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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. JAMES SMITH, Defendant and Appellant.	2d Crim. No. B278805 (Super. Ct. No. BA426228) (Los Angeles County)

James Smith appeals from the judgment entered after a jury convicted him on nine counts of sexual offenses committed against five women - Jane Does 1 through 5. The offenses were two counts of forcible oral copulation (Pen. Code, § 288a, subd. (c)(2)(A));[1] one count of forcible sexual penetration by a foreign object (§ 289, subd. (a)(1)(A)); three counts of forcible rape (§ 261, subd. (a)(2)); one count of attempted forcible sodomy (§§ 664, 286, subd. (c)(2)(A)); one count of forcible sodomy (§ 286, subd.

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

(c)(2)(A)); and one count of kidnapping for the purpose of committing oral copulation (§ 209, subd. (b)(1)). The jury found true allegations that appellant had kidnapped Jane Doe 1 (§ 667.61, subds. (a), (e)(1) & (4)); personally used a deadly weapon against Jane Does 2-5 (§ 667.61, subds. (a), (e)(3) & (4); and personally used a firearm in the commission of an offense against Jane Doe 3 (§ 12022.53, subd. (b)). The trial court sentenced appellant to prison for 150 years to life.

Appellant makes numerous claims in his 127-page opening brief.[2] We affirm.

Facts

We need not summarize the facts underlying each of the nine charged sexual offenses committed against Jane Does 1 through 5. Some of the victims were prostitutes. Appellant testified that they had consented to the sexual acts.

During cross-examination, appellant was questioned about uncharged sexual offenses committed against Jane Does 6 through 9. The questioning was pursuant to Evidence Code section 1108. The People presented evidence rebutting appellant's testimony. Jane Does 6 through 9 did not testify.

Validity of Waiver of Right of Self-Representation

Appellant initially represented himself. The trial court appointed Antonio Bestard as private standby counsel. "'Standby counsel' is an attorney appointed for the benefit of the court

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[2] "We address [appellant's] arguments only to the extent they are properly reflected in the headings and subheadings of his opening brief." (*People v. Schnabel* (2007) 150 Cal.App.4th 83, 84, fn. 1; see Cal. Rules of Court, rule 8.204(a)(1)(B); *In re S.C.* (2006) 138 Cal.App.4th 396, 408.)

whose responsibility is to step in and represent the defendant if that should become necessary because, for example, the defendant's in propria persona status is revoked." (*People v. Blair* (2005) 36 Cal.4th 686, 725, disapproved on another ground in *People v. Black* (2014) 58 Cal.4th 912, 919; see also *Faretta v. California* (1975) 422 U.S. 806, 834, fn. 46 ["a State may . . . appoint a 'standby counsel' . . . to be available to represent the accused in the event that termination of the defendant's self-representation is necessary"].)

On the date set for trial, appellant waived his right to represent himself and requested that Mr. Bestard represent him for all purposes. The trial court granted his request. Mr. Bestard announced that he was ready for trial.

Appellant contends that he did not knowingly, intelligently, and voluntarily waive his right to represent himself because the trial court failed to advise him "of the traditional benefits associated with self-representation" and "the disadvantages and dangers of counsel-representation." Appellant relies upon two cases: *McKaskle v. Wiggins* (1984) 465 U.S. 168, 174, and *Martinez v. Court of Appeal of California* (2000) 528 U.S. 152, 158. They do not support the contention that a defendant who wants to terminate his pro per status must be so advised by the court.

Allegedly Unauthorized Appointment of Standby Counsel as Counsel for All Purposes

Appellant claims that his convictions must be reversed because "the appointment of standby counsel as [counsel for all purposes] was unauthorized by state law." Appellant argues that, pursuant to section 987.2, subdivisions (d) and (e), the court was required to appoint the public defender and, if he was

unavailable, the alternate public defender. (See *Williams v. Superior Court* (1996) 46 Cal.App.4th 320, 326 ["Trial courts in Los Angeles County are required to appoint the public defender, subject to availability and in the absence of a conflict of interest"].)

Appellant forfeited this issue because he expressly requested that Mr. Bestard be appointed as counsel for all purposes. (See *In re Seaton* (2004) 34 Cal.4th 193, 198-199.) In any event, the appointment was authorized. Because Mr. Bestard had previously been appointed as standby counsel, he could step in and represent appellant when, on the day set for trial, appellant relinquished his pro per status. (*People v. Blair*, *supra*, 36 Cal.4th at p. 725; *Faretta v. California*, *supra*, 422 U.S. at p. 834, fn. 46; Super. Ct. L.A. County, Local Rules, rule 8.43(e) ["When a defendant's pro per status is relinquished or revoked . . . close to trial and prior counsel cannot be ready without a continuance, or for other good cause, the court may appoint standby counsel as defense counsel"].) Mr. Bestard had prepared for the trial and was ready to proceed. The following day, jury selection began. The appointment of the unprepared public defender, instead of Mr. Bestard, would have delayed the trial and been a waste of public resources. We do not construe section 987.2 as requiring the appointment of the public defender in these circumstances. (See *Trope v. Katz* (1995) 11 Cal.4th 274, 288 [statute should not be given a construction that "would lead to absurd results that the Legislature could not have intended"].)

Alleged Violation of Appellant's Privilege Against Self-Incrimination

During the prosecutor's cross-examination, appellant answered questions about uncharged sexual offenses. Appellant contends that the questions violated his Fifth Amendment privilege against self-incrimination. The contention is forfeited because in the trial court he failed to object on this ground. (Evid. Code, § 353, subd. (a);[3] *People v. Zamudio* (2008) 43 Cal.4th 327, 353 ["defendant 'may not [now] argue on appeal that [constitutional provisions] required exclusion of the evidence for reasons other than those articulated in his . . . argument' at trial" (brackets in original)]; *People v. Barnum* (2003) 29 Cal.4th 1210, 1224 ["As abundant authority attests, the rights subject to forfeiture as well as waiver include the privilege against compelled self-incrimination"].)

Appellant acknowledges that "defense counsel did not make an express Fifth Amendment objection." Appellant notes that counsel "object[ed] on the ground that alleged uncharged victims should be required to testify in order to guarantee [appellant's] right to cross-examination." The trial court asked defense counsel, "Why isn't it appropriate for the People to be allowed to cross-examine [appellant] on [the uncharged sexual offenses]?" Counsel replied, "Well, only if they're able to produce the actual witnesses themselves because we are entitled to cross-examine them."

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[3] Evidence Code section 353, subdivision (a) provides that a judgment shall not be reversed because of the erroneous admission of evidence unless "[t]here appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion."

Appellant asserts that an objection on Fifth Amendment grounds was excused because it would have been futile. (See *People v. Wilson* (2008) 44 Cal.4th 758, 793 ["A litigant need not object . . . if doing so would be futile"].) Appellant argues that an objection would have been futile since "the trial court's advisement of [appellant's] rights to testify or not testify did not adequately state the law because it did not include the advisement that a defendant does not waive Fifth Amendment rights merely by taking the stand as a witness." Appellant's argument is illogical, unsupported by citation to the record or legal authority, and wrong on the law. (See *People v. Saddler* (1979) 24 Cal.3d 671, 679 ["a defendant who takes the stand and testifies in his behalf waives his Fifth Amendment privilege [citation] . . . to the extent of the scope of relevant cross-examination"].) Appellant has therefore not satisfied his burden of showing that an objection would have been futile. (See *People ex rel. Reisig v. Acuna* (2017) 9 Cal.App.5th 1, 25.)

Appellant maintains that his Fifth Amendment claim is reviewable under section 1259 because it "affected [his] substantial rights."[4] This one-sentence conclusory allegation,

[4] Section 1259 provides: "Upon an appeal taken by the defendant, the appellate court may, without exception having been taken in the trial court, review any question of law involved in any ruling, order, instruction, or thing whatsoever said or done at the trial or prior to or after judgment, which thing was said or done after objection made in and considered by the lower court, and which affected the substantial rights of the defendant. The appellate court may also review any instruction given, refused or modified, even though no objection was made thereto in the lower court, if the substantial rights of the defendant were affected thereby."

without any legal analysis or citation to authority other than section 1259, "constitutes a waiver of the point on appeal. [Citations.]" (*People v. Roberto V.* (2001) 93 Cal.App.4th 1350, 1364, fn. 6; see also *In re S.C.*, *supra*, 138 Cal.App.4th at p. 408 ["conclusory claims of error will fail"].)

Appellant contends that he may raise the Fifth Amendment issue pursuant to *People v. Loy* (2011) 52 Cal.4th 46, 66. But *Loy* is distinguishable. There, the defendant objected on hearsay grounds to the admission of an out-of-court statement. His objection was overruled. For the first time on appeal, the defendant argued that the admission violated his confrontation rights under the Sixth Amendment. Our Supreme Court assumed that the trial court had erred in overruling the hearsay objection. "Accordingly, defendant may argue that the error also had the consequence of violating his federal confrontation rights." (*Id*. at p. 66, fn. 3.) The Supreme Court made clear that, if the trial court had not erred in overruling the hearsay objection, appellant "could not argue the evidence should have been excluded for a reason not asserted below." (*Ibid*.) Unlike the defendant in *Loy*, appellant is not claiming that the erroneous overruling of a hearsay objection violated his confrontation rights.

Even if appellant had invoked his privilege against self-incrimination, the prosecutor's cross-examination on uncharged sexual offenses would not have violated the privilege. "A defendant who takes the stand to testify in his own behalf waives the privilege against self-incrimination to the extent of the scope of relevant cross-examination. [Citations.] 'It matters not that the defendant's answer on cross-examination might tend to establish his guilt of a collateral offense for which he could still

be prosecuted. [Citations.]' [Citation.]" (*People v. Thornton* (1974) 11 Cal.3d 738, 760-761, disapproved on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668, 684, fn. 12, and *People v. Martinez* (1999) 20 Cal.4th 225, 234.) Appellant has not shown that the prosecutor's questions on uncharged sexual offenses exceeded the scope of relevant cross-examination. (See *People v. Falsetta* (1999) 21 Cal.4th 903, 920 ["evidence of a defendant's other sex offenses constitutes relevant circumstantial evidence that he committed the charged sex offenses"].)

Allegation that Inferences of Evidence Code Section 1108 Violate Due Process

Evidence of the uncharged sexual offenses was admitted pursuant to Evidence Code section 1108. "Subject to Evidence Code section 352, Evidence Code section 1108 permits a jury to consider prior incidents of sexual misconduct for the purpose of showing a defendant's propensity to commit offenses of the same type and essentially permits such evidence to be used in determining whether the defendant is guilty of a current sexual offense charge. [Citation.]" (*People v. Dejourney* (2011) 192 Cal.App.4th 1091, 1103, fn. omitted.) Appellant argues, "Section 1108 must be struck down as a violation of due process because the inference that the commission of one or more listed sexual offenses gives rise to a propensity to commit a separate and distinct charged sexual offense violates the due process requirement that permissible inferences 'be based on a rational connection between the fact proved and the fact to be inferred.' [Citations.]"

Our Supreme Court upheld Evidence Code section 1108 against a similar due process challenge in *People v. Falsetta*, *supra*, 21 Cal.4th at p. 922. The court concluded: "[T]he case law

clearly shows that evidence that [the defendant] committed other sex offenses is at least circumstantially *relevant* to the issue of his disposition or propensity to commit these offenses." (*Id*. at p. 915.) "[W]e think the trial court's discretion to exclude propensity evidence under [Evidence Code] section 352 saves section 1108 from defendant's due process challenge. . . . By subjecting evidence of uncharged sexual misconduct to the weighing process of section 352, the Legislature has ensured that such evidence cannot be used in cases where its probative value is substantially outweighed by the possibility that it will consume an undue amount of time or create a substantial danger of undue prejudice, confusion of issues, or misleading the jury.'"[5] (*Id*. at p. 917.) Pursuant to the doctrine of stare decisis, we are bound by our Supreme Court's decision in *Falsetta*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

After *Falsetta* was decided, the California Supreme Court upheld the validity of the inferences underlying Evidence Code section 1108. In *People v. Reliford* (2003) 29 Cal.4th 1007, 1012-1013, the court concluded: "The first part of the instruction [on Evidence Code section 1108] permits jurors to infer the defendant has a disposition to commit sex crimes from evidence the defendant has committed other sex offenses. The inference is a reasonable one. . . . [¶] The instruction next informs the jurors they may—but are not required to—infer from this predisposition

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[5] Evidence Code section 352 provides, "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

that the defendant was likely to commit and did commit the charged offense. This, again, is a legitimate inference."

Alleged Violation of Notice Requirement of Evidence Code Section 1108

Appellant maintains that the admission of the uncharged sexual offenses violated the notice requirement of Evidence Code section 1108, subdivision (b), which provides, "[T]he people shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered in compliance with the requirements of Section 1054.7 of the Penal Code." Section 1054.7 provides that disclosure shall be made "at least 30 days prior to the trial." Appellant failed to raise the notice issue below and has therefore forfeited it. (Evid. Code, § 353, subd. (a); *People v. Mayfield* (1997) 14 Cal.4th 668, 798, disapproved on another ground in *People v. Scott* (2015) 61 Cal.4th 363, 390, fn. 2 ["Generally, a defendant claiming lack of sufficient and timely notice must object at trial and request a continuance; failure to object is deemed a waiver of the point for appeal"]; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1153 ["Defendant's claim that the prosecutor failed to give the required statutory notice . . . is barred" because "[d]efense counsel did not object on notice grounds"].)

Alleged Violation of Due Process Notice Requirements

Appellant claims that his due process rights were violated because the People failed to give him reasonable advance notice of the uncharged sexual offenses. This claim is also forfeited because appellant failed to raise it in the trial court. (Evid. Code, § 353, subd. (a); *People v. Huggins* (2006) 38 Cal.4th 175, 236; *People v. Rowland* (1992) 4 Cal.4th 238, 273, fn. 14.)

Jury Instruction on Evidence Code Section 1108

The trial court gave CALCRIM No. 1191 (now 1191A), the standard jury instruction on uncharged sexual offenses admitted pursuant to Evidence Code section 1108. Appellant argues that the instruction erroneously failed to inform the jury that "uncharged crimes must be established by proof beyond a reasonable doubt and, likewise, the propensity inference must be established beyond a reasonable doubt before it may be used to convict."

In *People v. Reliford*, *supra*, 29 Cal.4th 1007, our Supreme Court considered a similar instruction on Evidence Code section 1108 - the 1999 version of CALJIC No. 2.50.01. (See *People v. Cromp* (2007) 153 Cal.App.4th 476, 480 ["there is no material difference in the manner in which each of the instructions [CALCRIM No. 1191 and CALJIC No. 2.50.01] allows the jury to conclude from the prior conduct evidence that the defendant was disposed to commit sexual offenses and, therefore, likely committed the current offenses"].) The Supreme Court decided that CALJIC No. 2.50.01 "correctly states the law." (*People v. Reliford*, *supra*, at p. 1009.) It reasoned, "The jury . . . would have understood that a conviction that relied on inferences to be drawn from defendant's prior [uncharged] offense would have to be proved beyond a reasonable doubt." (*Id*. at p. 1016.) The same reasoning applies to CALCRIM No. 1191, which provides: "If you conclude that the defendant committed the uncharged offenses, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of the charged sexual offenses. The People must still prove each charge and allegation beyond a reasonable doubt."

Appellant erroneously argues that the uncharged offenses must be proved beyond a reasonable doubt. "[A] long line of cases holds that prior crimes need only be proved by a preponderance standard." (*People v. Van Winkle* (1999) 75 Cal.App.4th 133, 140 & fn. 6; see also *People v. Carpenter* (1997) 15 Cal.4th 312, 382, superseded by statute on another ground as noted in *Verdin v. Superior Court* (2008) 43 Cal.4th 1096, 1106, overruled on another ground in *People v. Diaz* (2015) 60 Cal.4th 1176, 1189-1190 ["If the jury finds by a preponderance of the evidence that defendant committed the other crimes, the evidence is clearly relevant and may therefore be considered"].)

Alleged Abuse of Discretion in Applying Evidence Code Section 1108

Appellant acknowledges that the trial court "found a high degree of similarity between the uncharged and charged offenses and the probative value of the propensity evidence outweighed its prejudicial effect." Nevertheless, appellant claims that his convictions must be reversed because the trial court abused its discretion in admitting evidence of the uncharged offenses. The "'"'trial court's ruling will not be disturbed, and reversal . . . is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice." [Citation.]' [Citations.]" (*People v. Lewis* (2009) 46 Cal.4th 1255, 1286.) "'[A] "miscarriage of justice" should be declared only when the court, "after an examination of the entire cause, including the evidence," is of the "opinion" that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' [Citations.]" (*People v. Richardson* (2008) 43 Cal.4th 959, 1001.)

Appellant "faces a presumption favoring the admissibility of sexual offense evidence under Evidence Code section 1108 to show propensity to commit the charged offense. [Citations.]" (*People v. Merriman* (2014) 60 Cal.4th 1, 42.) Appellant has "failed to carry his burden of rebutting [this] strong presumption" and showing that the trial court abused its discretion. (*Ibid.*) Appellant contends that the trial court erred because (1) "there were seven [charged] propensity sex crimes committed against five separate women [Jane Does 1-5] which were available for propensity evidence"; (2) "the timing of the uncharged other crimes entering the trial . . . was designed by the prosecutor to have the jury place undue emphasis on the uncharged offenses"; (3) "the uncharged crimes jeopardized [appellant's] Fifth Amendment rights and due process notice rights"; (4) "the Doe 7 and Doe 9 offenses should have never been submitted to the jury" because there was "weak evidence to establish the existence of an 'actual crime'"; (5) "[appellant] was not going to have an opportunity to confront and cross-examine the alleged victims of the uncharged crimes"; (6) "there was an inherent danger the jury would convict on the charged offenses because defendant had escaped conviction and punishment for uncharged offenses committed against four women [Jane Does 6-9]"; and (7) "because of the different standards of proof in the section 1108 instruction and the general circumstantial evidence instruction, the jury would be confused and believe the specific section 1108 instruction superceded the general instruction."

Appellant does not fully analyze important factors that a trial court must consider in determining whether to admit evidence of an uncharged sexual offense under Evidence Code section 1108. These factors include the uncharged sexual

offense's "nature, relevance, and possible remoteness, the degree of certainty of its commission and . . . its similarity to the charged offense . . . ." (*People v. Falsetta*, *supra*, 21 Cal.4th at p. 917.) Appellant alleges that the evidence underlying "the Doe 7 and Doe 9 offenses" was "weak," but he fails to explain why. His argument does not contain a single citation to evidence in the record.

We recognize that "the prejudicial effect of this evidence is heightened by the circumstance that [appellant's] uncharged acts did not result in criminal convictions. This circumstance increased the danger that the jury might have been inclined to punish [him] for the uncharged offenses, regardless whether it considered him guilty of the charged offenses, and increased the likelihood of 'confusing the issues' (Evid. Code, § 352), because the jury had to determine whether the uncharged offenses had occurred." (*People v. Ewoldt* (1994) 7 Cal.4th 380, 405.) But appellant does not show that evidence of the uncharged offenses was stronger or more inflammatory than evidence of the charged offenses. Without such a showing, "it was unlikely that the jury disbelieved [the] testimony regarding the charged offenses but nevertheless convicted [appellant] on the strength of . . . [the] testimony regarding the uncharged offenses, or that the jury's passions were inflamed by the evidence of [the] uncharged offenses." (*Ibid*.)

Alleged Failure to Instruct Sua Sponte on Lesser Included Offense of Simple Kidnapping

Appellant was convicted of kidnapping Jane Doe 1 for the purpose of committing oral copulation. (§ 209, subd. (b)(1).) Appellant claims that the conviction should be reversed because the trial court erroneously failed to instruct sua sponte on the

lesser included offenses of simple kidnapping and false imprisonment. "A trial court must instruct the jury on a lesser included offense, whether or not the defendant so requests, whenever evidence that the defendant is guilty of only the lesser offense is substantial enough to merit consideration by the jury. [Citation.] Substantial evidence in this context is that which a reasonable jury could find persuasive. [Citation.]" (*People v. Halvorsen* (2007) 42 Cal.4th 379, 414.) "We apply the independent or de novo standard of review . . . ." (*People v. Cole* (2004) 33 Cal.4th 1158, 1218.)

The evidence shows that appellant drove by 19-year-old Jane Doe 1 while she was walking home from college. He opened the passenger door, grabbed her by the wrist, and pulled her into his vehicle. He immediately made a U-turn and parked across the street. He then dragged her from the vehicle to the back of a vacant house, where he orally copulated her. Appellant does not show why these facts constitute substantial evidence that ""'would absolve [appellant] from guilt of the greater offense" [citation] *but not the lesser*' [citation]." (*People v. Cole*, *supra*, 33 Cal.4th at p. 1218; see *In re S.C.*, *supra*, 138 Cal.App.4th at p. 408 ["To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error"].)

Alleged Failure to Instruct Sua Sponte on Lesser Included Offense of Battery

Appellant was convicted of forcibly raping Jane Doe 2 and forcibly sodomizing Jane Doe 4. Appellant claims that the trial court erroneously failed to instruct sua sponte on the lesser included offense of battery. (See *People v. Hughes* (2002) 27 Cal.4th 287, 366 [battery is a necessarily included offense of

forcible rape and forcible sodomy].) Appellant argues: "For each the Doe 2 and Doe 4 . . . charges, [he] testified there was consent for protected sexual intercourse but, without their knowledge, he took off the condom and ejaculated inside each one. This is sufficient to convict defendant of battery."

Appellant's claim is forfeited because he fails to set forth, with citations to the record, the significant facts relevant to our substantial evidence review. It is also forfeited because he fails to present meaningful legal analysis with citation to pertinent authority in support of his claim that, if a woman consents to protected sex but without her knowledge the defendant engages in unprotected sex, he is guilty only of battery. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; see also *In re S.C.*, *supra*, 138 Cal.App.4th at p. 408.) Appellant offers no explanation why the defendant's act would not constitute rape under section 261, subdivision (a)(4)(C), which provides that the offense is committed when the victim was "incapable of resisting" because she "[w]as not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact." The fraudulent removal of a condom during sexual intercourse could expose the woman to the risk of pregnancy and diseases such as acquired immunodeficiency syndrome (AIDS). (See also § 286, subd. (f)(3), criminalizing an act of sodomy where the victim was "incapable of resisting because the victim . . . [w]as not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.")

Even if appellant's claim was not forfeited and the trial court had erred, appellant could not obtain a reversal without a showing of prejudice. "[I]n a noncapital case, error in failing sua

sponte to instruct . . . on all lesser included offenses and theories thereof which are supported by the evidence must be reviewed for prejudice exclusively under *Watson* [*People v. Watson*, *supra*, 46 Cal.2d at p. 836]. A conviction of the charged offense may be reversed in consequence of this form of error only if, 'after an examination of the entire cause, including the evidence' [citation], it appears 'reasonably probable' the defendant would have obtained a more favorable outcome had the error not occurred [citation]." (*People v. Breverman* (1998) 19 Cal.4th 142, 178.) The burden is on appellant to show that the error was prejudicial under *Watson*. (*People v. Hernandez* (2011) 51 Cal.4th 733, 746; *Conservatorship of Maria B.* (2013) 218 Cal.App.4th 514, 532-533.) Appellant has not carried his burden. He asserts that "the trial court committed prejudicial error," but does not explain why.

Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Douglas Sortino, Judge

Superior Court County of Los Angeles

Waldemar D. Halka, under appointment by the Court of Appeal, for Defendant and Appellant.

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