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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. GABRIEL CAMPOS-MARTINEZ, Defendant and Appellant.	2d Crim. No. B268436 (Super. Ct. No. BA422242) (Los Angeles County)

Gabriel Campos-Martinez appeals his conviction by jury of first degree murder (Penal Code, §§ 187, subd. (a), 189).[1] He was sentenced to 25 years to life in prison (§§ 187, subd. (a), 190).

Several pieces of the victim's dismembered body, including his hands, feet and head, were found in Griffith Park within weeks of his demise. Timely disclosure was made. About

[1] All further statutory references are to the Penal Code.

two years later, three more pieces of flesh were discovered and linked to the victim by DNA analysis. Disclosure of the evidence and the ensuing report were made 16 months later while the trial was in progress. Appellant requested that the jury be instructed regarding the prosecution's failure to make timely disclosure. (CALCRIM No. 306.) The trial court refused. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Appellant met the victim, Hervey Medellin, in March 2011. Two months later, appellant left his then current partner and moved in with Medellin in Hollywood. On December 13, 2011, Medellin and appellant opened two joint bank accounts.

On December 25, 2011, appellant and Medellin had lunch at their apartment with Medellin's friend, Amelia De Vivar. At some point that day, someone used the Apple MacBook in the apartment to access a website called sausagemaker.com. The website advertised meat saws and sausage-making supplies.

The next day, De Vivar telephoned Medellin at his apartment, as they had previously arranged. Appellant answered, said that Medellin was asleep and told her to call again the next day. When she did as he instructed, appellant informed her that Medellin had gone to Mexico with two friends.

A couple of days later, De Vivar again telephoned Medellin and spoke with appellant. He told her Medellin was "staying a little longer" in Mexico and was expected back in three days. Appellant said that Medellin's cell phone was still at their apartment.

De Vivar subsequently went to Medellin's apartment. While there, she observed bottles of Medellin's prescription medication, which she knew he takes every day. She also spoke with Sandra Guillen, another friend of Medellin's. Guillen had

lunch with Medellin on December 26, 2011, and had arranged to meet him on New Year's Eve. He did not mention a trip to Mexico. Indeed, after lunch, Medellin went to sleep in his bedroom, while appellant used a laptop computer.

At 5:29 a.m. on December 27, 2011, someone using the Apple MacBook did a computer search for "Opus Dei, Church of Euthanasia." While on that website, the same user followed a link to an article titled "Butchering the Human Carcass For Consumption."

A day or two before New Year's Eve, Guillen called Medellin to confirm their plans. She tried calling his cell phone, but it was not working. When she called the landline, appellant answered. He told her that Medellin was in Mexico and would return on January 6, 2012.

On January 6, 2012, appellant told Guillen that he had not heard from Medellin since January 4. Appellant told her the same thing on January 9. Guillen recommended that he report Medellin missing. Appellant said he could not do so because he had no photographs of Medellin. Guillen knew this was not true. Appellant also admitted selling a dresser owned by Medellin.

On January 16, 2012, Los Angeles Police Department detectives, acting on a "crime stopper" tip, questioned appellant about Medellin's whereabouts. Appellant reported that Medellin had gone to Mexico and had not returned. The detectives assisted him in filing a missing person's report.

The next day, Lauren Kornberg was walking several dogs at the western edge of Griffith Park, below the Hollywood sign. One of the dogs broke away from the pack and started digging in a brushy area. The dog returned with what appeared

to be a human head. The hair on the head was still in place, and it appeared that the decedent had been a nice looking, middle-aged man. His eyes were open. Kornberg called "911."

James Blacklock of the Los Angeles County Coroner's Office confirmed that the object was a human head with some apparent insect activity and moderate decomposition. While at the scene, he recovered some plastic bags that appeared to contain tissue and fluids. Blacklock noted there was no blood in the immediate area.

Upon further investigation, coroner investigators uncovered plastics bags containing two feet and one hand. The hand and feet appeared to have been cut from the body with some sort of object, such as a saw. They also found a second hand that appeared to have been chewed by an animal. A fingerprint expert confirmed that the thumbprint of the right hand belonged to Medellin. The severed head also was identified as belonging to Medellin.

On January 19, 2012, Detective Lisa Sanchez-Padilla interviewed appellant. He said he had received phone calls from Medellin in late December 2011 and early January 2012, and that Medellin was calling from Tijuana. But a review of the records from the apartment's landline and Medellin's cell phone confirmed that appellant had not received any incoming calls from outside the United States between December 25, 2011 and January 7, 2012.

Appellant told Detective Sanchez-Padilla that he had used Medellin's ATM card to buy groceries, dog food, gas and basic necessities. He also had transferred the direct deposit of Medellin's Social Security checks into one of the accounts he held jointly with Medellin. In addition, appellant pawned for sale

several items of jewelry owned by Medellin. Appellant told authorities he was moving to Texas and needed the money. Appellant completed that move in late February 2012.

Dr. Yulai Wang, a deputy medical examiner with the Los Angeles Coroner's Department, concluded that Medellin's cause of death was probable asphyxia along with other, undetermined factors. He opined that Medellin probably died from strangulation. There was evidence of petechiae in Medellin's eyes and mouth, both commonly associated with strangulation. Dr. Wang concluded the death was a homicide.

Mandel Medina, a criminalist for the Los Angeles Police Department, conducted chemical screening tests for the presumptive presence of blood in the apartment and in the interior of Medellin's car. All of his tests returned either negative or inconclusive, except for a swab taken from the bedroom floor, which returned presumptively positive for blood.

Approximately two years later, on March 28, 2014, an equipment operator for the City of Los Angeles found a plastic grocery bag in the Bronson Caves area of Griffith Park. The bag contained three pieces of skin. Dr. Wang determined that the pieces of skin had come from different parts of the body, and that they had been cut, not torn. The larger pieces of skin might have come from the torso; the smallest, from an arm. He did not see any evidence of stab wounds or gunshots.

These additional remains were sent to the DOJ for analysis on May 20, 2015. The DOJ issued a report that was received by the coroner's office on September 22, 2015, during appellant's trial. The report confirmed that the tissue that made up the skin specimens was human, and that the DNA profile associated with it belonged to Medellin.

Defense counsel objected to the admission of any evidence related to the remains found in 2014, arguing he did not have sufficient time to review the evidence with defense experts. The trial court found that the prosecution had not been negligent and that the defense had not identified any prejudice that would result from admission of the additional evidence. The court stated it was "not hearing anything other than it was found at a different location." The court continued its inquiry:

"THE COURT: What's the relevance as -- on all of these things that you're objecting to in relationship to whether or not your client did it?

"MR. NAVARRO [DEFENSE COUNSEL]: Your Honor, I would argue that if the decomposition is such that it should have been decomposed at a higher rate, my client had gone to Texas. And then he would not have been able to place the bag in that grave. That was an area that I would explore or would have explored had I received the discovery at an earlier time.

"MR. GRACE [THE PROSECUTOR]: And I don't think that he's forestalled from asking those questions. There will be a coroner investigator who collected the specimen who is going to testify.

"THE COURT: Okay.

"MR. GRACE: She --

"THE COURT: "I'm going to allow the evidence to come in. I don't see it as being prejudicial in any way really to the defense case."

Subsequently, defense counsel requested that the jury be instructed with CALCRIM No. 306, regarding the

prosecution's failure to timely disclose the evidence.[2] The trial court denied the request, finding there was no "malfeasance or negligence on the part of the prosecutor's office with respect to this particular piece of evidence."

DISCUSSION

Appellant claims the trial court committed reversible error when it refused to instruct the jury with CALCRIM No. 306. We disagree.

"Section 1054.1 (the reciprocal-discovery statute) 'independently requires the prosecution to disclose to the defense . . . certain categories of evidence "in the possession of the prosecuting attorney or [known by] the prosecuting attorney . . . to be in the possession of the investigating agencies."' [Citation.] Evidence subject to disclosure includes '[s]tatements of all defendants' [citation], '[a]ll relevant real evidence seized or obtained as a part of the investigation of the offenses charged' [citation], any '[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

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[2] CALCRIM No. 306 states: "Both the People and the defense must disclose their evidence to the other side before trial, within the time limits set by law. Failure to follow this rule may deny the other side the chance to produce all relevant evidence, to counter opposing evidence, or to receive a fair trial. [¶] An attorney for the (People/defense) failed to disclose: <describe evidence that was not disclosed> [within the legal time period]. [¶] In evaluating the weight and significance of that evidence, you may consider the effect, if any, of that late disclosure. [¶] [However, the fact that the defendant's attorney failed to disclose evidence [within the legal time period] is not evidence that the defendant committed a crime.]"

statements of experts' [citation], and '[a]ny exculpatory evidence' [citation]. '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. (§ 1054.7)' [Citation.]" (*People v. Verdugo* (2010) 50 Cal.4th 263, 279-280 (*Verdugo*).)

"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.]" (*Verdugo*, *supra*, 50 Cal.4th at p. 280.) The court's ruling on discovery sanctions is reviewed under an abuse of discretion standard. (*People v. Ayala* (2000) 23 Cal.4th 225, 299; see *People v. Lamb* (2006) 136 Cal.App.4th 575, 581 [trial court's refusal to instruct jury on late discovery subject to review for abuse of discretion].) In addition, "[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. . . . [Citation.]" (*Verdugo* at p. 280.)

Even if a section 1054.1 violation did occur, as appellant claims, he has not met his burden of establishing that he was prejudiced by the trial court's refusal to give the CALCRIM No. 306 instruction. Indeed, he concedes "it is difficult for appellant to show [that] the late disclosure itself caused actual prejudice. Since appellant had no opportunity to have the evidence reviewed by his own expert, he cannot show how earlier disclosure might have directly benefitted him."

Instead, appellant argues it is unfair to put the burden on him to show how the late-disclosed evidence might have helped him and asks us to follow federal law holding that a violation of discovery rules warrants reversal of a conviction if the defendant shows prejudice to a substantial right. (See *United States v. Camargo-Vergara* (11th Cir. 1995) 57 F.3d 993, 998; *United States v. Noe* (11th Cir. 1987) 821 F.2d 604, 607.) But this is not the law in California. It is appellant's burden to demonstrate that he was prejudiced by the trial court's failure to instruct the jury with CALCRIM No. 306. (*Verdugo*, *supra*, 50 Cal.4th at pp. 279-280; *People v. Watson*, *supra,* 46 Cal.2d at p. 836 [reversal is appropriate only where it is reasonably probable, by state-law standards, that the omission affected the trial result].)

Although appellant argues that his defense was impeded, appellant provides no explanation of how the late discovery hindered his defense. Defense counsel claimed at trial that he would have argued that the state of decomposition of the third set of remains would have supported an argument that appellant could not have deposited the remains in Griffith Park before he moved to Texas. But his "generalized statements are insufficient to demonstrate prejudice." (*Verdugo*, *supra,* 50 Cal.4th at p. 282.) Moreover, as the prosecutor pointed out, the defense could still pursue such a theory when questioning coroner's investigators. Indeed, defense counsel cross-examined witnesses regarding decomposition. Counsel also could have requested a continuance to allow time to consult with his experts regarding the new evidence. (See *People v. Sakarias* (2000) 22 Cal.4th 596, 646-647 [trial court has broad discretion in granting a continuance during trial].)

In any event, the additional evidence was duplicative of the original discoveries of the victim's remains. It consisted of human tissue of the victim which had been buried in a manner similar to the burial of the other body parts. This additional evidence reinforced what the other evidence established, i.e., that the victim had been dismembered in a manner consistent with the methods of dismemberment that appellant had researched on his computer. We conclude the trial court did not abuse its discretion when it declined to give the CALCRIM No. 306 instruction.

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Katherine Mader, Judge
Superior Court County of Los Angeles

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, and David F. Glassman, Deputy Attorney General, for Plaintiff and Respondent.