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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

VINCENT VALENCIA,

Defendant and Appellant.

B285466

(Los Angeles County  
Super. Ct. No. MA071045)

APPEAL from a judgment of the Superior Court of Los Angeles County, Fernando Aenlle-Rocha, Judge. Affirmed.

Nicholas Seymour, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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A jury convicted Vincent Valencia of furnishing marijuana to a minor over the age of 14 (Health & Saf. Code, § 11361, subd. (b)). The court sentenced Valencia to three years in state prison. Valencia's appointed counsel on appeal filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In January 2016, Mackenzie T., who at the time was 14 years old, snuck out of her house around 11:00 p.m. to meet up with Valencia, who was then 23 years old.<sup>1</sup> Valencia was waiting for Mackenzie in his truck, which he parked down the street from her house. Valencia drove to an isolated location, where he and Mackenzie smoked marijuana. Valencia provided the marijuana.

A week or two later, Mackenzie again snuck out of her house and met up with Valencia. Valencia drove to a deserted parking lot, and the two smoked marijuana. Also around this time, Valencia sold Mackenzie about \$10 worth of marijuana.

In June 2017, the People filed an information charging Valencia as noted at the outset of this opinion.<sup>2</sup> The charge was tried to a jury in September 2017, and the prosecution presented evidence establishing the facts summarized above. Valencia testified on his own behalf, and denied giving Mackenzie marijuana.

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<sup>1</sup> Valencia's father had a prior relationship with Mackenzie's mother, which lasted about 10 years. Valencia lived with Mackenzie and her mother for a period of five months in 2011.

<sup>2</sup> In September 2017, the People filed an amended information which added a charge for contributing to the delinquency of a minor (Pen. Code, § 272, subd. (a)(1)). The People subsequently dismissed that charge.

During trial, the prosecutor provided Valencia recordings of his jail telephone calls that she intended to introduce into evidence.<sup>3</sup> Valencia asked that the court exclude the calls due to the late disclosure, or alternatively, order a short continuance to provide time to review the recordings. The court found no bad faith by the prosecutor and that the late disclosure was not intended to gain an advantage. It granted Valencia's request for a short continuance, after which the prosecutor introduced portions of the phone calls into evidence. In one call, Valencia was asked if he had learned a lesson, and he responded, "Yeah I did learn a lesson. People snitch and that's how people get in trouble it's cause they can't keep their mouth shut really."<sup>4</sup>

The jury found Valencia guilty of one count of furnishing marijuana to a minor over the age of 14 (Health & Saf. Code, § 11361, subd. (b)). The court sentenced Valencia to the low term of three years and awarded him 89 custody credits. The court imposed various fines and fees<sup>5</sup> and ordered that the Department of Motor Vehicles revoke Valencia's driver's license for three

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<sup>3</sup> The prosecutor received the recordings the same day she provided them to Valencia.

<sup>4</sup> The court subsequently denied Valencia's request to instruct the jury with CALCRIM No. 306, which concerns the late disclosure of evidence.

<sup>5</sup> The court assessed a \$40 court security fee (Pen. Code, § 1465.8), a \$30 criminal conviction assessment (Gov. Code, § 70373), a \$150 drug program fee (Health & Saf. Code, § 11372.7), a \$300 restitution fine (Pen. Code, § 1202.4, subd. (b)), and a parole revocation restitution fine (Pen. Code, § 1202.45), which it stayed unless parole is revoked.

years (Veh. Code, § 13202). After a hearing, the court ordered Valencia pay Mackenzie's mother \$716.08 in restitution for lost wages and costs associated with arranging for Mackenzie to appear at trial.

Valencia filed a timely notice of appeal, and we appointed counsel to represent him on appeal. Appointed counsel filed an opening brief on appeal pursuant to *Wende, supra*, 25 Cal.3d 436, requesting independent review of the record on appeal for any arguable issues. We notified Valencia by letter that he could submit any argument or issues that he wished our court to review. Valencia has not filed any claims or arguments.

### **DISCUSSION**

We have independently reviewed the record on appeal. We find appointed counsel has fulfilled his duty and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d 436; *People v. Kelly* (2006) 40 Cal.4th 106.)

### **DISPOSITION**

The judgment is affirmed.

BIGELOW, P.J.

We concur:

GRIMES, J.

ROGAN, J.\*

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\* Judge of Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.