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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE DEJESUS SANCHEZ,

Defendant and Appellant.

B284881

(Los Angeles County
Super. Ct. No. BA441318)

THE COURT:

On September 7, 2016, the Los Angeles County District Attorney's Office filed an information charging defendant and appellant Jose DeJesus Sanchez with one count of murder. (Pen. Code, § 187, subd. (a).) It was also alleged that defendant personally used a deadly and dangerous weapon, a knife, in the commission of the crime. (Pen. Code, § 12022, subd. (b)(1).)

Defendant pleaded not guilty and denied all allegations.

On July 13, 2017, the jury returned a verdict of first degree murder, finding the knife enhancement true.

Defendant was sentenced to serve 25 years to life, plus a consecutive sentence of one year for the knife enhancement, for a total of 26 years to life in prison.

This timely appeal ensued.

Counsel was appointed to represent defendant in connection with this appeal. After examination of the record, counsel filed an “Opening Brief” in which no arguable issues were raised. On March 27, 2018, we advised defendant that he had 30 days within which to personally submit any contentions or issues for us to consider.

After receiving an extension, on July 23, 2018, defendant submitted a supplemental brief. We address each argument he raises in turn.

1. *Challenges to the verdict form*

First, defendant appears to argue that the appellate record is inadequate because it does not contain any evidence that the jury was provided with proper verdict forms. He writes, “there is no proof that verdict forms for second degree murder or manslaughter had ever actually been provided to the jury.” In support, he cites to various case law and the California Rules of Court, which require that an appellant supply the appellate court with an adequate record and adequate record citations. What defendant does not seem to grasp is that he, as the appellant, has the burden of providing us with an adequate record for appellate review. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) Because defendant did not provide us with an adequate record, and we presume the judgment was correct (*ibid.*), defendant offers no basis for reversal.

Setting that procedural obstacle aside, to the extent defendant is claiming that the jury was only provided with the

one guilty verdict form for first degree murder, the appellate record indicates otherwise. As evidenced by the transcript of the trial court's conversation with counsel for both the People and defendant, "verdict forms" were signed by both counsel and provided to the jury. Moreover, the trial court gave the jury CALCRIM No. 640, titled "Deliberations and Completion of Verdict Forms: For Use When Defendant Is Charged With First Degree Murder and Jury Is Given Not Guilty Forms for Each Level of Homicide." That instruction specifically advised the jurors on how to consider the different kinds of homicide (first degree murder, second degree murder, and voluntary manslaughter) charged and how to use the different verdict forms provided to them. Not only does this instruction confirm that various verdict forms were provided to the jury, but we also presume the jury understood and followed these instructions. Since the jury was properly instructed as to the different degrees of the offense charged, had only the one first degree murder verdict form been provided to them, we presume that the jury would have either asked for the proper verdict form or written it out themselves. (*People v. Osband* (1996) 13 Cal.4th 622, 689–690.)

Second, in one sentence, defendant contends that "the heavily redacted jury instructions confused [the] jury." But defendant offers no evidence of juror confusion, and his brief speculation is insufficient to reverse his judgment of conviction. (*People v. Williams* (1988) 44 Cal.3d 883, 933.)

Third, defendant argues that the predrafted jury verdict form directed a true finding on the Penal Code section 12022, subdivision (b)(1), allegation against him. But defendant offers no legal authority in support of his contention that the verdict

form violates the law. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) Setting this issue aside, we see no prejudice in the form of the verdict. The jury was given the choice of “‘TRUE’ or ‘NOT TRUE’” on the verdict form. And the evidence was overwhelming that defendant used a knife when he murdered the victim.¹

2. *Failure to admit evidence regarding a witness’s prior arrest*

Defendant argues that the trial court erred when it failed to admit evidence that prosecution witness Izaiah Ramirez (Ramirez) had been arrested on a crime of moral turpitude, namely violation of Vehicle Code section 31.² Vehicle Code section 31 provides: “No person shall give, either orally or in writing, information to a peace officer while in the performance of his duties under the provisions of this code when such person knows that the information is false.” Defendant contends that

¹ Defendant also argues that he was denied effective assistance of counsel in connection with the verdict form. According to defendant, “[t]rial counsel had a duty to see to it that the jury was provided verdict forms allowing them to find [him ‘guilty’ or ‘not guilty’ for first degree murder, second degree murder, manslaughter, and a ‘true’ or ‘not true’ finding on the Penal Code [section] 12022[, subdivision (b)(1),] allegation.” Given that we reach the issue on the merits, there is no reason for us to consider whether defendant’s trial counsel was ineffective.

² Defendant also argues that he was denied effective assistance of counsel regarding this issue. Given that we reach the issue on the merits, there is no reason for us to consider whether defendant’s trial counsel was ineffective.

the jury should have been told of Ramirez's arrest for violation of this statute because it would have been relevant in its assessment of his credibility.

Even if the trial court erred in not admitting this evidence, we conclude that the error was harmless as a matter of law. (*People v. Houston* (2012) 54 Cal.4th 1186, 1222; *Chapman v. California* (1967) 386 U.S. 18, 24; *People v. Watson* (1956) 46 Cal.2d 818, 836.) At least one other witness testified that he saw defendant stab the victim in the neck.

3. *Defense counsel's trial preparation and tactics and alleged failure to advise defendant to accept a plea*

Defendant argues that he was denied effective assistance of counsel when his trial attorney advised him to proceed to trial as opposed to accepting a plea deal to second degree murder. He also argues that his defense attorney failed to conduct an adequate investigation to prepare for trial and failed to impeach a witness.

We usually do not consider ineffective assistance of counsel claims on appeal; we generally leave defendants to petition for a writ of habeas corpus where counsel's conduct might have had a tactical purpose and the appellate record does not illuminate its basis. (*People v. Phillips* (1985) 41 Cal.3d 29, 61.) We only address the claim on appeal if there could be no conceivable legitimate tactical purpose behind counsel's actions. (*People v. Diaz* (1992) 3 Cal.4th 495, 558; *People v. Pope* (1979) 23 Cal.3d 412, 426.) Because there may have been a legitimate tactical purpose behind defense counsel's actions now challenged by defendant, we cannot decide these issues on direct appeal.

We have examined the entire record and we are satisfied that defendant's appellate counsel has fully complied with her

responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441 (*Wende*).)

Defendant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment and sentence entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123–124.)

The trial court's judgment is affirmed.

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LUI, P. J.,

ASHMANN-GERST, J.,

CHAVEZ, J.