Filed 1/25/17 P. v. Freeman CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. EVAN BERNARD FREEMAN, Defendant and Appellant.	B255499 (Los Angeles County Super. Ct. No. NA093988)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark C. Kim. Affirmed as modified.

Susan Wolk, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Kathleen Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and William H. Shin, Deputy Attorneys General, for Plaintiff and Respondent.

The trial court sentenced Evan Bernard Freeman to 181 years to life in prison after a jury found him guilty of four counts of second degree robbery and one count of assault with a firearm, and found firearm and recidivism allegations to be true. Freeman contends the court abused its discretion in denying him access to a court-appointed investigator and cell phone expert, denying his motion to continue a suppression hearing, denying his suppression motion, denying his motions to continue trial, denying his requests to impeach and recall witnesses, denying him discovery, and excluding him from an in camera hearing. We order that the judgment be modified slightly, but otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 2, August 13, August 17, and September 1, 2012, Freeman robbed four merchants at gunpoint after following them in his black Dodge Charger from banks where they had made large withdrawals to their respective businesses (or in one case to a restaurant) in El Monte, Norwalk, Wilmington, and Long Beach, respectively. The banks were all known to serve the Korean community. In Long Beach, where the fourth robbery occurred, Freeman shot the victim in the leg, which was witnessed by Stephanie Carden.

On September 7, 2012, the car of Elias Romero was burglarized under similar circumstances—after making a large withdrawal from his Korean bank, Romero drove to a gas station and left the money in the car when he went inside to pay. When he returned, he found his window had been broken and the money was missing. On September 13, Griselda Romero, Elias Romero's daughter-in-law, and a merchant who had just made a large withdrawal from her Korean bank in Artesia, noticed

Freeman watching her from a black Charger that had no license plates. Her husband called the police, and Los Angeles County Sheriff's Deputy Daniel Castaneda responded and saw Freeman running away from the scene. Castaneda stopped Freeman, determined the Charger was his, and searched it, recovering a revolver, a Taser, and two license plates. Freeman was arrested.

Three of the merchants and Carden identified Freeman as the perpetrator in the first, third and fourth robberies, occurring on July 2, August 17, and September 1, 2012, and video surveillance of the scene of the second robbery showed his Charger entering the parking lot shortly before the crime and leaving shortly after it.

Freeman was charged with four counts of second degree robbery (Pen. Code, § 211)[1] and one count of assault with a firearm (§ 245, subd. (a)(2)), and it was alleged he personally used a firearm (§ 12022.53, subd. (b)), personally and intentionally discharged a firearm causing great bodily injury (§ 12022.53, subds. (c) & (d)), personally inflicted great bodily injury (§ 12022.7, subd. (a)), had suffered three prior convictions for which a prison term was served (§ 667.5, subd. (b)), had five prior convictions for a serious or violent felony (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and had one prior conviction for a serious felony (§ 667, subd. (a)(1)). (Freeman was not charged in connection with events involving the Romeros on September 7 and 13, 2012.) Freeman pleaded not guilty and denied the special allegations.

---

[1] All further statutory references will be to the Penal Code unless otherwise indicated.

Freeman represented himself, and before and during trial made several motions and requests that the trial court denied. We will describe the proceedings surrounding each motion and request as they become pertinent, below.

A jury found Freeman guilty on all counts and found all special allegations to be true, and the trial court sentenced him to 181 years to life in prison.

Freeman timely appealed.

DISCUSSION

I. Cell Phone Evidence

Several of Freeman's arguments on appeal pertain to cell tower evidence.

On September 13, 2012, a police investigation into the string of robberies related to Korean banks began to focus on Freeman when he was arrested after following Graciela Romero from her bank in his black Charger. His Charger was impounded and he was released on bail as the investigation continued.

On September 24, 2012, police called Freeman on the pretext that his Charger would be released to him. When he appeared at the impound lot in a car driven by Tasha Hardy, he was again arrested. Hardy consented to a search of her car, which recovered Freeman's cell phone, various personal items, and four license plates.

Freeman was again released on bail. He later called Long Beach Police Detective Nancy Mora from his cell phone and left a message asking her to call him back at that number, which number was also captured by Mora's phone system. Using this number, Mora served a search warrant for Freeman's phone records on his cellular provider, Metro P.C.S., which turned over

a 153-page record of Freeman's phone calls and 94 pages of his text messages.

In 2013, Freeman filed a motion to suppress unspecified evidence, arguing his September 24 arrest was unlawful, and the "fruits of the unlawful action" must be suppressed. In preparation for the motion, Freeman requested that the trial court appoint Hank Waring of FDS Laboratories, a well known cell phone expert, who Freeman said would be needed "to show that images and information [were] downloaded from [his] cellular phone and exactly what those images were and exactly when this data was downloaded." The trial court denied the request.

Freeman also requested that the trial court appoint an investigator to assist him. The court granted the request and set a $1,000 limit for the investigator's services, instructing Freeman that the investigator would have to submit a detailed accounting of her activities to justify additional funding.

Freeman's investigator, Catherine Chavers-Yaines (Yaines), subpoenaed seven police officers to appear at the suppression hearing, but due to a conflict in the court's schedule the hearing was continued to November 15, 2013. Freeman failed to ask that the police officers be ordered to return on that date, and the investigator was unable to re-subpoena the witnesses in time.

At the suppression hearing, Freeman requested another continuance because he had been unable to subpoena his witnesses. The trial court denied the request.

Freeman argued his September 24 arrest was unlawful because it was conducted without a warrant. Therefore, he argued, "the evidence that was accumulated" from the arrest and

"everything derivative" from it should be suppressed, including his cell phone and "everything that came about from the cellular phone." The court found that Freeman's arrest was lawful even without a warrant because police had probable cause to arrest him based on Carden having picked him out of a photo array. It therefore denied the suppression motion.

At trial, Detective Mora testified she never accessed Freeman's phone because to obtain a search warrant for his phone records she needed only his number, which he had given her. The records were authenticated at trial by the provider's custodian of records. They showed that Freeman's phone had made and accepted calls: one mile from the bank visited by the third merchant robbed; half a mile from the site of the fourth robbery; and 356 yards from where Elias Romero's vehicle was burglarized shortly after he visited his bank. All of the calls occurred within minutes of the respective crimes. In closing argument, the prosecutor argued the cell phone records indicated Freeman was the perpetrator.

Freeman argues the trial court erred in denying (1) his request for a cell phone expert to show what was downloaded from the phone, (2) his request that his court-appointed investigator be replaced after she failed to re-serve witness subpoenas for the suppression hearing, (3) his request that the hearing be continued so that witnesses could be re-served, and (4) his motion to suppress evidence derived from the phone. The arguments are without merit.

A defendant may move to suppress as evidence "any tangible or intangible thing obtained as a result of a search or seizure" where "[t]here was any . . . violation of federal or state constitutional standards." (§ 1538.5.) Accordingly, evidence

"secured after and as a result of an illegal arrest, can be suppressed by a motion under section 1538.5." (*People v. Massey* (1976) 59 Cal.App.3d 777, 780.)

Freeman and the Attorney General argue at length over the legality of Freeman's September 24 arrest, the fairness of the suppression proceedings, and the trial court's discretion to appoint experts and investigators and continue hearings. But none of this need detain us because Freeman identifies no evidence used at trial that was derived from his phone.

Although Freeman's cell phone records were admitted at trial and discussed at some length, they were derived from his phone *number*, which Freeman voluntarily gave to Detective Mora and which police apparently already had—they called Freeman to induce him to appear at the impound lot on September 24. Freeman never argued below, and does not argue here, that police obtained his phone number illegally.

Similarly, Freeman identifies no reason why the expert he requested was necessary to his defense. A court may appoint an expert at public expense when an indigent defendant shows the expert is reasonably necessary in presenting a defense. (Evid. Code, § 730; *People v. Stuckey* (2009) 175 Cal.App.4th 898, 908.) We review an order denying such an appointment for abuse of discretion. (*Corenevsky v. Superior Court* (1984) 36 Cal.3d 307, 321.)

At the hearing on his motion to appoint an expert, Freeman told the court he had not received "downloaded images off [his] phone." The prosecutor responded that "everything that [the police] downloaded" was turned over to Freeman's investigator. Yaines, the investigator, then explained the images Freeman sought were of nude women, which jail policy forbade inmates to

possess. Freeman argues on appeal that a cell phone expert was necessary to prove his phone was searched. He does not, however, indicate why knowing this was necessary. For example, he identifies no evidence admitted or discussed at trial that resulted from a search of the contents of his phone. Freeman argues for the first time on appeal that an expert was necessary to rebut the prosecution's cell tower evidence, but he failed to request an expert for this purpose.

II. Investigator's Trial Preparation

Freeman contends the trial court abused its discretion in denying his multiple requests to replace his court-appointed investigator.

On June 4, 2013, the trial court appointed Yaines to assist Freeman, set a $1,000 limit for her services, and instructed Freeman that she would have to submit a detailed accounting of the hours she spent on the case to justify additional funding. On June 11, the prosecution indicated it had turned over all discovery except for the two search warrants and CD's of surveillance video recordings, both of which would be made available to Yaines. On July 1, the prosecutor informed the court that Yaines had not yet picked up the discovery. The court instructed Freeman to tell Yaines to contact the prosecutor directly, and he said he would. Yaines picked up the discovery on July 22, 2013, but on July 26, Freeman asked for appointment of a new investigator because Yaines had not yet delivered the outstanding discovery to him. He then asked for and received a copy of the discovery directly from the prosecution.

On August 6, 2013, Freeman informed the court he still had not received any discovery from Yaines. The court ordered Yaines to appear in court on August 9 to explain the delay. On

that date, Freeman filed a motion for appointment of a new private investigator, declaring Yaines had failed to serve subpoenas to secure witnesses for the suppression hearing and failed to obtain the 911 call recording (although Freeman also admitted Yaines had brought him the 911 call recording, but due to "a policy at the jail," he could not listen to it. The court inquired as to what outstanding discovery remained, to which Freeman responded, "[t]here's supposed to be videotapes I was supposed to listen to." He admitted that he had received some images obtained from his cell phone, but not all of them. The prosecutor stated that "everything that [the police] downloaded" was turned over to Freeman. Freeman also complained that Yaines refused to secure court stamps on subpoenas because the line at the clerk's office was too long.

Outside the presence of Freeman or the prosecutor, the court invited Yaines to respond to Freeman's contentions. She said Freeman failed to fill out subpoenas properly, which caused her not to reach the line at the clerk's window until 10 minutes before lunch, and she could not have made it to the window before the office closed for lunch, so she left to complete another errand at a different courthouse. When asked why she did not return to get the subpoenas conformed, Yaines responded: "He only gave me four days. He didn't have enough time to file from the—I told him that you need five days for a subpoena to be served." Regarding the missing discovery, Yaines said she took it to jail to give to Freeman, but a sheriff's deputy there prevented her from giving him images of nude women. Everything else was turned over to him. Yaines said Freeman told her he was going to "get rid" of her, and later he and the prosecutor told her he had done so, and she was no longer his appointed investigator. The

court asked Yaines, "If I keep you[,] can you still work for Mr. Freeman?" She responded, "Absolutely, I don't mind doing the work. . . . I've been a police officer professional for 35 years, I have no problem."

Back in the presence of Freeman and the prosecutor, the court stated it had held a brief in-chambers hearing because it "didn't want your investigator to tell the court in open court what she has done for you." The court then denied Freeman's motion for appointment of a new investigator. It ordered Yaines to provide Freeman "all the discovery other than the photocopies of images that contains photos of certain nude women." She did so. The prosecution also reminded the court that it had given Freeman the same discovery in July.

Yaines informed the court that a court order was needed for her to bring a laptop to jail to review with Freeman the CD's of 911 calls. The court made the requested order. On September 20, 2013, Freeman and Yaines watched the surveillance video recordings and listened to a 911 call recording. When Freeman nevertheless complained he still had not received discovery on the data downloaded from his cell phone, the prosecutor stated that a copy would be provided to Yaines later that day. Yaines told the court she was near the maximum allotted time limit set by the court. The court reminded Freeman that he must file a motion requesting additional funds for his private investigator.

On October 3, 2013, Freeman filed another motion for appointment of a new investigator. The court stated that Yaines had been granted additional funds, and she would have to come to court to request additional funding. Freeman said that Yaines was on vacation, and he could not wait for her to return. The court authorized 10 additional hours of investigative services and

$50 in ancillary funds, and denied Freeman's request to appoint a new investigator, but warned Freeman he would have to submit receipts or a detailed accounting of how he spent the money.

On October 29, 2013, when the suppression hearing was to occur, Freeman stated the investigator had told him she did not get the order granting her 10 additional hours of investigation funds. Freeman also complained 10 hours would not be enough. The court again reminded Freeman that the investigator would have to submit an accounting before additional hours would be authorized. The court granted an additional $50 in ancillary funds but warned that an invoice or receipt was needed to justify more funding.

At the continued suppression hearing on November 15, 2013, Freeman complained his investigator had not been able to re-subpoena his witnesses because Yaines "has not had the hours to come back down to the [jail] to retrieve my resubmitted subpoenas." Freeman stated he needed 10 police officers for the suppression hearing. The prosecutor said that only two officers had been involved in Freeman's September 24 arrest.

On December 4, 2013, the day of trial, Freeman requested that trial be continued because he had been without an investigator since early October because she had used up all authorized hours serving subpoenas for the suppression hearing. Freeman stated that he needed to subpoena his apartment managers, Claudia and Salvador Sanchez, and all pertinent law enforcement officers. The trial court again reminded Freeman that he had repeatedly ignored the instruction to provide an invoice explaining the work Yaines performed in order to receive additional hours. The court nevertheless appointed a different investigator, who informed the court he needed approximately 10

hours to complete the work Freeman requested, which the court authorized. The court also ordered that the prosecution not release the law enforcement officer witnesses whose testimony Freeman sought, all of whom were already under prosecution subpoena.

Claudia and Salvador Sanchez ultimately testified for the defense.

Freeman argues the trial court's failure to replace his investigator before trial caused him to have no witnesses at the suppression hearing and no adequate pretrial investigation before trial, which violated his rights to due process, a fair trial, equal protection, effective assistance of counsel, the right to investigate and prepare defenses, and the right to confront witnesses effectively.

A defendant has the right to "'all means of presenting a defense.'" (*People v. Blair* (2005) 36 Cal.4th 686, 733, citation omitted.) This includes the right to an appointed investigator. (*Ibid.*; *Corenevsky v. Superior Court*, *supra*, 36 Cal.3d at p. 319 [right to counsel "includes the right to reasonably necessary ancillary defense services"].) "In the final analysis, the Sixth Amendment requires . . . that a self-represented defendant's access to the resources necessary to present a defense be reasonable under all the circumstances." (*People v. Blair*, *supra*, at p. 733.) The "crucial question" is whether a self-represented defendant has had "reasonable access to the ancillary services that were reasonably necessary for his defense." (*Id.* at p. 734.) We review trial court's denial of ancillary services for abuse of discretion. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1085.)

Here, Freeman was granted $1,000 in investigative services and was told he would have to account for the investigator's time

before a further allotment would be granted. Yaines served subpoenas for Freeman and pursued discovery until she had expended all the hours the allotment permitted, but Freeman never accounted to the court for her time. The trial court nevertheless twice granted him 10 additional investigator hours. Although Freeman often complained about Yaines's diligence, several of his concerns were impossible to address: Yaines was unable to forward pictures of nude women to Freeman in jail; she could not play 911 calls for him in jail absent a court order; and she could not serve subpoenas that were improper or untimely. Further, she was told both by Freeman and the prosecutor that her services had been terminated. Freeman's other complaints were remedied, as discovery that he complained Yaines had not forwarded to him was later provided. Freeman identifies no discovery he failed to obtain due to Yaines's claimed dilatory conduct. Under these circumstances, the court could reasonably conclude Yaines provided adequate ancillary services, and therefore reasonably denied Freeman's request for a replacement investigator.

On appeal, Freeman identifies no deficiency in his defense caused by lack of an investigator. Although he complains he had no witnesses at the suppression hearing, the witnesses he sought—arresting officers and supervisors who could testify about any downloads from his cell phone—had no information pertinent to the suppression hearing. Detective Mora, the officer who did have pertinent information, testified at the hearing. Freeman complains he had no rebuttal to the prosecution's evidence concerning cell towers, but that evidence was derived from his cell number, which was not the subject of his

suppression motion and about which the arresting officers knew nothing.

Freeman argues appointment of the new investigator on the day of trial was "too little too late" to assist him in preparing for trial. But he identifies no deficiency in the defense attributable to the late appointment. The replacement investigator informed the court that he would require approximately 10 hours to complete the work Freeman requested, and Freeman does not argue that work was not completed or that he lacked any witnesses or evidence at trial.

Freeman argues the trial court violated his due process and confrontation rights by excluding him from the in camera discussion with Yaines, which he characterizes as a critical stage in the proceedings. The argument is without merit.

"Broadly stated, a criminal defendant has a right to be personally present at certain pretrial proceedings and at trial under various provisions of law, including the confrontation clause of the Sixth Amendment to the United States Constitution, the due process clause of the Fourteenth Amendment to the United States Constitution, section 15 of article I of the California Constitution, and sections 977 and 1043." (*People v. Col*e (2004) 33 Cal.4th 1158, 1230.) But a defendant has no right under the Sixth Amendment's confrontation clause, to be present at a particular proceeding "'unless his appearance is necessary to prevent "interference with [his] opportunity for effective cross-examination."'" (*Id*. at p. 1231.) "'Similarly, under the Fourteenth Amendment's due process clause, a criminal defendant does not have a right to be personally present at a particular proceeding unless he finds himself at a "stage . . . that is critical to [the] outcome" and "his

presence would contribute to the fairness of the procedure.'"" (*Ibid*.) Under the California Constitution, a criminal defendant has no right to be personally present at discussions in chambers where his presence is unnecessary to the fullness of his opportunity to present a defense. (*Ibid*.) We review de novo a trial court's exclusion of a defendant from chambers discussions. (*Id*. at p. 1230.)

Here, the meeting with Yaines in chambers was not a critical stage of the proceedings. The in camera discussion concerned only Yaines's work on Freeman's behalf, an issue that the trial court had previously asked Freeman to address in writing and which Freeman had ample opportunity to discuss, and did discuss, in open court. Freeman offers no explanation about any additional information he could have provided in chambers and no explanation how his attendance at the proceeding in chambers would have further assisted his defense.

III. Motions to Continue Trial

On April 22, 2013, the trial court set a trial date of June 11. Over the next six months, Freeman (1) delayed submitting a request for appointment of an investigator, (2) filed a motion for a continuance, (3) requested that a different investigator be appointed when the first failed to provide him with images of nude women that had been downloaded from his phone, (4) again requested that trial be continued to afford him time to discover what had been downloaded from his phone, (5) requested a third continuance to afford him time to file a motion to quash a search warrant, (6) refused to come to court on the date finally set for trial, (7) received a fourth continuance to afford time for the suppression hearing, (8) received a fifth continuance to afford him time to subpoena witness for the suppression hearing, and

(9) requested a sixth continuance to afford him time to traverse a search warrant. The court serially continued trial from June 11 to July 8, August 6, August 9, August 14, September 16, September 20, September 25, and December 4, 2013.

On December 4, 2013, the latest trial date, Freeman filed another motion to continue trial. He complained his investigator had run out her appointed time, and he needed 30 days to subpoena "over a dozen witnesses" and allow his private investigator to "complete necessary investigation into the crime(s)" and "interview and acquire . . . expert witnesses that will be requested." The court denied the request, and trial commenced. On December 5, Freeman filed a supplemental motion to continue trial, arguing Yaines had failed to provide adequate investigative services. The court denied the motion.

Freeman contends the trial court abused its discretion in denying his requests to continue trial a ninth time. We disagree.

"Continuances shall be granted only upon a showing of good cause." (§ 1050, subd. (e).) "The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel. [Citation.] Contrariwise, a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality. [Citation.] There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied." (*Ungar v. Sarafite* (1964) 376 U.S. 575, 589; accord *People v. Howard* (1992) 1 Cal.4th 1132,

1171.) "An important factor for a trial court to consider is whether a continuance would be useful." (*People v. Beeler* (1995) 9 Cal.4th 953, 1003.) "A defendant is required to act with diligence and may not demand a continuance if he is unjustifiably dilatory . . . ." (*People v. Rhines* (1982) 131 Cal.App.3d 498, 506.) The defendant bears the burden of demonstrating good cause for a continuance. (*Ibid*.)

At every hearing, Freeman expressed dissatisfaction with the state of discovery and with his appointed investigator. He requested information that police had downloaded from his phone, all of which, except for some nude photos, was provided at least twice. He sought to subpoena multiple witnesses for the suppression hearing, but has yet to explain why they were necessary. He sought to replace his investigator when she was purportedly unable to meet his discovery demands, and six months after trial was first scheduled he was still seeking to complete unspecified investigation "into the crimes" and to acquire expert witnesses. Freeman deliberately missed one trial date and failed adequately to prepare for any others, yet the trial court granted him eight continuances over a period of six months, several of them on the putative day of trial. We conclude the court was well within its discretion to deny him a ninth continuance.

Freeman argues he did not request some of the continuances in this case, but merely acquiesced when the trial court ordered them. The point is technically correct, as the court instituted some of the continuances on its own motion when it became apparent that Freeman was unprepared for the proceedings. But whether the continuances were initiated by Freeman or the court is irrelevant. Freeman's dilatory defense

preparations necessitated them, and after six months the court could reasonably conclude that further delay would bring no different result.

Freeman argues his lack of preparation for trial stemmed from his investigator's dilatoriness, which he for months tried to rectify but was thwarted by the trial court's unwillingness to appoint a different investigator. The argument is without merit. As discussed above, the court could reasonably conclude Freeman's problems with the investigator were largely illusory, as he engaged her in pursuing duplicative and impossible discovery and subpoenaing unnecessary witnesses, and after having used her allotted hours he neglected to pursue the prescribed avenue by which to obtain more hours.

IV. Examination of Carden and Castaneda

During the prosecution's presentation of its case, Stephanie Carden testified she witnessed Freeman rob and shoot Shin on September 1, 2012, stating she observed the shooting from approximately 25 feet away. She identified Freeman as the shooter at a photographic lineup, at the preliminary hearing, and at trial, and stated she was "very positive" about her identifications.

Deputy Castaneda testified he responded to a call in Artesia on September 13, 2012, and witnessed Freeman running away from where he had been staking out Griselda Romero after she made a withdrawal from her bank. Castaneda arrested Freeman and searched his car, recovering a gun and license plates.[2]

---

[2] The trial court initially ruled that testimony about the September 13, 2012 arrest would be inadmissible because no

Freeman cross-examined Carden about the distance from which she witnessed the shooting of Shin.

Freeman cross-examined Castaneda for an hour and a half regarding the dispatch call he received and the basis for searching Freeman's car on September 13, a topic that had already been litigated during a suppression hearing in another courtroom. After a recess, the trial court asked Freeman how much longer he needed with Castaneda. Freeman responded, "Oh, I got a lot for him," and when asked for an offer of proof, he stated he intended to show that Castaneda had testified falsely. The court instructed Freeman to limit the questions to testimony covered during direct examination, saying "I will give you ten more." Freeman continued to question Castaneda about inconsistencies between his police report and preliminary hearing testimony. Afterward, Freeman stated he intended to recall Castaneda during his case-in-chief, and when asked for an offer of proof, said, "I can't put nothing [*sic*] specific, but I have a lot of questions . . . ."

During his case-in-chief, Freeman's investigator testified he had taken photographs depicting the streets surrounding the location of the Shin shooting and Freeman's September 13, 2012 arrest. Freeman then moved to recall Castaneda and Carden. When asked again for an offer of proof, Freeman stated he intended to impeach them by using the investigator's photographs to show Castaneda and Carden could not have observed him as they claimed. The court replied, "That's what your investigator talked about. So you could clearly make that

---

charges resulted from it. However, Freeman informed the court he had "no qualms" with admission of the testimony.

argument to the jurors. [¶] . . . [¶] Sir, basically what you want to do is try to say these photos are here, this is what Investigator Williams testified, therefore, you must be lying. That's not proper. [¶] . . . [¶] So, certainly what you are trying to do is make an argument. That's not a new question." Freeman stated he also wanted to ask Carden whether "she ever informed the person she was in the car with of what she [had] seen." The court ruled that the question would be improper because it called for hearsay.

Freeman argues the trial court erred in denying his request to impeach Deputy Castaneda during his cross-examination, and to recall Carden and Castaneda as defense witnesses.

The Sixth Amendment and California Constitution guarantee a criminal defendant the right to confront adverse witnesses, especially during cross-examination. (Cal. Const., art. I, § 15; *People v. Brown* (2003) 31 Cal.4th 518, 537-538.) "Nevertheless, a trial court retains broad discretion over the conduct of trial. In the context of its duty to supervise the questioning of trial witnesses, it has wide discretion to limit questions that are marginally relevant and cumulative." (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1385.) A Sixth Amendment violation occurs if "'the prohibited cross-examination might reasonably have produced "a significantly different impression of [the witness's] credibility. . . ."'" (*People v. Belmontes* (1988) 45 Cal.3d 744, 780.) We review a trial court's restriction on cross-examination for abuse of discretion. (*People v. Farnam* (2002) 28 Cal.4th 107, 187.)

Here, Freeman examined Deputy Castaneda for 90 minutes on the legality of the September 13, 2012 arrest and discrepancies between Castaneda's arrest report and his

preliminary hearing testimony. The admitted discrepancies between the report and testimony were relevant to impeach Castaneda, but had already been covered at length during cross-examination. In his request for further examination of Castaneda, Freeman stated he intended to impeach the deputy by using photographs of the scene to reinforce that he had testified falsely. But Freeman's investigator had already testified concerning the photographs, and Freeman identified nothing Castaneda could have added.

Freeman also intended to impeach Carden with the investigator's photographs of the scene of the Shin shooting, but again, he identified nothing she could add. The trial court reasonably surmised that Freeman's purpose was to argue with Carden on the stand over discrepancies between her eyewitness testimony and distances and angles depicted in the photographs. But as the trial court noted, that argument was for the jury, not a witness.

The trial court could reasonably conclude that further testimony from Castaneda or Carden would be cumulative. (Evid. Code, § 352 ["The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time"].) It was therefore within the court's discretion to exclude it.

Even if exclusion of the witnesses was error, it was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.) Freeman submitted all the evidence necessary to impeach Castaneda and Carden. His investigator introduced photographs of the scenes in question, and the witnesses themselves testified to what they saw. The only

remaining element was for Freeman to argue to the jury that the layout of the scenes made their testimony unbelievable. Further testimony by the witnesses would have been superfluous.

V. Discovery

Freeman contends he was denied discovery concerning the events involving the Romeros on September 7 and 13, 2012.

Prior to trial, the prosecution provided Freeman with police reports. Before the opening statements, the prosecutor stated she wanted to introduce evidence of the uncharged events of September 7 and 13, 2012. (Evid. Code, § 1101, subd. (b) [evidence of uncharged bad acts admissible to prove intent or absence of mistake].) The trial court originally commented that those events were irrelevant, but when it asked Freeman to respond, he said, "If the prosecutor is willing to provide me with the report from that 9/7 incident, if you are willing to bring me the police report from that 9/7 incident, I have absolutely no objection to it being brought into this case." The court said, "There [are] two incident[s] that she wants to bring in, September 7 and September 13 incident[s], 2012," to which Freeman responded, "I have absolutely no qualms with her bringing it in, if you bring me all the written documentation from those reports." The prosecution repeatedly insisted that Freeman already had the documents, but in any event provided him with another copy of them, which she called "duplicates among duplicates." Although Freeman denied he had already been given the discovery, he agreed to the production and sought no further order.

Section 1054.1, subdivision (f) mandates that a prosecutor disclose to a criminal defendant "[r]elevant written or recorded statements of witnesses or reports of the statements of witnesses

whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case." "'Absent good cause, such evidence must be disclosed at least 30 days before trial, or immediately if discovered or obtained within 30 days of trial. [Citation.]' [Citation.] [¶] Upon a showing both that the defense complied with the informal discovery procedures provided by the statute, and that the prosecutor has not complied with section 1054.1, a trial court 'may make any order necessary to enforce the provisions' of the statute, 'including, but not limited to, immediate disclosure, . . . continuance of the matter, or any other lawful order.' [Citation.] The court may also 'advise the jury of any failure or refusal to disclose and of any untimely disclosure.' [Citation.] A violation of section 1054.1 is subject to the harmless-error standard set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836 [299 P.2d 243]." (*People v. Verdugo* (2010) 50 Cal.4th 263, 280.) We review "a trial court's ruling on matters regarding discovery under an abuse of discretion standard." (*People v. Ayala* (2000) 23 Cal.4th 225, 299.)

Here, the prosecution complied with section 1054.1 by providing Freeman with the requested discovery.

Freeman argues the prosecution committed misconduct by waiting until after opening argument to provide the discovery. We disagree. First, Freeman forfeited any objection to belated discovery by failing to raise the issue at trial. (*People v. Williams* (2008) 43 Cal.4th 584, 620 [failure to object at trial forfeits contention on appeal "that the People improperly delayed discovery"].) Although he stated he had not received discovery pertaining to the incidents of September 7 and 13, 2012, he raised no objection about the timing of discovery and asked for no

order concerning it. Second, it was not established that the prosecutor delayed turning over discovery. On the contrary, the prosecutor insisted the discovery had been turned over even before Freeman asked for it. Third, it is not clear from the record that the prosecutor intended—substantially before handing over the discovery—to admit evidence pertaining to the September 7 and 13, 2012 events, as she did not move to admit the evidence until shortly before trial.

Freeman argues the prosecutor committed misconduct by compelling him to barter his right to object to admission of evidence concerning uncharged offenses in exchange for discovery. That is not what happened. After the court tentatively indicated evidence concerning uncharged offenses would be irrelevant, Freeman voluntarily and gratuitously offered not to object to the evidence. There was no bartering or coercion.

VI. Motion for New Trial

At 3:55 p.m. on February 6, 2014, Freeman filed a motion raising 10 arguments—many of them the same arguments he makes on appeal—which motion was somewhat duplicative of an earlier new trial motion raising three arguments. The court considered the motion, grouped the issues it raised into three categories—ineffective assistance of counsel, various abuses of discretion by the court, and various abuses by the prosecution—asked Freeman if he had anything to add, then denied the motion. The court then sentenced Freeman, and adjourned shortly after 4:05 p.m.

Freeman argues it "does not seem physically possible" for the trial court to have given his "38-page" [*sic*: 37-page], "single-spaced" [*sic*: one-and-a-half spaced] motion due consideration in

10 minutes. He infers from this that the trial court gave no due consideration to the motion before denying it, which he argues was an abuse of discretion. We reject the premise and inference because the trial court stated that it "went over the motion."

We see no basis to conclude that the trial court gave the motion inadequate consideration. The court stated it considered the motion, and summarized the main points. The motion raised no new issues, and the court was well familiar with the case and Freeman's arguments.

VII. Sentence

The Attorney General argues the trial court erred in failing to impose and stay a parole revocation fine, and to apply its order imposing a $40 court security fee and a $30 criminal conviction assessment to each count, rather than just one count. We agree. (§§ 1202.45, 1465.8, subd. (a)(1); Gov. Code, § 70373, subd. (a)(1).) "It is well established that a legally unauthorized sentence can be corrected at any time including on direct appeal upon request of the prosecution even though the issue was never raised in the trial court and the result is the defendant serves a longer prison term." (*People v. Miles* (1996) 43 Cal.App.4th 364, 367.) We will order that the judgment be corrected.

DISPOSITION

The judgment is modified to impose and stay a parole revocation fine and to impose a $40 court security fee and a $30 criminal conviction assessment as to each count upon which Freeman was convicted. In all other respects the judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment to reflect the judgment as modified and forward a copy of it to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.