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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCISCO MONDRAGON-
HERRERA,

Defendant and Appellant.

B235377

(Los Angeles County
Super. Ct. No. GA079580)

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

Audra S. Ibarra, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Francisco Javier Mondragon-Herrera was charged by information with one count of burglary (Pen. Code, § 459). It was also alleged that defendant suffered a prior burglary conviction (Pen. Code, §§ 667, subds. (a)(1), (b)-(i), 1170.12, subds. (a)-(d)), the crime was a serious felony (Pen. Code, § 1192.7, subd. (c)), and defendant was ineligible for probation (Pen. Code, § 462, subd. (a)). At the time of defendant's arrest, he was on felony probation for a 2007 conviction for burglary. Following the filing of the information, the court decided to try the probation violation and the new crime together.

Defendant timely appealed his judgment of conviction and sentence. We appointed appellate counsel to represent him. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. The brief included a declaration from counsel that she reviewed the record and sent a letter to defendant explaining her evaluation of the record. Counsel further declared that she advised defendant of his right to submit a supplemental brief. Defendant did not file any supplemental brief with this court.

While awaiting trial, defendant filed a motion for *Pitchess*¹ discovery. The court conducted an in camera hearing and determined that one discoverable complaint existed. Defendant also filed motions to suppress evidence, and quash and traverse the search warrant. These motions were denied.

The testimony during the jury trial revealed the following facts: On March 16, 2010, at a little after noon, Miguel Soria came home from work and discovered that numerous items were missing from his Altadena home. It appeared the house had been ransacked; drawers were open, and video cases were on the floor. Two green parrots, their cage, the family's jewelry, Nintendo Game Boys and a Wii console, a portable DVD player, an iPod, and games were missing. A window air-conditioning unit on the side of the house had been slid over, and the panel that secured the unit was on the ground.

¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

Miguel's wife, Marisela Soria, testified that when she left to take their children to school that morning, the house was locked and empty as Miguel had already gone to work. When she returned home for lunch, she learned that numerous items were missing from the home.

At approximately 12:00 p.m., the Sorias' neighbor, Roberta Clarke, was weeding her garden when she noticed an unfamiliar car. It was an older El Camino, with a blue California license plate bearing the number "1-L," followed by either "0-0-8" or "8-0-0." The car stopped in front of the Sorias' house, drove up the road, turned around, and then parked in front of Ms. Clarke's house. Two people got out of the car, and walked to the Sorias' side yard. Both men were Hispanic, and the driver was heavy set. A short time later, Ms. Clarke saw them leave. She saw the Sorias' birdcage in the bed of the El Camino.

Neighbor Damon Diego was home for lunch and noticed an unfamiliar car parked on his street. Two men got out of the car, and walked to the side of a nearby house. One of the two men was heavy, had a goatee, and was wearing a black baseball cap. At trial, Mr. Diego identified the heavy man as defendant. The following day, Mr. Diego noticed the same car a few blocks away from his house, at an apartment complex on Figueroa and Lincoln in Altadena.

On March 17, 2010, Los Angeles County Sheriff's Detective David Gaisford was investigating the burglary, and went to the apartment building on Figueroa. He saw a white El Camino, with number 1L38005 on its blue license plate, parked in front of the apartment complex. The next day, Detectives Gaisford and Manuel Avina surveilled the Figueroa apartment complex. They saw defendant, who matched the description provided by Mr. Diego and Ms. Clarke, come out of the complex. He got into the El Camino and drove away.

On March 23, 2010, Detective Gaisford again saw the El Camino at the Figueroa complex. Three men were standing around the car, including defendant. Detective Gaisford strolled up to the men, and started talking to them. Defendant said that he lived

in apartment 22. When Detective Gaisford searched the apartment, he discovered the Sorias' green parrot in a room with documents bearing defendant's name. He also found a picture of the bird on defendant's mobile phone. One of the three men, Gustavo Olvera, told Gaisford that defendant had recently given him a birdcage. Deputies retrieved the cage from Olvera's home.

Gustavo Olvera testified that the El Camino belonged to him. He stored it at defendant's apartment because he did not have parking at his home. He also gave the keys to defendant.

Mr. Soria picked up the parrot and birdcage from the Sheriff's Department, and confirmed they were his.

During deliberations, the jury asked for a read back of Mr. Diego's testimony, and then declared it was deadlocked. After deliberating further, the jury reached a verdict and found defendant guilty. In a bifurcated trial, the prior conviction allegation was found true. Defendant then moved to strike his prior conviction under Penal Code section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. The trial court denied the motion and sentenced defendant to an aggregate term of 13 years, consisting of the midterm of four years for the burglary, doubled to eight years (Pen. Code, §§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)), with an enhancement of five years (Pen. Code, § 667, subd. (a)(1)). Defendant was also sentenced to four concurrent years for his probation violation. He received 768 days of custody credit, consisting of 512 actual and 256 conduct credits.

We have examined the entire record, consisting of three volumes of clerk's transcript, four volumes of reporter's transcript, an in camera *Pitchess* transcript, as well as the trial exhibits and the search warrant, and are satisfied that appointed counsel fully complied with her responsibilities and that no arguable appellate issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436.) We therefore affirm judgment below.

DISPOSITION

The judgment is affirmed.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.