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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN AMIRANT,

Defendant and Appellant.

B232350

(Los Angeles County  
Super. Ct. No. PA068226)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
David B. Gelfound, Judge. Affirmed.

Bahar Law Office and Sarvenaz Bahar, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted defendant Ryan Amirant of one count of carjacking (Pen. Code, § 215, subd. (a))<sup>1</sup> with use of a firearm (§ 12022.53, subd. (b)), one count of felon in possession of ammunition (§ 12316, subd. (b)(1)), and two counts each of possession of a firearm by a felon (§ 12021, subd. (a)(1)) and resisting an executive officer (§ 69). The trial court found true six prior prison term allegations (§ 667.5, subd. (b)), and sentenced him to a total term of term of 22 years, 4 months in state prison. Defendant appeals from the judgment of conviction.

## **BACKGROUND**

In the early morning hours of July 14, 2010, Ryan Tinstman was driving his father's white Mustang automobile when he saw defendant walking on the street. Tinstman knew defendant, pulled over, and agreed to give defendant a ride. While Tinstman drove, defendant pulled a rifle out of his duffle bag and put it on his lap. He eventually asked Tinstman to pull over. Tinstman stopped. Defendant turned the engine off and pulled out the keys. He told Tinstman to get out, that he needed the car, and repeatedly said not to make him mad. He pointed the rifle at Tinstman and demanded Tinstman's cell phone. Tinstman complied and backed away from the car. Defendant drove off.

On July 18, 2010, Los Angeles Police Officers located defendant at a residence on Paddock Street, and observed the stolen Mustang outside the residence. Ten to twelve officers were present when defendant was ordered to come outside with his hands up. He did not comply, so officers entered the residence. Defendant resisted their efforts to subdue him, requiring the use of a taser burst to get him under control. According to Los Angeles Police Officer Juan Zarazua, he and Officer Chris Eilers (among other officers) came into physical

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<sup>1</sup> All undesignated statutory references are to the Penal Code.

contact with defendant as he struggled. A loaded rifle was found in a duffle bag at the foot of the bed where defendant was subdued.

## **DISCUSSION**

After review of the record, appellant's court-appointed counsel filed an opening brief asking this court to review the record independently pursuant *People v. Wende* (1979) 25 Cal.3d 436, 441.

We advised appellant of his right to submit any contentions or issues that he wished us to consider. He filed a supplemental letter brief in which he contends that the court erroneously denied his motion for mistrial, that the prosecutor asked Tinstman a misleading question, that the evidence was insufficient to sustain the firearm use enhancement and one count of resisting an executive officer, and that his trial counsel was ineffective. The contentions lack merit.

### **1. Motion for a Mistrial**

Before trial, the court granted a defense motion to preclude any reference to defendant's gang membership. Later during trial, Los Angeles Police Officer Juan Zarazua (the officer named in one count charging defendant with resisting an executive officer in violation of section 69) was asked by the prosecutor the purpose of his calling for back up. He answered, nonresponsively, "It was actually for a parole search." Defense counsel objected. The court sustained the objection and struck the answer. Still later, when asked why officers acted quickly to take defendant into custody, Officer Zarazua testified, "Well, based on the fact that he could possibly be armed and a known gang member in the area –" The prosecutor immediately interrupted to ask another question, and defense counsel objected to

the prior answer and moved to strike it. The court sustained the objection, struck the answer, and admonished the jury to disregard it.

Before beginning cross-examination, defense counsel moved for a mistrial based on Officer Zarazua's references to a parole search and defendant being a known gang member. The trial court denied the motion. On appeal, defendant contends that the court erred. However, "[a] trial court should grant a mistrial only when a party's chances of receiving a fair trial have been irreparably damaged, and we use the deferential abuse of discretion standard to review a trial court ruling denying a mistrial." (*People v. Bolden* (2002) 29 Cal.4th 515, 555.) Here, the references to a parole search and defendant's gang membership were extremely brief and the court struck them. Although the court did not expressly instruct the jury to disregard the reference to a parole search, the court did do so with respect to the reference to gang membership. Further, because defendant was charged with being a felon in possession of a firearm and in possession of ammunition, the parties entered a stipulation before the jury that he was a convicted felon. Finally, the evidence of defendant's guilt of all charges was overwhelming. Thus, defendant's chance for a fair trial was not irreparably damaged, and the trial court did not abuse its discretion in denying the mistrial motion.

## **2. Misleading Question**

During his examination of Tinstman, the prosecutor sought to refresh Tinstman's recollection that defendant told him to "report" the taking of the white Mustang. In doing so, the prosecutor asked if Tinstman remembered speaking to Officer Zarazua about what defendant said. Tinstman replied that he did.

On appeal, defendant notes that Officer Zarazua was not one of the officers who took the report of the carjacking, and contends that the prosecutor's question

referring to Officer Zarazua was “very misleading.” We find nothing misleading, and nothing prejudicial. The prosecutor’s mistake in referring to Officer Zarazua was merely a preliminary question before Tinstman was shown the police report on the carjacking in an effort to refresh his recollection.

### **3. Sufficiency of the Evidence**

Defendant contends that the evidence was insufficient to support the firearm enhancement under section 12022.53, subdivision (b). He is incorrect. Tinstman’s testimony that defendant pointed the rifle at him is adequate to prove that defendant used the rifle in the commission of the carjacking. “[W]hen a defendant deliberately shows a gun, or otherwise makes its presence known, and there is no evidence to suggest any purpose other than intimidating the victim (or others) so as to successfully complete the underlying offense, the jury is entitled to find a facilitative use rather than an incidental or inadvertent exposure.” (*People v. Granado* (1996) 49 Cal.App.4th 317, 325.)

Defendant also contends that the evidence was insufficient to prove his conviction of violating section 69 by resisting Officer Chris Eilers, who participated in subduing defendant with Officer Zarazua, because Officer Eilers testified on subjects other than the resisting charge. However, Officer Zarazua testified that Officer Eilers was one of the officers who entered the residence, that all the officers ordered defendant to put his hands up, that defendant failed to comply, and that Officer Eilers tried to help Officer Zarazua gain control of defendant by grabbing defendant’s arm shortly before defendant was subdued by the use of a taser. This evidence is sufficient to prove that defendant resisted Officer Eilers.

#### **4. Ineffective Assistance**

Defendant contends that his trial counsel was ineffective for: (1) failing to call witnesses on his behalf; (2) failing to move to suppress evidence; (3) accepting jurors who had been victims of theft or had a connection to law enforcement; (4) questioning Tinstman in a way that allowed the prosecutor to introduce evidence of defendant's tattoos; (5) asking Tinstman about an erroneous phone number and (6) failing to subpoena video surveillance tapes from the 7-Eleven store where Tinstman testified he saw defendant walking in the street.

"In order to demonstrate ineffective assistance, a defendant must first show counsel's performance was deficient because the representation fell below an objective standard of reasonableness under prevailing professional norms. [Citation.] Second, he must show prejudice flowing from counsel's performance or lack thereof. Prejudice is shown when there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (*People v. Williams* (1997) 16 Cal.4th 153, 214-215.)

Here, defendant fails to cite any facts in the record that suggest that his attorney failed to perform in a reasonably competent manner. "“Reviewing courts defer to counsel's reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a ‘strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.’” [Citations.]”” (*People v. Jones* (2003) 29 Cal.4th 1229, 1254.) Moreover, as we have noted, the evidence of defendant's guilt was overwhelming. Defendant fails to demonstrate that in the absence of his attorney's alleged failings, it is reasonably probable that the result of the trial would have been different.

## **5. Independent Review**

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant 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 entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

## **DISPOSITION**

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.