Filed 5/17/18 P. v. Mora CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. MYTCHELL MORA, Defendant and Appellant.	B280345 (Los Angeles County Super. Ct. No. MA066814)

APPEAL from a Judgment of the Superior Court of Los Angeles County. Joel L. Lofton, Judge. Affirmed.

A. William Bartz, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, David E. Madeo and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Mytchell Mora appeals his conviction for two counts of stalking (Pen. Code, § 646.9, subd. (a).)[1] During trial, a hearing-impaired juror was impaneled, and pursuant to Code of Civil Procedure section 224, made use of a special court reporter in order to understand the proceedings. Defendant contends that (1) the trial court committed prejudicial error by failing to instruct the jury properly on the role of the special reporter in deliberations, (2) the parties failed to stipulate to the juror, and (3) the parties did not know the identity of the hearing-impaired juror, thus precluding defendant from making a peremptory challenge on that basis. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Defendant is a self-styled independent journalist, and became interested in the adoption of two half-sisters, each of whom was placed in a different home. Defendant met the birth mother of both girls in 2013, and stalked the adoptive parents physically, on the telephone, and through social media, claiming the adoptions were illegal.

1. *Ke.F.*

Mark Pursel, a sergeant with the Los Angeles Police Department, and his wife Cora adopted Ke.F. in 2014. The Pursels have six children total, three of whom, including Ke.F., are adopted. Ke.F. had come to live with them in 2012 when she was eight as a foster child, and her

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[1] All statutory references herein are to the Penal Code unless otherwise noted.

adoption was a "closed" adoption. Ke.F.'s birth mother C.F. had a substance abuse problem.

The Pursels home school their four younger children, and as a police officer, Pursel keeps his residence address private. The social worker, Elizabeth Canup, told the Pursels that C.F. had abducted Ke.F. from another foster home by fraudulently checking Ke.F. out of her school. One reason the Pursels home-schooled Ke.F. was to keep her birth mother from abducting her again.

Both Ke.F. and her half-sister, Ka.F., were the subject of a 2014 news article. The article did not mention defendant by name, but alluded to defendant's relationship with C.F. The article discussed how C.F.'s children, Ke.F. and Ka.F., had been taken from her and put up for adoption. Defendant wanted to publicize C.F.'s story, and helped her find an apartment.

On March 28, 2014, Pursel, who lives next door to a church parking lot, observed defendant parked in a white pickup truck in the church parking lot. It was evening and getting dark. Pursel pulled up and asked defendant what he was doing. Defendant responded that he was there for church. Pursel did not know defendant and this was the first time Pursel had seen him. However, Canup had previously shown him a picture of defendant.

Several days later, on April 2, 2014, defendant called Cora Pursel and identified himself. Defendant asserted he had gotten her phone number from Canup, and began to yell that there were sexual allegations against Mark Pursel. After this phone call, Mark Pursel went on the Internet and found a picture of defendant.

Defendant posted a picture of Pursel in his police uniform to defendant's Twitter account. Defendant made a twitter post on March 17, 2014, with a photograph of Ke.F. and another child, stating "Amber Alert. These two children have been kidnapped and are being held against their will." The post requested callers to contact defendant, not the police. Defendant also made a number of Internet posts claiming that Ke.F.'s adoption was illegal.

Pursel teaches martial arts to at-risk and underprivileged children for a nationwide nonprofit known as "Team Pride." Pursel runs the program in his area. Defendant contacted Jordan Schreiber, the national director of Team Pride, and left a voicemail asking why someone accused of sexual abuse would be permitted to work with children.

An anonymous caller (later determined to be defendant) made two complaints to the child-abuse hotline stating that a police officer was abusing his child Ke.F. DCFS made an investigation, and came to Pursel's house with a search warrant and armed deputies. DCFS determined the allegations were unfounded.

Armand Montiel, the public relations director for DCFS, received an email from defendant in December 2014 that asked why Ke.F. was still at Pursel's home, given that Pursel was under investigation for sexual assault. Montiel believed that defendant thought some unfair advantage had been given to Pursel in connection with Ke.F.'s adoption because Pursel was a police officer.

Defendant represented himself to Montiel as a reporter working on a story, and Montiel met with defendant and C.F. for about an hour.

Montiel expected the meeting to be about a media story, but defendant was on a crusade about the adoption of C.F.'s children. Montiel asked defendant to leave the meeting because defendant had become agitated.

On March 10, 2015, defendant sent an email to Canup, Montiel, and members of the LAPD in which defendant claimed that the truth had come out about DCFS kidnappings and false reports. Defendant alleged DCFS had kidnapped Ke.F. In the email, defendant claimed he was "willing to become a martyr for this cause" and that "ISIS and Al [Qaeda] are not real enemies but 'animals' like Canup [were] worse."

Defendant made numerous personnel complaints to the Los Angeles Police Department about Pursel. He told the LAPD that he was actively working to get Ke.F. back for C.F. Defendant alleged that Pursel used government data bases to run a search on defendant, and to find out what car defendant drove. Defendant also alleged that Pursel used his authority as a police officer or detective and made inappropriate statements in a blog.

Defendant's complaints were investigated by the Internal Affairs Department. Eventually Pursel was cleared of any wrongdoing.

In July 2014, the Pursels' neighbor Heidi Hall looked after the Pursels' house. She went to their house to put their trash cans away and observed defendant sitting in his car photographing her with his cell phone. She approached him and asked if he needed anything. Defendant responded that he was fine.

As a result of defendant's conduct, although he normally did not carry his gun while not on duty, Pursel began to carry his weapon, even while off duty. Pursel obtained a restraining order against defendant

on August 28, 2014, but was unable to serve it because he could not determine defendant's location.

Defendant had never interviewed Pursel.

2. *Ka.F.*

Cheryl Osterkamp adopted Ka.F. on August 1, 2016. The adoption process took three years. Osterkamp first received a text message from defendant on March 30, 2014, stating, "I'm coming after you Cheryl. You're being filmed as we speak. You get them arrested, I will strike back, and you will never recover. You are an animal. You're going to have no choice but to have me murdered, but my story will still air. Some of your people sold you out to save themselves. You should also. Let's talk or dance."

Defendant sent a text to Osterkamp with a picture of a car similar to Osterkamp's car. Osterkamp received a phone call the same day, from the same phone number, and a man screamed at her, "I'm following you, Cheryl. You're being filmed as we speak. Get the police away from her. If the police arrest her, I will come after you. I will destroy you. I will kill you. You are an animal. How could you do this?"

On April 19 she received another text. "Cheryl . . . it's time you and I talk. Since you won't return the media's calls and you seem to have a lot of time at night posting on the Internet, it's time we talk. I have the mother's power of attorney now. We are demanding to see [Ka.F.] ASAP and to resume visitations now. I have forward[ed] this text to members of the media. It's time for the truth to come out and for

you to confess, and if you try to file yet another restraining order, we will fight back and respond."

That night, Osterkamp received a phone call from a male voice who said, "Cheryl, let's talk. Come on, Cheryl. We need to talk. Cheryl, I know you're afraid. Don't be afraid. Let's talk. I know you think you have a lot of power." Osterkamp hung up. She received another phone call eight minutes later, and another after that.

She received a text message later that day. "I urge you now to call your police and report me. I will unload all my evidence to them. I will call you every day until police—I will unload my—I will call you every day until you allow [Ka.F.] to see her mother." The next day, April 20, 2014, she got two more phone calls. The caller did not leave a message. The next several days, she received calls from defendant's number, but he did not leave a message.

Osterkamp filed two police reports and sought a Temporary Restraining Order.

Gloria Manchame had worked for Cheryl Osterkamp for 16 years. In 2015, Manchame received a phone call from a man whose name was Mytchell Mora, who said he was a television reporter. He was calling about Ka.F., and wanted information about the little girl. The man said if she did not give him information, he would turn her over to immigration.

3. *Police Investigation*

Detective Michael Rose of the LAPD investigated the incidents. Rose believed that defendant was a "self-proclaimed independent news

producer." Rose spoke to defendant on the phone and taped the conversation. The conversation was played for the jury. During the conversation, defendant told Rose that he met C.F. in December 2013. She was homeless at the time. C.F. told defendant about her children Ka.F. and Ke.F. being taken away. Defendant investigated what C.F. had told him and defendant believed the two girls had been kidnapped. Although he admitted sending the Amber Alert tweet, defendant denied calling the Pursel home and denied being in front of their home.

Sometime after the phone conversation, Rose obtained a warrant for defendant's arrest.

4. *Information, Trial and Verdict*

On May 23, 2016, an information charged defendant with two counts of stalking in violation of section 646.9, subdivision (a) (counts 1 and 3) and one count of attempted child stealing in violation of section 664/278 (count 2). During trial, on defendant's motion, the court dismissed count 2 pursuant to section 1118.1. On December 1, 2016, the jury began deliberating and on the same date, the jury found defendant guilty on both counts. On January 20, 2017, the trial court sentenced defendant. On count 1, the court suspended imposition of sentence and placed defendant on formal probation for 48 months, with appellant to serve 364 days in County Jail. On count 3, the court suspended sentence and placed defendant on 48 months' probation, with defendant to serve 364 days in County Jail. Count 3 was to run consecutively to count 1. The trial court ordered defendant to complete

a 52-week mental health counseling program, and issued a 10-year protective order for the victims' families.

DISCUSSION

I. *Duty to Instruct with CALCRIM Nos. 120 and 3531 on Proper Role of CART Reporter*

Defendant argues the trial court committed prejudicial error by failing to instruct the jury with CALCRIM Nos. 120 and 3531 on the limited role of the CART[2] reporter who was assigned to the case to assist the hearing-impaired juror. Defendant complains the trial court paraphrased the instructions and in so doing, misinstructed the jury. As a result, defendant has no confidence that the CART reporter did not take part in the deliberations.

A. *Factual Background*

At the commencement of voir dire, the trial court informed the jury that "[w]e also have a special court reporter who is also present."

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[2] A "CART" reporter is one who provides "Communication Access Realtime Transcription." According to the National Court Reporters Association, CART services are "the instant translation of the spoken word into English text using a stenotype machine, notebook computer and realtime software." The website of the National Association for the Deaf explains that "[t]he text produced by the CART service can be displayed on an individual's computer monitor, projected onto a screen, combined with a video presentation to appear as captions, or otherwise made available using other transmission and display systems." (https://www.nad.org/resources/technology/captioning-for-access/communication-access-realtime-translation/.)

The CART reporter, Linda Breech, introduced herself as a "reporter for a hard-of-hearing juror." The court's minute order for that date establishes that the hearing-impaired juror, No. 9791, was assisted by Linda Breech.

During voir dire, juror No. 9791 was placed in seat No. 8 in the jury box, where she participated in voir dire questioning. She stated that she was a behaviorial therapist who worked with children with special needs. Juror No. 9791 was single and had three adults living in her household: a restaurant manager, a stay-at-home mother, and a graduate student in neuroscience.

Juror No. 9791 was not challenged and remained on the panel.

During closing arguments, instead of reading from CALCRIM Nos. 120 and 3531, the standard instructions on the role of a CART reporter in deliberations,[3] the court orally instructed the jurors that during deliberations, the CART reporter would be in the jury room:

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[3] CALCRIM No. 120 provides: "During trial, _____<*insert name or number of juror*> will be assisted by (a/an) _____<*insert description of service provider, e.g., sign language interpreter*>. The _____<*insert description of service provider*> is not a member of the jury and is not to participate in the deliberations in any way other than as necessary to provide the service to _____ <*insert name or number of juror*>."

CALCRIM No. 3531 provides: "_____ <*insert name or number of juror*> has been assisted by (a/ an) _____ <*insert description of service provider, e.g., sign language interpreter*> to communicate and receive information. The _____ <*insert description of service provider*> will be with you during your deliberations. You may not discuss the case with the _____ <*insert description of service provider*>. The _____ <*insert description of service provider*> is not a

"All right. . . . [D]uring your deliberations, Linda Breech is going to be right back there with you. Now we all see Ms. Breech, recognize she's a human being, that she's here, she's smart, but *she's not going to be participating in your deliberations at all*; so it might seem a little unnatural, but while she's in the deliberation room, it's almost like I'm ordering you to ignore her.

"Not almost. I'm ordering you to ignore her. I'm ordering you to ignore her, and I know it might seem rude or unnatural, but she understands that. She's a professional. *You can't engage her in any conversation. She's not to become part of the deliberations in any way whether that's nodding or smiling or participating*. She's a professional. She's not going to do that; so I'm going to ask you not to make her uncomfortable by engaging her in any type of conversation or acknowledgment.

"Also, she's going to pass out numbers. If you could wear those numbers and display those numbers somewhere where it's easy for her to see, that would help her. *Also how you conduct your deliberations is entirely on you*. I'm not telling you how to sit, where to sit. I'm not

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member of the jury and is not to participate in the deliberations in any way other than as necessary to provide the service to _____ <*insert name or number of juror*>. [¶] All jurors must be able to fully participate in deliberations. In order to allow the _____ <*insert description of service provider*> to properly assist _____<*insert name or number of juror*>, jurors should not talk at the same time and should not have side conversations. Jurors should speak directly to _____<*insert name or number of juror*>, not to the _____<*insert description of service provider*>."

going to tell you not to talk over each other, but if you do those things, it might make it difficult for her to transcribe; so just keep that in mind, *but how you handle your deliberations is entirely up to you*. Everyone understand that?" (Italics added.)

The trial court did not provide any other instruction to the jury, and it did not provide the jury with the CALCRIM written instructions, although the court said that it would give the jury a copy.

B. *Discussion*

Defendant contends that the court's oral instruction conflicted with CALCRIM No. 3531 because the written instruction makes it clear the jurors should not talk at the same time. However, the trial court told the jurors, "I'm not going to tell you not to talk over each other." As a result, defendant contends, it is impossible to know whether juror No. 9791 received correct information during deliberations and was able to participate in the deliberations. Furthermore, defendant contends the trial court failed to provide the jury with the written form of these instructions, even though it said that it would. Defendant argues these errors were not harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.)

1. *Defendant Failed to Preserve the Issue for Appeal*

Persons with disabilities, including those who are hearing impaired, may serve on juries. (Code Civ. Proc., § 203, subd. (a)(6).) To that end, Code of Civil Procedure section 224 governs the empanelment of hearing-impaired jurors and the use of interpreters to assist them.

Section 224 provides with respect to instructing the jury on the use of a CART reporter: "(b) . . . If auxiliary services are required during the course of jury deliberations*, the court shall instruct the jury and the service provider that the service provider for the juror with a disability is not to participate in the jury's deliberations in any manner except to facilitate communication between the juror with a disability and other jurors*." (Code Civ. Proc., § 224, subd. (b), italics added.)

The bench notes to both standard instructions, CALCRIM Nos. 120 and 3531, consistent with the directive of Code of Civil Procedure section 224, subdivision (b), indicate that the trial court has a sua sponte duty to give these instructions when a special service provider is used. Defendant contends that because the trial court had a sua sponte duty to instruct pursuant to Code of Civil Procedure section 224, his failure to object to the CART reporter or the juror in the trial court did not forfeit the issue. (See, e.g., *People v. Carter* (2010) 182 Cal.App.4th 522, 532 [trial court's failures to give sua sponte instruction requires no trial court action by defendant to preserve issue].)

However, although the trial court had a sua sponte duty to give instructions pursuant to Code of Civil Procedure section 224, contrary to defendant's assertion, it did not violate that duty here. The trial court gave oral instructions on the role of the CART reporter in jury deliberations. These instructions were based on the written CALCRIM instructions. As a result, the issue was not automatically preserved for appeal in spite of defendant's lack of objection to the oral instructions in the trial court. Rather, here, the purported variance of the instructions from the written CALCRIM instructions required defendant to take

some action in the trial court to preserve the issue. (*People v. O'Malley* (2016) 62 Cal.4th 944, 991; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1192 [refusing to consider appellate claim that instruction was "vague, misleading and constitutionally defective" because defendant did not ask for clarification at trial].) As a result, defendant could have requested clarification or elaboration of the CART instructions, and his failure to do so forfeited the issue. (*People v. Rojas* (2015) 237 Cal.App.4th 1298, 1304.)

2. *In Any Event, the Variance in Official CALCRIM Instruction and Oral Instructions Is Immaterial and Not Prejudicial*

California Rules of Court, rule 2.1050(a) provides that "[t]he California jury instructions approved by the Judicial Council are the official instructions for use in the State of California," and rule 2.1050(e) provides that "[u]se of the Judicial Council instructions is strongly encouraged." (See *People v. Thomas* (2007) 150 Cal.App.4th 461, 465 [California Judicial Council adopted the new CALCRIM instructions, effective January 1, 2006].) However, "[n]o statute, rule of court, or case mandates the use of CALCRIM instructions to the exclusion of other valid instructions." (*Id.* at p. 466.) We review de novo a defendant's claim that the trial court's jury instructions did not correctly state the law. (*People v. Posey* (2004) 32 Cal.4th 193, 218.)

Here, we find the variance in the oral instructions from the standard written instructions immaterial and also nonprejudicial. The key component of both instructions is the admonishment that the CART

reporter has no role in deliberations; her role is only to facilitate the hearing-impaired juror's participation in deliberations. Both the trial court's oral instruction and the written version of the instructions make that clear.

Further, CALCRIM No. 3531 admonishes the jurors not to speak at the same time to avoid making the court reporter's transcription more difficult or impossible. While the trial court told the jury it would not tell them not to talk at the same time, it made it clear that such behavior would make the CART reporter's job more difficult. This admonishment was short of the complete prohibition on speaking at the same time contemplated by CALCRIM No. 3531, but did advise the jury such conduct was counterproductive to the CART reporter's duties.

In any event, any error was harmless. Defendant points to nothing in the record that indicates the jury was confused. On the contrary, the jurors had no questions for the court, did not request rereading of instructions or evidence, and they returned their verdict the same day. As a result, we are confident that there is no reasonable probability the result would have been different had the jury either been instruction with the complete version of CALCRIM No. 3531. "'"[M]isdirection of the jury, including incorrect, ambiguous, conflicting, or wrongly omitted instructions that do not amount to federal constitutional error are reviewed under the harmless error standard articulated" in *Watson*.'" (*People v. Beltran* (2013) 56 Cal.4th 935, 955.) "[U]nder *Watson*, a defendant must show it is reasonably probable a more favorable result would have been obtained absent the error." (*People v. Mena* (2012) 54 Cal.4th 146, 162.)

3. *No Error in Failure to Give Written Instructions*

Defendant argues the trial court erred in failing to give the jury copies of the written CALCRIM instructions regarding the hearing-impaired juror. California requires augmentation of oral instructions with written instructions only upon request of the defendant or the jury. (§ 1093, subd. (f); *People v. Trinh* (2014) 59 Cal.4th 216, 235 (*Trinh*).) Otherwise, the decision whether to give the jury written instructions is at the discretion of the trial judge. (*Ibid.*)[4] Furthermore, "[n]either the United States Supreme Court nor we have ever held that oral jury instructions are ineffectual unless augmented by written copies of the same instructions; to the contrary, we have established that neither the state nor the federal Constitution guarantees a criminal defendant the delivery of written instructions in addition to oral ones." (*Trinh, supra,* 59 Cal.4th at p. 234.)

As a result, defendant cannot show error here in the trial court's failure to give the jury written instructions. Although the court stated it would provide the jury with written instructions, it was under no

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[4] Section 1093, subdivision (f) provides a statutory basis for a requirement that written instructions be given to the jury on its request: "At the beginning of the trial or from time to time during the trial, and without any request from either party, the trial judge may give the jury such instructions on the law applicable to the case as the judge may deem necessary for their guidance on hearing the case. Upon the jury retiring for deliberation, the court shall advise the jury of the availability of a written copy of the jury instructions. The court may, at its discretion, provide the jury with a copy of the written instructions given. However, if the jury requests the court to supply a copy of the written instructions, the court shall supply the jury with a copy."

obligation to do so; furthermore, the jury did not request written instructions.

II. *No Error Regarding Hearing-Impaired Juror*

Defendant argues he did not stipulate to the empanelment of the hearing-impaired juror as required by Code of Civil Procedure section 224, subdivision (a). He contends that the purpose of the statute is to ensure all parties agree to the presence of a nonjuror in the jury room. As a result, and because this language is mandatory and the trial court failed to comply with it, he contends his conviction must be reversed. He is mistaken.

Code of Civil Procedure section 224, subdivision (a), does not require a party to stipulate to the participation of a hearing-impaired juror, but rather provides that if a party does not remove a hearing-impaired juror from the jury panel by an appropriate challenge, the party *is required to* stipulate to the presence of a special reporter in the jury room during deliberations to assist the juror in jury deliberations. The statute provides: "(a) If a party does not cause the removal by challenge of an individual juror who is deaf, hard of hearing, blind, visually impaired, or speech impaired and who requires auxiliary services to facilitate communication, *the party shall stipulate to the presence of a service provider in the jury room during jury deliberations,* and prepare and deliver to the court proposed jury instructions to the service provider." (Italics added.)

Here, defendant did not remove the hearing-impaired juror from the jury panel, and thus was obliged to stipulate to the presence of a

service provider during deliberations. That the court took no formal stipulation does not create judicial error. In substance, by accepting the juror, defendant impliedly stipulated to the presence of a service provider. Defendant's interpretation of the statute would lead to the absurd result that a party could accept a hearing-impaired juror, and then, by failing to expressly stipulate to the presence of a service provider, or prevent that juror from participating in deliberations.

Assuming arguendo that the court erred in not obtaining an express stipulation, the error was not prejudicial. We interpret defendant's prejudice assertion to be that the error here is reversible per se. Whether an error, even one of constitutional dimensions, is considered reversible per se or one to which harmless error may be applied is dependent upon whether the error is a "structural defect" which affects the entire proceeding, or a "trial error." (*Arizona v. Fulminante* (1991) 499 U.S. 279, 309–310.) A structural defect is the type of error "affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself," one that "'transcends the criminal process'" and "def[ies] analysis by 'harmless-error' standards." (*Id.* at pp. 309–311.) Trial errors, by contrast, are errors that "occurred during the presentation of the case to the jury, and which may therefore be quantitatively assessed in the context of other evidence presented" in order to determine whether the error was harmless. (*Id.* at pp. 307–308.)

Under article VI, section 13 of our state Constitution, trial error does not merit reversal of a judgment unless the error complained of has resulted in a miscarriage of justice. A defendant who has

established error under state law must demonstrate pursuant to *People v. Watson* (1956) 46 Cal.2d 818 that there is a reasonable probability that in the absence of the error he or she would have obtained a more favorable result. (*People v. Anzalone* (2013) 56 Cal.4th 545, 553.)

The supposed error here was not so pervasive as to affect the framework within which the trial proceeded and consists of trial error. As a result, it is susceptible to quantitative assessment in the context of the evidence received by the jury and subject to harmless error analysis. Given the strong evidence of defendant's guilt, the lack of juror questions, and the speed with which the jury reached a verdict, we can find nothing in the record suggesting that the error affected the outcome of the trial or resulted in a miscarriage of justice.

III. *No Error in Failure to Identify Juror*

Defendant contends the trial court erred in failing to identify the hearing-impaired juror, and as a result, voir dire was impermissibly limited, violating his rights to due process. He contends the error was prejudicial because it was reasonably probable he would have excused juror No. 9791 from the panel. Respondent disputes that the identity of the juror was unknown, pointing to the record which reflects that the minute orders identified the juror; the juror responded to questions during voir dire; and defense counsel asked the juror a question.

We need not decide whether substantial evidence supports a finding the parties specifically knew the identity of the hearing-impaired juror. Defendant's failure to object to the use of an impaired juror at the time of trial forfeited the issue. (*People v. Holloway* (2004)

33 Cal.4th 96, 124 [failure to object to juror at trial forfeits issue on appeal].)

Even so, defendant cannot show prejudice. Voir dire is critical to assure that the Sixth Amendment right to a fair and impartial jury will be honored. "Without an adequate voir dire the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled." (*Rosales-Lopez v. United States* (1981) 451 U.S. 182, 188.) Nonetheless, the exercise of discretion by trial judges in conducting voir dire is accorded considerable deference by appellate courts. We find an abuse of discretion if voir dire is insufficient to test the jury for bias or partiality. (*People v. Chapman* (1993) 15 Cal.App.4th 136, 141.)

Here, the judge did not improperly restrict voir dire. The judge did not keep the juror's number confidential; the judge expressly announced the use of the CART reporter, and did not in any other way limit the questioning of any of the jurors. Thus, if defendant objected to having a hearing-impaired juror sitting on his jury, it was incumbent upon his counsel to question that juror concerning the juror's ability to follow the proceedings with the CART reporter.

In any event, defendant cannot show prejudice. The record discloses no evidence that the juror had trouble following the proceedings, failed to deliberate properly, or otherwise had difficulty sitting on the jury.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.