence bolstering their impeachment of a previously known witness regarding previously known events does not render their pleas involuntary. (See *People v. Grand* (1971) 16 Cal.App.3d 27, 32 ["[n]or may the defendant enter a plea of guilty confident that if by some

fortuitous circumstance his chances of an acquittal are substantially improved, he may thereafter withdraw his guilty plea as of right”].)

Further, substantial evidence supports the trial court’s determination Magallanes’s and Aguirre’s motions to withdraw their pleas were motivated by “buyer’s remorse” rather than by an inability to exercise free judgment. Magallanes and Aguirre unequivocally stated they understood their pleas at the time and acknowledged the pleas could not be withdrawn, all while knowing the facts regarding the shank’s destruction. Once they learned of the investigation of Lieutenant Thompson’s misconduct, Magallanes and Aguirre waited more than two years to assert any argument that knowledge of the investigation would have influenced their decision to plead guilty. As for Magallanes, his written motion to withdraw his plea was based on a purported change in the law. It was not until oral argument on the motion that either man asserted he would not have pleaded guilty had he known of Thompson’s conduct. On this record it was reasonable for the trial court to conclude Magallanes and Aguirre were motivated by a change of heart rather than a genuine belief the investigation would have affected their willingness to plead guilty. Accordingly, Magallanes and Aguirre failed to show good cause for withdrawing their pleas. The court’s decision to deny the motions was well within its discretion.

**DISPOSITION**

The judgments are affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.