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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE OF THE STATE  
OF CALIFORNIA,

Plaintiff and Respondent,

v.

PEDRO NAVARRO,

Defendant and Appellant.

B279763

(Los Angeles County  
Super. Ct. No. BA435580)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dennis J. Landin, Judge. Affirmed.

Stephen Temko, 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, Joseph P. Lee and Jaime L. Fuster, Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

A jury convicted defendant Pedro Navarro of first degree murder and personal use of a deadly weapon. On appeal, defendant contends that (1) the trial court committed reversible error in failing to sua sponte instruct the jury on third party culpability, and (2) defendant's trial counsel was prejudicially ineffective in failing to request instructions on third party culpability. We affirm.

## FACTS AND PROCEDURAL BACKGROUND

In accord with the usual rules of appellate review, we state the facts supporting defendant's conviction in a manner most favorable to the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

### ***1. Escalating Tensions Between Defendant and the Victim***

In late February 2015, defendant rented an apartment to Karina Amparo Velarde and her son, Christian Blanco. The apartment was in the back unit of a converted garage on defendant's property, where defendant and his wife lived in separate units. On March 1, 2015, defendant barged into the unit while Velarde and Blanco were sleeping and demanded rent money. Defendant "flipped out" and screamed at them to get out of the apartment. Defendant tried to take their phones away when Velarde attempted to call the police. Defendant told them, "[g]o ahead and call [the police] and be a snitch and see what happens." Police officers ultimately responded to the scene, and advised defendant that he would need a formal eviction order to remove Velarde and Blanco.

After the officers left, there was a second altercation. Jazmin Sandoval, a friend of defendant, enlisted her friends Ernest Lopez and Rick Vargas to come to defendant's house to help ease the situation. At first, they calmly interacted with

tenant Velarde. But then Sandoval and Velarde began screaming at each other, and Blanco had to push the women away from one another. Blanco tried to calm things down with defendant and asked him for a few days so he and Velarde could move out. Defendant responded, “ ‘You really think I’m scared to go to jail? Jail nothing [sic] to me.’ ” Police again responded to the scene, and advised defendant he needed to obtain an eviction order to remove the tenants.

In the early morning of March 2, 2015, Blanco and Velarde checked into a motel. They returned to the unit on defendant’s property to collect their belongings, but Velarde suddenly changed her mind about moving out. Blanco unsuccessfully tried to convince his mother to leave the unit with him, but she insisted she would stay. Blanco left the unit without her, and did not see Velarde alive again.

## **2. *Velarde’s Murder***

In the early morning hours of March 3, 2015, defendant fatally stabbed Velarde 29 times and then partially burned her body. Around 8:00 a.m., defendant picked up his friend Sandoval to help him dispose of Velarde’s body. Defendant and Sandoval drove to a turnout on Mount Baldy Road, where they removed the body from the back of his truck and left it in a small ditch. Around 9:30 a.m., a U.S. Forest Service employee discovered Velarde’s body.

## **3. *Police Investigation***

Police investigating Velarde’s murder found evidence tying defendant to the crime. Sergeant Gray searched defendant’s property and observed missing tiles, paint on the floor, a missing portion of drywall, and blood stains in Velarde’s unit. It appeared that someone had attempted to clean the crime scene. DNA testing of the bloodstains in the unit returned matches for Velarde and defendant. Police also discovered burn marks and

fire debris on the concrete outside. In defendant's unit, Sergeant Gray found a tablecloth the same color and pattern as the fabric Velarde's body was found wrapped in. Defendant also had a cut on his left hand, consistent with an injury one might sustain while stabbing another person.

Police reviewed defendant's phone records, which also tied him to the crime. In a series of text messages between defendant and his girlfriend, he voiced frustration about Velarde and spoke of getting her out of "[his] way," as opposed to formally evicting her, despite his girlfriend urging him not to do "anything bad." At the time of the murder, defendant's cell phone was in the area of Velarde's apartment. Phone records also indicated that defendant left the area where Velarde's body was disposed shortly before the body was discovered on Mount Baldy Road.

#### ***4. Defendant's Jury Trial***

On October 8, 2015, defendant and Sandoval were charged with Velarde's murder and personal use of a deadly weapon. Sandoval entered into a leniency agreement by which she pled guilty to the offense of accessory after the fact, and would serve a seven- year sentence in exchange for her truthful testimony at defendant's trial.

Defendant's jury trial commenced on June 28, 2016. The People introduced the physical evidence described above and the phone records tying defendant to the crime. Blanco, Sergeant Gray, Lopez, and Sandoval testified.<sup>1</sup> The jury also heard testimony from officers who responded to the two altercations on March 1, 2015, the Forest Service employee who discovered

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<sup>1</sup> Sandoval testified about the second altercation between defendant and Velarde (prior to the murder), defendant's statements about Velarde, defendant's references to killing Velarde, and disposing of Velarde's body with defendant. Her testimony is summarized in the preceding sections.

Velarde's body, and the criminalist who analyzed physical evidence found at the dumpsite and on defendant's property.

Defendant did not testify. Defendant's theory of the case was that Sandoval killed Velarde, perhaps with her friend Lopez. In support of this third party culpability defense, defendant presented two witnesses: his wife and Vargas. Although each addressed aspects of the People's evidence, neither Vargas nor defendant's wife gave defendant an alibi.

#### **5. *Jury Instructions***

The court instructed the jury that a defendant in a criminal case is presumed to be innocent, and the People bear the burden of proving his guilt beyond a reasonable doubt. The court also gave CALCRIM No. 335 to instruct the jury that Sandoval was an accomplice as a matter of law, and that the jury must not convict a defendant based on accomplice testimony alone. Defendant requested this instruction, without any modifications. Defendant did not request a pinpoint instruction on third party culpability.

#### **6. *Defendant's Conviction and Sentence***

The jury convicted defendant of first degree murder and found the personal weapon use allegation to be true. Defendant admitted having a prior felony conviction within the meaning of the California Three Strikes Law. The trial court denied probation and sentenced defendant to the prescribed 25 years to life in prison, which was doubled pursuant to the Three Strikes Law. The court also imposed a five-year enhancement for the prior serious felony conviction, and a one-year enhancement for the weapon use.

## DISCUSSION

### 1. *The Trial Court Did Not Have a Sua Sponte Duty to Instruct on Third Party Culpability*

Defendant contends that the trial court erred by failing sua sponte to instruct the jury on third party culpability. We review this issue of law de novo (*People v. Guiuan* (1998) 18 Cal.4th 558, 569), and start with some familiar principles.

The “trial court has a duty to instruct the jury ‘sua sponte on general principles which are closely and openly connected with the facts before the court.’” (*People v. Abilez* (2007) 41 Cal.4th 472, 516 (*Abilez*)). The “trial court has a sua sponte duty to give instructions on the defendant’s theory of the case, including instructions ‘as to defenses “ ‘that the defendant is relying on . . . , or if there is substantial evidence supportive of such a defense and the defense is not inconsistent with the defendant’s theory of the case.’ ” ’ ” (*People v. Gutierrez* (2009) 45 Cal.4th 789, 824 (*Gutierrez*)). A different rule applies to pinpoint instructions. Those instructions, i.e. “ ‘instructions [that] relate particular facts to a legal issue in the case or ‘pinpoint’ the crux of a defendant’s case, such as mistaken identification or alibi . . . are required to be given upon request when there is evidence supportive of the theory, but they are not required to be given sua sponte.” (*Ibid.* [“As an initial matter, defendant bore the burden of requesting a pinpoint instruction.”].)

The Supreme Court specifically addressed the trial court’s sua sponte duty to instruct on third party culpability in *Gutierrez, supra*, 45 Cal.4th 789, and *Abilez, supra*, 41 Cal.4th 472. In those cases, neither of the defendants requested a pinpoint instruction on third party culpability, but both argued on appeal that the trial courts erred by failing to provide the instruction sua sponte. (*Gutierrez*, at pp. 824-825; *Abilez*, at pp. 564-565.) The Supreme Court held that the additional

pinpoint instruction on third party culpability was not required because the trial courts had instructed the juries that a criminal defendant is entitled to a presumption of innocence, and may only be convicted if the jury is convinced of the defendant's guilt beyond a reasonable doubt. (*Id.*) "Because the jury was properly instructed as to these issues, and because the jury could have acquitted defendant had it believed that a third party was responsible for [the victim]'s death, no third party culpability instruction was necessary." (*Gutierrez*, at p. 825.)

Likewise here, defendant did not request a pinpoint instruction on third party culpability. The trial court instructed the jury that defendant was entitled both to a presumption of innocence, and to a verdict of not guilty if the jury was not convinced of his guilt beyond a reasonable doubt. As in *Gutierrez* and *Abilez*, these instructions empowered the jury to find defendant not guilty if his theory of the case raised a reasonable doubt as to his guilt. Therefore, the court was not required to give sua sponte an instruction on third party culpability.

Defendant asserts that the case at hand is distinguishable from *Gutierrez* and *Abilez* because the trial court gave an instruction (CALCRIM No. 335) that Sandoval was an accomplice as a matter of law.<sup>2</sup> Defendant contends that this instruction could have been understood by the jury as a direction to consider Sandoval only as an accomplice, rather than as the main perpetrator of the crime. Defendant provides no citation to case law showing how this accomplice instruction eliminated defendant's burden to request a pinpoint instruction on third party culpability. (*People v. Stanley* (1995) 10 Cal.4th 764, 793 ["[E]very brief should contain a legal argument with citation of

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<sup>2</sup> We observe defendant requested CALCRIM No. 335 without any modifications.

authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration. [Citations.]’ ”]; *People v. Murray* (2008) 167 Cal.App.4th 1133, 1143.) As stated above, it is well established that defendants must request pinpoint instructions like this one. (*Gutierrez, supra*, 45 Cal.4th at p. 824; *People v. San Nicolas* (2004) 34 Cal.4th 614, 669.)

We also find defendant’s argument factually unpersuasive because the accomplice instruction given did not preclude defendant’s theory of the case. The instruction did not specify Sandoval’s role, state that Sandoval acted as *defendant’s* accomplice in the murder, or provide the identity of any other person involved in the murder. In fact, defendant’s theory fit within the language of the instruction. In closing and opening statements, defense counsel advanced the idea that Sandoval and Lopez were involved with one another in Velarde’s murder and the subsequent cleanup of the crime scene. Defendant primarily relied on Rick Vargas’s testimony that Sandoval asked for his help cleaning a bloody mess she made with Lopez at defendant’s house. Defendant’s theory, supported by Vargas’s testimony, suggested that Sandoval and Lopez were each other’s accomplice in the crime, which was consistent with the language of the accomplice instruction.



**2. *Defense Counsel's Failure to Request a Third Party Culpability Instruction Was Not Prejudicial***

In the alternative, defendant asserts that his trial counsel was ineffective for failing to request a third party culpability instruction. Defendant relies on the same arguments made in the previous section to contend that it was crucial for his trial counsel to request the instruction to dispel any suggestion made by CALCRIM No. 335 that the jury should disregard his theory of the case.

To prevail on a claim of ineffective assistance of counsel, defendant has the burden of proving that (1) his trial counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) defendant suffered prejudice, measured by a reasonable probability of a more favorable outcome absent his counsel's substandard performance. (*People v. Ledesma* (2006) 39 Cal.4th 641, 745-746.) "A reviewing court will indulge in a presumption that counsel's performance fell within the wide range of professional competence and that counsel's actions and inactions can be explained as a matter of sound trial strategy." (*People v. Carter* (2003) 30 Cal.4th 1166, 1211.)

Assuming that defendant satisfied the first prong, he is unable to establish a reasonable probability of a more favorable outcome absent the alleged deficient performance. In *Gutierrez, supra*, 45 Cal.4th at page 825, the Supreme Court held in the alternative that if the trial court had erred in failing to instruct on third party culpability, any error was harmless because the jury was properly instructed on reasonable doubt and burden of proof. Therefore the jury could have acquitted the defendant if it believed the theory that a third party committed the murder. As a result, there was no reasonable probability of a different outcome if the instruction had been given. (*Id.*)

Likewise here, failure to request the instruction was harmless. As in *Gutierrez*, the jury was properly instructed on the burden of proof and reasonable doubt. Based on the defense evidence presented and the argument of counsel, the jury understood that defendant's theory of the case was that Sandoval, perhaps in conjunction with Lopez, was the actual perpetrator of the murder. In convicting defendant, the jury chose to believe the People's evidence over the minimal showing offered by defendant.

The People presented an array of witnesses to testify to defendant's motive and personal involvement in Velarde's murder. Several witnesses testified to details of the rental dispute, including defendant's frustration with Velarde for failing to pay rent and refusing to vacate the premises. In text messages between defendant and his girlfriend that the People entered into evidence, defendant said he had "to take [Velarde] out now and at whatever the cost," against his girlfriend's implorations that he not to do "anything bad." There was also physical evidence tying defendant to the murder. Jurors heard testimony that Velarde's apartment appeared to be a cleaned-up crime scene, there was a burn site on defendant's property, and a tablecloth was found in defendant's unit that matched the color and pattern of the one Velarde's body was wrapped in. There was a cut on defendant's left hand that was consistent with an injury one might accidentally self-inflict during the commission of a stabbing. DNA testing matched bloodstains found in Velarde's unit to both Velarde and defendant. Cell phone records placed defendant's cell phone in the area of his property at the time of the murder and leaving the area where the body was dumped. Sandoval also testified to her involvement in helping defendant dispose of the body.

In his defense, defendant presented only two witnesses: his wife and Vargas. His wife's testimony tried to explain away the People's evidence of the cut on defendant's left hand and the burn site on defendant's property. Although Vargas's testimony indicated that Sandoval was the main actor responsible for Velarde's murder, Vargas did not testify that defendant was not involved in the murder. Because Sandoval was already assumed to be an accomplice, Vargas's testimony as to her involvement did nothing to exculpate defendant. Furthermore, the People impeached Vargas with several prior inconsistent statements on cross-examination.

As the jury was properly instructed as to burden of proof and reasonable doubt, and given the abundance of evidence of defendant's guilt, it is not reasonably probable that the jury would have returned a more favorable verdict for defendant had his counsel requested a third party culpability instruction.

#### **DISPOSITION**

We affirm defendant's conviction.

RUBIN, J.

WE CONCUR:

BIGELOW, P.J.

FLIER, J.