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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,
Plaintiff and Respondent,
v.
ETUATE SEKONA,
Defendant and Appellant.

A136961
(San Mateo County
Super. Ct. No. SC072948A)

A jury convicted Etuate Sekona of numerous sexual offenses. The victim, a teenaged girl whom we shall call K.D., is a member of Sekona’s family. In this appeal, Sekona challenges the sufficiency of the evidence to support a number of the offenses alleged in the information. He also contends the sentences imposed on certain counts must be reversed because the jury failed to make a specific finding that he had used a deadly or dangerous weapon within the meaning of Penal Code section 667.61, subdivision (e)(3).¹ Sekona further argues the trial court erred in failing to conduct a hearing to determine whether substitute counsel should have been appointed for him. Finally, he contends the trial court improperly denied him both the right to make a motion for new trial based on ineffective assistance of counsel and the right to allocution at sentencing.

¹ All further undesignated statutory references are to the Penal Code.

We have carefully examined all of Sekona's arguments and find none of them persuasive. Accordingly, we will affirm the judgment in its entirety.

FACTUAL AND PROCEDURAL BACKGROUND

Sekona was born in Tonga in 1950 and moved to California when he was 24 years old. K.D. is one of Sekona's relatives. When she was about 13 years old, she went to live with Sekona and his wife, T. They lived in a house in San Mateo with a number of K.D.'s nieces and nephews.

Four major sexual assaults occurred in this house. The assaults occurred weeks or months apart, between Sekona's trips to Los Angeles, Utah, and Hawaii. The first occurred in the early part of 2008 when K.D. was 16 years old. One afternoon, K.D. and Sekona were the only ones in the house, and he asked her to come upstairs to his bedroom and help him move a box. Appellant closed the bedroom door and locked it. K.D. became afraid, and Sekona told her to take off her pants and get on the bed.

Sekona had a knife in his hand when he made the demand, and he touched K.D.'s neck with the tip of the six-to-seven inch knife. He told her he had a gun, but she never saw it. He also told K.D. he loved her, and repeatedly demanded that she take off her pants and get on the bed. She tried to resist but he pushed her on the bed and held the knife against her throat while he pulled off her pants. He pulled off her underwear and put his mouth on her vagina, "bare skin to bare skin." K.D. was scared, and it hurt because Sekona bit her vagina. He pulled up her shirt and put his mouth on K.D.'s bare breasts. He also made her touch his penis with her hand, and inserted his penis into her rectum two times.² K.D. escaped when appellant went to the bathroom.

During the sexual assault, Sekona spoke to K.D. in Tongan. He told her she had to hide in the closet if his wife came home and that he was going to kill her. K.D. did not say anything to anyone that night, because she believed appellant would kill her. She was afraid of him, and she did not want to lose her family. She locked herself in her room that night, and did not open the door when Sekona tried to talk to her. He later

² The victim later told the police Sekona had inserted his penis into her rectum two or three times.

came to her door and told her no one would believe her and that she would be sent away if she said anything. He said the revelation would break up the family and it would be her fault. Sekona walked away again, and then returned to her door and said it would be their little secret.

The second sexual assault occurred in the middle of 2008, when K.D. was still 16 years old.³ It was the middle of the night, and K.D. told the police that Sekona put his fingers inside her vagina. It hurt because “[h]is nails were so long.” Appellant entered her room and closed the door, and then did the same things to her he always did. He forcefully removed her pants, pinned her down, and held her mouth while she tried to kick and avoid him. She did not yell because she was “so embarrassed” and did not want anyone to know. Appellant put his mouth on her bare vagina, his mouth and hands on her bare breasts, and his fingers in her vagina. He choked her until she stuck out her tongue and let him kiss her. During the oral copulation he stopped and started several times. Appellant also put his penis in her vagina. K.D. was afraid of appellant and testified, “He just scares me.”

The third sexual assault also occurred in K.D.’s bedroom at night. It was “like a month” after the second sexual assault, and K.D. was still 16 years old. Three of her young nephews and one niece (Sekona’s grandchildren) were sleeping in the bed with her. Appellant did the same sexual things to her. He pulled off her pants and put his mouth on her vagina. He also put his mouth and hands on her bare breasts. K.D. later told the police that Sekona put his fingers in her vagina and that it hurt. He started and stopped the oral copulation several times, remaining in the room for approximately 45 minutes. One of her nephews threw up, and appellant cleaned up the mess and then resumed the sexual assault. K.D. became angry that appellant would sexually assault her with his grandchildren in the room, and she tried to kick him off but he was too strong.

³ At trial, K.D. confused the second and third attacks. The prosecutor asked the jury to follow the order of events contained in K.D.’s statement to the police, because the charges corresponded to that statement, and it was made when events were fresh in the victim’s mind. We recount the events in the order contained in her statement to the police.

The fourth sexual assault occurred after K.D. turned 17 in October 2008. K.D. came home from school and saw that Sekona's car was not parked outside. She thought she would be alone in the house, but appellant was hiding behind the door with a 12-inch kitchen knife in his hand. He waved the knife at her and told her to hurry up, "[i]t will be quick." K.D. tried to fight him off that day because she was menstruating, but he pointed the knife at her throat and dragged her up the stairs. He did not get her pants off, and only kissed her bare breasts.

In 2009, the family moved to a different house in San Mateo. The fifth sexual assault occurred in K.D.'s bedroom where she was sleeping with two of her nieces and nephews. Sekona put his mouth on her vagina, put his finger in her rectum, and kissed her bare breasts.

Sekona's wife, T., discovered what was happening after the fifth sexual assault. Although T. became angry and confronted her husband, she never contacted the police (although she threatened it), and appellant left for Hawaii and stayed away for a couple of months. T. asked K.D. not to tell anyone about the sexual assaults. K.D. honored her wishes because she loved T.

In April 2010, K.D. was 18 years old. She had attended a rugby game, and went home to get her clothes for a church function. She knew Sekona was home and waited until he left to go inside the house. Appellant pretended to leave, and then went to her room and closed the door. He had a small pocket knife in his hand. K.D. fought him, but he choked her and actually cut her neck with the knife. K.D. ended up on the floor, and appellant raped her. He inserted his penis into her vagina and her rectum. She thought he raped her vagina twice, and her rectum three times. He also put his mouth on her vagina and his finger in her vagina. He took a package of ketchup from his pocket, and squeezed it onto her vagina. He bit, licked, and kissed her vagina, and it hurt "really bad."

K.D. smelled alcohol on Sekona's breath when he sexually assaulted her on Christmas Day 2010. The smell woke her up. She told appellant to get out of her room, and at first he left. But he returned a minute or two later with a knife in his hand. K.D.

was “over it,” and sick of it, and she fought him. She asked him to kill her. He tried to get on the bed, but she pushed him off. He grabbed some of her hair and pulled it hard. Sekona pulled out so much hair that it left a bald spot on her head. K.D. pushed him away again and yelled her cousin’s name. Her cousin came into the room, and the assaulted ended.

K.D.’s cousin noticed the bald spot on her head and asked what happened. K.D. told her that nothing happened, and she tried to hide the bald spot. Her cousin kept asking her what happened, and K.D. finally started crying and told her. K.D. did not really want to talk about it, and at first she lied and omitted information. They talked for a long time and her cousin kept asking questions, so little by little K.D. told her everything. It was the first time she told somebody about everything appellant had done to her, and she was afraid. She was afraid of appellant, afraid and embarrassed that everyone would find out what had been happening to her, and afraid that she was going to break up her family.

The family had a meeting the next day, on December 30, 2010. K.D. did not want to be in the room when her family confronted Sekona, because she could not bear to be in the same room as him. She became angry when she heard appellant admit everything with no shame. She testified that Sekona said, “yeah, I did it, but I didn’t take her virginity.”

On December 31, 2010, K.D. talked to Detective Anthony Riccardi of the San Mateo Police Department.⁴ She spoke to Riccardi for a couple hours and told him the truth. K.D. was on an emotional “roller coaster ride” during the interview. She whispered, cried, got angry, and at times became so overwhelmed she lost the ability to talk at all. She had a very difficult time talking about certain events, and her body language was a “depleted posture[.]” K.D. showed Detective Riccardi the bald spot on her head. After the police interviewed other members of K.D.’s family, Riccardi placed Sekona under arrest on December 31, 2010.

⁴ A transcript of this interview was read into the trial record and was admitted as a prior consistent statement and as past recollection recorded.

After a jury trial, Sekona was convicted of violating K.D.'s personal liberty by means of violence, menace, fraud, or deceit (§ 236; counts 1, 11, 28, 33), and threatening to commit a crime resulting in death or great bodily injury to her (§ 422; counts 2, 27), orally copulating K.D. by means of force, violence, duress, menace, or fear of immediate and unlawful great bodily injury to her or to another (§ 288a, subd. (c)(2); counts 3, 13, 16-21, 40), penetrating K.D.'s genital or anal openings with a foreign object (fingers) by means of force, violence, duress, menace, or fear of immediate and unlawful great bodily injury to her or to another for the purpose of sexual arousal, gratification, or abuse (§ 289, subd. (a)(1); counts 5, 14, 26, 39), participating in an act of sodomy with K.D. by means of force, violence, duress, menace, or fear of immediate and unlawful great bodily injury to her or to another (§ 286, subd. (c)(2); counts 6-7, 31, 36-38), forcing K.D. to masturbate or touch an intimate part of his body while she was unlawfully restrained (§ 243.4, subd. (d); count 10), touching an intimate part of K.D.'s body while she was unlawfully restrained and for the purpose of sexual arousal, gratification, or abuse (§ 243.4, subd. (a); counts 12, 15, 29, 32), and having sexual intercourse with K.D. against her will and by means of force, violence, duress, menace, or fear of immediate bodily injury to her or to another (§ 261, subd. (a)(2); counts 30, 35).⁵

The jury also found true allegations that Sekona personally used a knife during the commission of counts 1 through 6, 10, 27 through 29, 33, and 35 through 40, and that he was personally armed with a knife during the commission of count 7, within the meaning of sections 667.61, subdivision (e)(3),⁶ 12022, subdivision (b), 12022.3, subdivision (a), and 12022.3, subdivision (b).

⁵ The trial court granted Sekona's section 1118 motion as to counts 4 and 8, and the prosecution dismissed counts 9 and 41. The jury acquitted on counts 22 through 25.

⁶ The parties' briefs and the record refer to section 667.61, subdivision (e)(4) rather than subdivision (e)(3). The special circumstance for use of a deadly or dangerous weapon in the commission of the offense was formerly contained in section 667.61, subdivision (e)(4), but now appears in subdivision (e)(3) of that section. (See Stats. 2010, ch. 219, § 16 [deleting former subdivision (e)(3)].) We cite the subdivision as currently numbered.

Sekona moved for a new trial, but the court denied the motion after a hearing. The trial court sentenced Sekona to serve a total term of 130 years to life in state prison. Sekona then filed a timely notice of appeal.

DISCUSSION

Sekona first argues the evidence was insufficient to support his convictions for a number of the offenses charged in the information. Second, he contends his statutory and constitutional rights were violated, because the jury did not make a specific finding that he used a deadly and dangerous weapon in the commission of some of the offenses. Third, Sekona argues the trial court erred at the sentencing hearing when it failed to hold a hearing under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) to determine whether he was entitled to substitute counsel. Fourth, he asserts the trial court improperly denied him his right to make a motion for new trial based on ineffective assistance of his counsel. Finally, he claims the trial court denied him his right of allocution at sentencing. We will address his claims in the order presented in his opening brief.

I. *Substantial Evidence Supports the Verdicts.*

Sekona argues there was insufficient evidence to support his conviction on counts 5, 11 through 14, 15 through 21, 27, and 29 through 33. After setting forth our standard of review, we will examine the evidence before the jury with respect to each of these counts to determine whether it is sufficient to sustain the convictions.

A. *Standard of Review*

“The standard of review for a sufficiency of the evidence claim is well established. We review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume in support of the judgment the existence of every fact that could reasonably be deduced from the evidence. [Citation.] We ask whether, after viewing the evidence in the light most favorable to the judgment, any rational trier of fact could have found the allegations to be true beyond a reasonable doubt. [Citation.] Unless it is clearly demonstrated that ‘upon no hypothesis whatever is

there sufficient substantial evidence to support [the verdict of the jury],’ we will not reverse. [Citation.]” (*People v. Huynh* (2012) 212 Cal.App.4th 285, 304.)

B. *Count 5*

Sekona contends there was no competent evidence that he committed digital penetration as charged in count 5. Count 5 alleged that between January 1, 2008 and April 30, 2008, Sekona penetrated K.D.’s genital or anal openings with his fingers against her will by force, violence, duress, menace, or fear of immediate or unlawful bodily injury for the purpose of sexual arousal, gratification or abuse, in violation of section 289, subdivision (a)(1).

Sekona argues the prosecutor relied on the transcript of K.D.’s statement during her December 2010 interview as proof of count 5. He claims this statement was hearsay but was offered under the exceptions for prior consistent statements and past recollection recorded. (Evid. Code, §§ 1236, 1237.) He asserts it fell into neither category, because it was not consistent with K.D.’s trial testimony and did not meet the conditions of Evidence Code section 791.⁷

This argument faces two procedural obstacles. First, it has been forfeited. As Sekona himself acknowledges, defense counsel objected to playing the tape recording of this interview because of its emotional content, but he made no objection that it did not constitute either a prior consistent statement or a past recollection recorded. “An objection to evidence must generally be preserved by specific objection at the time the evidence is introduced[.]” (*People v. Demetrulias* (2006) 39 Cal.4th 1, 22 [objection that testimony lacked foundation, was speculative, or was nonresponsive insufficient to

⁷ Evidence Code section 791 provides: “Evidence of a statement previously made by a witness that is consistent with his testimony at the hearing is inadmissible to support his credibility unless it is offered after: [¶] (a) Evidence of a statement made by him that is inconsistent with any part of his testimony at the hearing has been admitted for the purpose of attacking his credibility, and the statement was made before the alleged inconsistent statement; or [¶] (b) An express or implied charge has been made that his testimony at the hearing is recently fabricated or is influenced by bias or other improper motive, and the statement was made before the bias, motive for fabrication, or other improper motive is alleged to have arisen.”

preserve for appeal claim that testimony constituted improper character evidence].) “Second, when reviewing the sufficiency of the evidence for purposes of deciding whether retrial is permissible, the reviewing court must consider *all* of the evidence presented at trial, including evidence that should not have been admitted.” (*People v. Story* (2009) 45 Cal.4th 1282, 1296.) Thus, in determining whether the evidence against Sekona was sufficient to sustain the conviction on this count, we must take account of this evidence even if the trial court erred in admitting it. (See *id.* at pp. 1296-1297.)

In any event, Sekona’s argument fails on the merits. The interview transcript was properly admitted as a prior consistent statement under Evidence Code section 791, subdivision (b). Defense counsel questioned K.D., her aunts, and her cousins about K.D.’s failure to tell anyone about the sexual abuse before December 2010. The California Supreme Court has held that “ ‘ “[t]he mere asking of questions [by the defense] may raise an implied charge of improper motive” ’ ” (*People v. Noguera* (1992) 4 Cal.4th 599, 629.) Defense counsel’s questions raised an implied charge of recent fabrication by seeking to show K.D. did not speak about the important matter of sexual abuse at a time when it would have been natural for her to do so. (*People v. Lopez* (2013) 56 Cal.4th 1028, 1066.) It was perfectly proper for the prosecution to rebut this implied charge with a prior consistent statement. (*Ibid.*) We therefore hold there was competent evidence supporting Sekona’s conviction for the offenses charged in count 5.

C. Counts 11 through 14

Sekona next contends his convictions on counts 11 through 14 must be reversed because there is no evidence of offenses occurring between May 1 and August 31, 2008. These counts of the information alleged that between May 1 and August 31, 2008, Sekona violated K.D.’s personal liberty by violence, menace, fraud, or deceit; willfully and unlawfully touched an intimate part of K.D. while she was unlawfully restrained by him and for the purpose of sexual arousal, gratification or abuse; orally copulated K.D. by force, violence, duress, menace, or fear of immediate bodily injury; and digitally penetrated K.D.’s genital or anal openings against her will by force, violence, duress, menace, or fear of immediate or unlawful bodily injury for the purpose of sexual arousal,

gratification or abuse. (See §§ 236, 243.4, subd. (a), 288a, subd. (c)(2), 289, subd. (a)(1)).

These counts arose from the second sexual assault, which occurred in mid-2008, when K.D. was still 16 years old. It took place in the middle of the night, when appellant entered K.D.'s bedroom. He closed the door and held her down, then put his mouth on her bare vagina, put his mouth and hands on her bare breasts, and put his fingers in her vagina.

Sekona's challenge to the evidence on these counts is that it failed to show any of the offenses occurred in the time period alleged in the information. He relies on K.D.'s testimony on cross-examination that she spent the summer of 2008 in Oregon and that "it" happened only one time before she left for Oregon. In fact, however, K.D. testified only that she "went to Oregon that summer," not that she "spent" the summer there. She also testified she went to Oregon "only for . . . a couple of weeks and [she] came back before school started[.]" K.D. further clarified that she went to summer school *before* she went to Oregon for a couple of weeks. And while she testified that Sekona was not there on the night she returned from Oregon, she did not testify that appellant never returned that summer.

K.D. was unable to recall the exact dates on which the abuse occurred, but her failure to specify the precise date and time does not render her testimony insufficient. (*People v. Jones* (1990) 51 Cal.3d 294, 315.) It was enough for her to describe the kind of act committed with sufficient specificity, the number of acts committed with sufficient certainty, and the general time period in which the acts occurred. (*Id.* at p. 316.) This she did. To the extent there were inconsistencies in her testimony, those were for the jury to reconcile, and on appeal our function is limited to resolving all inferences and inconsistencies in favor of the judgment. (*People v. Cortes* (1999) 71 Cal.App.4th 62, 73-74.) Moreover, any lack of precision in K.D.'s testimony is unsurprising, for "even a mature victim might understandably be hard pressed to separate particular incidents of repetitive molestations by time, place or circumstance." (*People v. Jones, supra*, 51 Cal.3d at p. 305.)

D. *Count 14*

Sekona argues there was no competent evidence of digital penetration that would support his conviction of the offense charged in count 14 of the information.⁸ This count pertained to the second sexual assault. At trial, K.D. testified she could not remember if appellant put his fingers anywhere on her body besides her breasts. She did, however, tell Detective Riccardi that Sekona put his fingers in her vagina during the second sexual assault. Sekona again argues the victim's interview with Riccardi should not have been admitted as a prior consistent statement or past recollection recorded, but we have rejected that argument in connection with his challenge to the conviction on count 5, and we reject it here for the same reasons.

E. *Counts 15 through 21 – Date of the Offenses*

Counts 15 through 21 pertained to the third sexual assault and alleged that between September 1 and September 30, 2008, Sekona touched an intimate part of K.D.'s body while she was unlawfully restrained and for the purpose of sexual arousal, gratification, or abuse, and that he orally copulated her by means of force, violence, duress, menace, or fear of immediate and unlawful great bodily injury to her or to another, in violation of sections 243.4, subdivision (a) and 288a, subdivision (c)(2).⁹

Sekona contends these offenses could not have occurred in September 2008, because, in his view, the second sexual assault could not have occurred in August of that year. We have already rejected that factual premise in connection with his challenge to his conviction on count 5. Although K.D. did not specify these offenses occurred in September 2008, she did testify there were a number of sexual attacks after she returned

⁸ As noted above, count 14 charged that between May 1, 2008 and August 31, 2008, Sekona penetrated K.D.'s genital or anal openings with his fingers against her will by force, violence, duress, menace, or fear of immediate or unlawful bodily injury for the purpose of sexual arousal, gratification or abuse, in violation of section 289, subdivision (a)(1).

⁹ Appellant's opening brief argues there was no evidence he committed the offenses alleged in counts 15 through 25 during the period alleged. We need not address the offenses charged in counts 22 through 25, because the jury acquitted Sekona on those counts.

from Oregon but before her birthday in October. She went to school the day after she returned from Oregon. When the third sexual assault occurred, she was already back in school, and it was definitely before her 17th birthday in October. Once again, her inability to provide precise dates does not render her testimony insufficient. (*People v. Jones, supra*, 51 Cal.3d at p. 315.)

F. *Count 15 – Evidence of Restraint*

Sekona contends his conviction for sexual battery on count 15 cannot stand because there was no evidence K.D. was restrained when the offense was committed. Not so. Section 243.4, subdivision (a) provides, in pertinent part, that “[a]ny person who touches an intimate part of another person *while that person is unlawfully restrained by the accused or an accomplice*, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.” (Italics added.) Appellant seems to equate restraint with the use of physical force, but the statute does not require that the restraint be physical. The required force may be “a psychological force compelling the victim to comply with the orders of the authority figure.” (*People v. Grant* (1992) 8 Cal.App.4th 1105, 1112.)

K.D. testified she was afraid of Sekona, even though he did not have a knife during this particular incident. Sekona threatened that if she revealed their “little secret” she would be sent away, would lose her family, and the family would break up. Given appellant’s position of authority in K.D.’s family, this is sufficient to constitute the restraint required by the statute. (*People v. Grant, supra*, 8 Cal.App.4th at p. 1113 [victim’s liberty “was being controlled by defendant’s words, acts and authority”].) In any event, she also testified that during this incident, Sekona forced her to kiss him, as he always did. To compel her compliance, “he would choke [her] until [she] st[u]ck her tongue out so he could kiss [her].” This testimony constitutes substantial evidence of restraint.

G. *Counts 16 through 21 – Evidence of Oral Copulation*

Sekona contends there was insufficient evidence of 10 separate instances of forcible oral copulation during the third sexual assault, and thus his convictions on counts

16 through 21 must be reversed. Those counts alleged that between September 1 and September 30, 2008, appellant committed multiple acts of oral copulation on K.D., against her will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury. (§ 288a, subd. (c)(2).)

Much of Sekona's argument is devoted to pointing out what he believes to be inconsistencies in the victim's testimony concerning the precise number of times he orally copulated her. As explained earlier, however, it is not our function to resolve those inconsistencies. That task belonged to the jury. (*People v. Cortes, supra*, 71 Cal.App.4th at pp. 73-74.) In addition, Sekona again seeks to rely on the argument that K.D.'s interview with Detective Riccardi should not have been admitted, an argument we have already rejected. (See part I.B., *ante*.)

During her interview with the police, Detective Riccardi asked K.D. how many times Sekona stopped the oral copulation and then started again, and she responded, "a lot." Riccardi asked whether it happened more than five times and K.D. said yes, it was more than five times. Riccardi also asked if it happened more than 10 times, and K.D. answered, "I think so. I just remember he did it a lot and he was in there for a while that night."

Sekona argues K.D. was counting a single, continuous act of oral copulation as separate instances of that offense, because "it *appears* that she was counting each 'kiss' in a series of 'kisses' as a separate oral copulation, regardless of whether they were separated by appellant's removing his mouth." (Italics added.) He acknowledges, however, that her statement to Riccardi was "ambiguous" on this point, but that the victim did testify she thought Sekona had performed the act more than 10 times. Again, it is not for us to resolve what Sekona admits are ambiguities in K.D.'s testimony. He seeks to have us reweigh and reevaluate it, asking us to draw particular inferences about the meaning of her statements. We decline to do so. Sekona directs us to nothing in the record suggesting that he never removed his mouth between what the victim referred to

as “kisses.”¹⁰ The jury could infer from the victim’s testimony that she counted each separate “kiss” as one instance of oral copulation. She told Riccardi she thought it had happened more than 10 times. “It is now settled that an accused may be convicted for multiple, nonconsensual sex acts of an identical nature which follow one another in quick, uninterrupted succession.” (*People v. Catelli* (1991) 227 Cal.App.3d 1434, 1446.) K.D.’s testimony is sufficient to support the convictions for separate sexual acts.

H. *Counts 16 through 21 – Evidence of Force*

Sekona contends there was insufficient evidence that the offenses charged in counts 16 through 21 were committed by force. (See § 288a, subd. (c)(2) [prohibiting committing “an act of oral copulation when the act is accomplished against the victim’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim”].) We disagree. As used in the statute, the term “force” carries no specialized legal meaning, and “oral copulation by force within the meaning of section 288a, subdivision (c)(2) is proven when a jury finds beyond a reasonable doubt that defendant accomplished an act of oral copulation by the use of force sufficient to overcome the victim’s will.” (*People v. Guido* (2005) 125 Cal.App.4th 566, 576.)

During the first sexual assault, Sekona held a knife to K.D.’s throat and told her he had a gun. He told her he was going to kill her. During the third sexual assault, appellant held K.D. as she tried unsuccessfully to “kick him off.” This testimony was sufficient for the jury to find that Sekona accomplished an act of oral copulation by the use of force sufficient to overcome his victim’s will. (*People v. Guido, supra*, 125 Cal.App.4th at p. 576.)

¹⁰ His trial counsel asked K.D. whether “his [Sekona’s] face was there the entire time[.]” K.D. answered affirmatively, but this does not establish, as Sekona suggests, that he never removed his mouth from the victim’s vagina between the instances of oral copulation. Defense counsel did not further clarify what this meant, and in fact, K.D. testified appellant would look up at her and speak to her and then look over at his grandchildren as he committed the acts.

I. *Count 27 – Evidence of Threat*

Sekona contends there was insufficient evidence of an unlawful threat to prove the elements of count 27. That count charged him with threatening to commit a crime resulting in death or great bodily injury to K.D. (§ 422, subd. (a).) This count pertained to the fourth sexual assault which occurred on a day when K.D. came home from school and found appellant hiding behind the front door with a 12-inch kitchen knife in his hand. He waved the knife at her and told her to hurry up, “[i]t will be quick.” K.D. tried to fight him off, but he pointed the knife at her throat and dragged her up the stairs. He did not get her pants off and only kissed her bare breasts.

Sekona argues K.D. never said anything about him making verbal threats to kill her. While this is literally true, her testimony permitted the jury to infer he did. Although K.D. did not quote appellant making an explicit threat to kill her, she did testify she told appellant, “I’m sick of your fucking telling me you’ll kill me. Just kill me already.” The jury could reasonably have inferred she would not have told Sekona she was sick of him threatening to kill her if he had not, in fact, threatened to kill her. Such an inference would certainly be reasonable in this factual context, because K.D. testified appellant had a large knife that he was pointing at her neck. (See *People v. Culbert* (2013) 218 Cal.App.4th 184, 190 [defendant’s statements, “ ‘Don’t lie to me’ ” and “ ‘Don’t call me that’ ” were threats under § 422 when uttered while defendant had gun pressed to victim’s head].)

Sekona argues K.D. was referring to a threat he made on “some prior unspecified occasion,” but it would not be unreasonable for the jury to conclude appellant had threatened to kill her on *this* occasion as he was dragging her up the stairs, pulling her hair, and pointing a knife at her neck. (See *People v. Culbert, supra*, 218 Cal.App.4th at p. 190 [circumstances under which threat is made give meaning to the actual words used].) It is true K.D. testified that Sekona told her he was not going to kill her, but the jury could have inferred from this that he was trying to assure her he would not carry out a threat he had previously made. Since the circumstances reasonably justified the jury’s

findings, we may not reverse merely because the circumstances might also reasonably support a contrary factual finding. (*People v. Fierro* (2010) 180 Cal.App.4th 1342, 1347.)

J. *Counts 30 through 32 – Date of Offenses*

Counts 30 through 32 charged Sekona with rape, sodomy, and touching an intimate part of K.D.’s body while she was unlawfully restrained and for the purpose of sexual arousal, gratification or abuse. (§§ 243.4, subd. (a), 261, subd. (a)(2), 286, subd. (c)(2).) These charges arose from the fifth sexual assault, which occurred between January 1, 2010 and March 31, 2010. Sekona contends there was no evidence of any offenses occurring in January, February, or March 2010. Instead, he argues the evidence showed the fifth sexual assault occurred in 2009.

As Sekona grudgingly concedes, however, the transcript of K.D.’s interview with Detective Riccardi provided evidence of offenses occurring in the period from January to March 2010. He calls the transcript “the only evidence of anything happening in January-March 2010” and again seeks to argue it should not have been admitted as a prior consistent statement. We have already rejected the challenge to the transcript’s admissibility, and since Sekona does not dispute that it provided evidence of offenses occurring during the relevant time period, that is the end of the matter as far as we are concerned. Whether it is the “only evidence” of the offenses or one piece of evidence among many, it is sufficient evidence. (See Evid. Code, § 411 [testimony of one witness sufficient proof of any fact].) The remainder of Sekona’s argument about the time the offenses occurred seeks to have us resolve what he views as inconsistencies or contradictions in the victim’s testimony. But that is the jury’s job, not ours.¹¹ (*People v. Cortes, supra*, 71 Cal.App.4th at pp. 73-74.)

K. *Count 33 – Evidence of Forcible Imprisonment*

Count 33 charged Sekona with willfully and unlawfully violating K.D.’s personal liberty by violence, menace, fraud, or deceit. (§ 236.) The charge pertained to the sixth

¹¹ Sekona’s cursory argument that K.D. did not testify about any rape or sodomy is meritless. In her statement to Riccardi, she said appellant raped her, put his mouth on her vagina, and put his penis in her rectum.

sexual assault, which occurred in April 2010. In his final challenge to the sufficiency of the evidence, Sekona argues there was insufficient proof of forcible false imprisonment because there was no testimony that he locked the door or that he detained K.D. on that occasion by violence or menace. We disagree.

The victim testified that in April 2010 she attended a rugby game, and then went home to get her clothes for a church function. She knew Sekona was home and waited until he left to go inside the house. Appellant pretended to leave and then went to her room and closed the door. He had a small pocket knife in his hand. K.D. fought him and asked him to “just let [her] go,” but he ignored her and cut her neck with the knife, which made her afraid. He also choked her, because she yelled her aunts’ names and he wanted to shut her up. K.D. fell and appellant raped her on the floor.

This testimony is sufficient to prove the charged offense. False imprisonment involves a restraint of the person and any exercise of force, or an express or implied threat of force, by which the victim is deprived of her liberty or is compelled to remain where she does not wish to remain. (*People v. Grant, supra*, 8 Cal.App.4th at p. 1112.) “ ‘An express or implied threat of harm does not require the use of a deadly weapon or an express verbal threat to do additional harm. Threats can be exhibited in a myriad number of ways, verbally and by conduct.’ [Citation.]” (*People v. Islas* (2012) 210 Cal.App.4th 116, 125-126.) The jury may also consider a victim’s fear in determining whether the defendant expressly or impliedly threatened harm. (*Id.* at p. 127.) Here, K.D. was afraid and she asked appellant to let her go. Appellant ignored her request, closed her bedroom door, wrestled with her when she tried to get away, choked her, and cut her with his knife before he raped and sodomized her on the floor. This evidence provides ample support for the jury’s finding of forcible false imprisonment. (See *People v. Wardell* (2008) 162 Cal.App.4th 1484, 1491 [“When a rational fact finder could conclude that a defendant’s acts or words expressly or impliedly threatened harm, the fact finder may find that there is menace sufficient to make false imprisonment a felony.”].)

II. *The Jury Found Sekona Used a Deadly or Dangerous Weapon.*

Sekona next contends his statutory and constitutional rights were violated because the jury failed to decide beyond a reasonable doubt that he used a dangerous or deadly weapon for purposes of section 667.61, subdivision (e)(3). He argues that the verdict forms for counts 3, 5 through 7, and 35 through 40 only required the jury to find he used a knife in commission of the offenses, but case law holds that a knife is not a dangerous or deadly weapon as a matter of law. Since the verdict forms did not require the jury to make a specific finding that he used a “deadly or dangerous weapon” in commission of the offenses, appellant claims the sentences on these counts must be reversed. This is because “[t]he penalties provided in . . . section [667.61] shall apply only if the existence of any circumstance specified in subdivision (d) or (e) is alleged in the accusatory pleading pursuant to this section, and is either admitted by the defendant in open court or found to be true by the trier of fact.” (§ 667.61, subd. (o).) For the same reason, he contends the findings on the verdict forms do not satisfy his constitutional right to have the jury find this fact beyond a reasonable doubt. (See *Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [defendant has constitutional right to have jury find facts that increase penalty for crime].) Sekona is mistaken.

At the outset, it is unclear this claim has been preserved for appeal. Sekona points to nothing in the record showing his trial counsel objected to the verdict forms at issue, and in the absence of such an objection any defect in the verdict forms is forfeited. (See *People v. Toro* (1989) 47 Cal.3d 966, 976, fn. 6 [“An objection to jury verdict forms is generally deemed waived if not raised in the trial court.”]; accord, *People v. Bolin* (1998) 18 Cal.4th 297, 330.) Although challenges to jury instructions are not necessarily forfeited by a failure to object (§ 1259), Sekona expressly eschews any challenge to the correctness of the court’s instructions. (Cf. *People v. Jones* (1997) 58 Cal.App.4th 693, 715 [assuming “error in the verdict forms was tantamount to an error in instructing the jury” on special circumstance].) His argument concerns only what he considers a deficiency in the jury’s findings.

Sekona’s argument is unpersuasive. To begin with, the knives he was alleged to have used were the only deadly or dangerous weapons identified in the information. In addition, no evidence was offered that he had actually used any other deadly or dangerous weapon in committing the charged offenses. In closing argument, the prosecutor explained to the jury that to find the enhancement allegations true, they had to find “either that the defendant displayed *the knife* in a menacing manner . . . [o]r that he hit [K.D.] with *the knife*.” (Italics added.) Thus, the information, the evidence, and the prosecutor’s closing argument left no doubt that the deadly or dangerous weapons referred to in the enhancement allegations were knives.

Furthermore, Sekona does not claim the jury was improperly instructed on the enhancement issue. Nor could he. The instruction the trial court read to the jury was taken from CALCRIM No. 3145. That instruction informed the jury that it would have to find, beyond a reasonable doubt, that Sekona had used a deadly or dangerous weapon during the commission of the offenses charged in the counts at issue. The instruction defined a deadly or dangerous weapon as “any object, instrument, or weapon that is inherently deadly or, dangerous, or one that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.” The jury was further instructed that “[i]n deciding whether or not an object is a deadly weapon, consider all the surrounding circumstances, including when and where the object was possessed and where the person who possessed the object was going and any other evidence that indicated whether the object would be used for a dangerous rather than a harmless purpose.”

“ ‘A verdict should be read in light of the charging instrument and the plea entered by the defendant. . . . [T]he form of the verdict generally is immaterial, so long as the intention of the jury to convict clearly may be seen.’ [Citations.]” (*People v. Jackson* (2014) 58 Cal.4th 724, 750.) Where the jury’s intent is unmistakably clear in light of the prosecution’s argument and the instructions from the court, any defect in the verdict form is a technical one that may be disregarded. (*Id.* at pp. 750-751; see also *People v. Ochoa* (1998) 19 Cal.4th 353, 427 [where “the instructions were quite clear, and the verdict form

did not contradict them” there was no reasonable likelihood the jury was misled or confused in deciding truth of special circumstance allegation]; *People v. Jones, supra*, 58 Cal.App.4th at p. 710 [verdict to be given reasonable construction in light of issues submitted to the jury and instructions of the court].)

Sekona relies on case law holding that not every knife is necessarily a deadly or dangerous weapon.¹² We have no quarrel with the holdings of those cases, but they do not address the facts of this case. Here, appellant was charged with using a deadly or dangerous weapon in the commission of the offenses, and the evidence put before the jury concerned only his use of knives. The jury was instructed it could not find the deadly or dangerous weapon enhancement true unless the instrument was “inherently deadly or, dangerous, or one that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.” This instruction did not suggest the jury could find the enhancement true based on a finding that the knives were “dangerous” weapons in the sense that they were merely *potentially* dangerous. Thus, even if the knives were not inherently deadly or dangerous instruments, the instruction properly informed the jury of the essential requirement for a deadly or dangerous weapon finding based on use of such instruments—i.e., that they were in fact used in a deadly or dangerous fashion. We presume the jury followed the instruction (*People v. Anderson* (2007) 152 Cal.App.4th 919, 951), and Sekona does not argue the evidence is insufficient to sustain a finding that he used the knives in the requisite fashion. We therefore reject his claim that the jury failed to make the findings required by section 667.61, subdivision (o) or by the federal Constitution.

¹² There is no question that a knife *can* be a deadly or dangerous weapon for purposes of the section 667.61 enhancement. (See *People v. Jones* (2001) 25 Cal.4th 98, 101-102, 110.) Moreover, a knife is an instrument commonly understood by lay people as capable of causing death. (*People v. Pruett* (1997) 57 Cal.App.4th 77, 86.) “Nearly all knives have sharp edges and points which are *designed* to cut things, and knives can be—and all too often are—employed to cut—and kill—people.” (*Ibid.*)

III. *The Trial Court Was Not Required to Hold a Marsden Hearing.*

Sekona contends the trial court erred in failing to hold a hearing under *Marsden*, *supra*, 2 Cal.3d 118 after he complained about his trial counsel on the day of sentencing.¹³ He also claims he was denied his right to make a motion for new trial on the ground of ineffective assistance of counsel. After setting out the relevant facts, we will review these claims in the order presented.

A. *Factual Background*

On March 28, 2012, the jury returned its verdicts. On September 14, 2012, the trial court heard Sekona's motion for new trial. The motion was based on claims that: (1) he was denied his right to a Tongan interpreter; (2) he had a brain injury that affected his memory and concentration during the trial; and (3) he received ineffective assistance of counsel at trial.¹⁴

During the hearing on the motion for new trial, the court noted Sekona had testified at the trial in English without an interpreter. And although the proceedings went on for months, appellant had never requested an interpreter. The court concluded it was

¹³ Sekona simply assumes no *Marsden* hearing occurred here because the prosecutor was present. This assumption ignores our holding in *People v. Madrid* (1985) 168 Cal.App.3d 14 that “no single, inflexible procedure exists for conducting a *Marsden* inquiry[,]” and prosecutors are sometimes present during *Marsden* hearings. (*Id.* at p. 18.) “The district attorney may be able to provide the court with valuable input that is necessary and appropriate to a just resolution of defendant's motion.” (*Ibid.*) We believed it merely to be “better practice . . . to exclude the district attorney when a timely request is made to do so by the defendant or his counsel.” (*Id.* at p. 19.) Here, it is possible “the trial court might have considered the colloquy in open court a *Marsden* hearing.” (*People v. Lopez* (2008) 168 Cal.App.4th 801, 814.) Since both parties treat this as a case in which no *Marsden* hearing was held, however, we will analyze it on that basis.

¹⁴ In a declaration attached to the motion, Sekona's trial counsel explained he had never had any trouble communicating with his client in English. He noted Sekona had never requested an interpreter and had never indicated he had any difficulty understanding his counsel. In addition, although Sekona had told his counsel about a head injury, he did not raise any problems with memory or concentration until after the trial. Counsel conceded he had not subpoenaed the records that might support an alibi defense until after the trial, but after reviewing them, he determined they did not provide evidence of his client's absence from California during the time the offenses were committed.

manifestly unfair for Sekona to wait until after his conviction to decide he needed an interpreter, when nothing had prevented him from asking for one earlier.

Similarly, Sekona waited until after the guilty verdicts to complain about his head injury and memory deficits. The court explained that if appellant was having cognitive problems, he should have articulated those to the court or counsel during the trial and should have mentioned any problems during his testimony. The court found it was a classic case of “Monday morning quarterbacking” or “looking through your rear view mirror at life[.]” “[O]nce something happens the defendant doesn’t like the result, then he makes these claims that he didn’t understand the language that was spoken within the court or that he had memory problems because of a head injury. And he had every opportunity to raise these issues before the court.”

As to the claim of ineffective assistance of counsel, defense counsel argued that the court needed to hear from Sekona about why he did not ask for an interpreter. Counsel also hypothesized that perhaps he should have inquired further of appellant concerning his medical issues and how they might have affected his ability to assist in his defense.

The trial court found no evidence of ineffective assistance at the trial. In the court’s opinion, defense counsel had done an outstanding job. Sekona’s failure to communicate his concerns about the lack of an interpreter and his cognitive deficits did not rise to the level of ineffective assistance of counsel.

At the sentencing hearing on October 25, 2012, Sekona was given an opportunity to address the court. He told the court he did not receive a fair trial. Appellant felt like his mouth was taped together and he was unable to speak. He was forbidden to provide information about his relationship with K.D. and how he raised her. Sekona thanked his attorney “for all that he has done,” but stated he and counsel were not in agreement. He complained about stories printed about him in the newspaper and expressed the view that defense counsel had paid insufficient attention to his case. For example, Sekona said counsel could not visit him in jail when he was first arrested because counsel had a back problem. Appellant asked counsel’s supervisor for an attorney who did not have back

problems. He also told the court counsel had failed to obtain certain evidence for an alibi defense. Sekona said he had gone to the prison law library and found “ten errors” that were committed during his trial, and asked to share a few of them with the court. He told the court he should have had an interpreter, he did not have any witnesses, he did not present an alibi defense, and in fact he did not have any defense.

At that point, the trial court thanked appellant and he asked, “Is that all the time I’m given?” The trial court responded, “I’ve given you a lot of time, Mr. Sekona. You repeated yourself over and over again that you felt that [you were] not adequately represented and that you felt you didn’t get a fair trial.” The court told appellant it believed he had received a fair trial. The trial court also commented very favorably on defense counsel’s performance.

B. *Governing Law – Marsden*

When a defendant complains about the adequacy of appointed counsel, the trial court must permit the defendant to articulate the basis for his concerns so that the court can determine if they have merit and, if necessary, appoint new counsel. (*Marsden, supra*, 2 Cal.3d at pp. 123-124; accord, *People v. Smith* (1993) 6 Cal.4th 684, 691 (*Smith*)). The rule requiring a *Marsden* hearing also applies posttrial. “[T]he trial court should appoint substitute counsel when a proper showing has been made at any stage [of the proceedings]. A defendant is entitled to competent representation at all times” (*Smith, supra*, at p. 695.)

Nevertheless, “[t]he trial court is not obliged to initiate a *Marsden* inquiry sua sponte. [Citation.] The court’s duty to conduct the inquiry arises ‘only when the defendant asserts directly or by implication that his counsel’s performance has been so inadequate as to deny him his constitutional right to effective counsel.’ [Citations.]” (*People v. Lara* (2001) 86 Cal.App.4th 139, 150-151.) “[A] trial court’s duty to permit a defendant to state his reasons for dissatisfaction with his attorney arises when the defendant in some manner moves to discharge his current counsel. The mere fact that there appears to be a difference of opinion between a defendant and his attorney over trial tactics does not place a court under a duty to hold a *Marsden* hearing.” (*People v. Lucky*

(1988) 45 Cal.3d 259, 281, fn. omitted (*Lucky*.) A proper, formal legal motion is not required, but the defendant must provide “ ‘at least some clear indication . . .’ either personally or through his current counsel, that [he] ‘wants a substitute attorney.’ ” (*People v. Sanchez* (2011) 53 Cal.4th 80, 90 (*Sanchez*.) Nothing less will suffice. (*Id.* at p. 90, fn. 3.) “Mere grumbling” about counsel’s failures is not enough to invoke a *Marsden* hearing. (*People v. Lee* (2002) 95 Cal.App.4th 772, 780.) “[W]e will not find error on the part of the trial court for failure to conduct a *Marsden* hearing in the absence of evidence that defendant made his desire for appointment of new counsel known to the court.” (*People v. Richardson* (2009) 171 Cal.App.4th 479, 484 (*Richardson*.) We generally review *Marsden* issues only for abuse of discretion. (*People v. Jones* (2003) 29 Cal.4th 1229, 1245.)

C. *Sekona Did Not Request Substitute Counsel.*

Sekona’s opening brief twice concedes he made no express request for appointment of substitute counsel. Instead, he says his “statement to the probation officer . . . of which the court was aware . . . , that he had tried to fire his attorney three times and had asked his ‘supervisor’ for a different attorney . . . were ‘clear indications’ that he wanted a substitute attorney.” Not so. Appellant cites no authority holding that statements to a probation officer are sufficient to trigger a trial court’s duty to hold a *Marsden* hearing, and we are aware of none. To the contrary, before we may find *Marsden* error, there must be “evidence that defendant made his desire for appointment of new counsel *known to the court*.” (*Richardson, supra*, 171 Cal.App.4th at p. 484, italics added.) Sekona’s statement to the probation officer that defense counsel was angry with him because he had tried to fire counsel three times is simply not a clear indication from either the defendant or his counsel that defendant wanted substitute counsel. (*Sanchez, supra*, 53 Cal.4th at p. 90; cf. *People v. Martinez* (2009) 47 Cal.4th 399, 421 (*Martinez*) [trial court under no duty to conduct *Marsden* hearing requested by third party]. Furthermore, Sekona does not explain why he was able to express his alleged desire for substitute counsel to the probation officer but could not make the same complaints to the court itself.

Appellant also contends his statements to the court that his counsel had represented him ineffectively were a clear indication he wanted a different attorney. His complaints about his attorney, however, were that he and his trial counsel “were not in agreement.” Expressed disagreement over trial tactics does not give rise to a duty to conduct a *Marsden* hearing. (*Lucky, supra*, 45 Cal.3d at p. 281.) Sekona also repeated he should have had a Tongan interpreter and that counsel should have presented certain evidence, arguments he had already made in his unsuccessful motion for new trial. But “a defendant is not entitled to keep repeating and renewing complaints that the court has already heard.” (*People v. Vera* (2004) 122 Cal.App.4th 970, 980.) The trial court was not required to afford Sekona a hearing each time he made the same accusations. (*People v. Clark* (1992) 3 Cal.4th 41, 104.) Moreover, to the extent these issues concerned trial tactics, they did not require the trial court to conduct a hearing. (*Lucky, supra*, 45 Cal.3d at p. 281; see *Martinez, supra*, 47 Cal.4th at pp. 418-419 [“differences of opinion between a defendant and his or her appointed counsel regarding the conduct of the defense do not impose a duty upon the court to conduct a *Marsden* hearing”]; *People v. Valdez* (2004) 32 Cal.4th 73, 97 [no *Marsden* hearing required where “defendant merely complained about his defense and argued that additional witnesses should be questioned”].) In sum, Sekona’s statements did not require the trial court to conduct a *Marsden* hearing, because “at most they reflect a difference of opinion over trial tactics and some generalized complaints regarding counsel’s performance, rather than a request for new counsel based on specific facts showing a deterioration of the attorney-client relationship.” (*People v. Nakahara* (2003) 30 Cal.4th 705, 719.)

IV. *Sekona Waived the Right to Make a Second Motion for New Trial.*

Sekona contends he was denied the right to make a motion for new trial on the ground of ineffective assistance of counsel. We disagree.

At the outset of the sentencing hearing, the trial court asked Sekona’s counsel, “So is there any legal cause why sentencing should not now be pronounced?” Counsel responded, “There is none, Your Honor.” “Appellant’s counsel, by stating that no legal cause existed, waived the right to make a motion for a new trial.” (*People v. Taylor*

(1967) 250 Cal.App.2d 367, 372; see *People v. Jaramillo* (1962) 208 Cal.App.2d 620, 628 [“the right to make the motion was waived when counsel stated that no legal cause existed”].) Thus, “[a]lthough grounds may have existed to grant a new trial they were waived when the defendant through his counsel indicated there was no legal cause why judgment should not be pronounced.” (*People v. Hales* (1966) 244 Cal.App.2d 507, 512.)

Sekona was represented by counsel at the sentencing hearing, and as we have held above, he did not request substitute counsel. “Counsel may waive all but a few fundamental rights for a defendant.” (*People v. Riel* (2000) 22 Cal.4th 1153, 1196.) Since he had professional representation, appellant had no right to “participate as cocounsel” and thus no right to make his own motion for new trial. (*People v. Hamilton* (1989) 48 Cal.3d 1142, 1162.) Neither Sekona’s opening brief nor his reply brief explains why his counsel’s response to the court’s question was not effective to waive any right to make a second motion for new trial. (See *People v. Johnson* (2015) 60 Cal.4th 966, 979 [“because he was represented by counsel, defendant’s personal waiver was not required”].)

V. *Sekona Was Not Denied the Right to Allocution.*

Sekona argues he was denied the right to allocution “in the sense of the right to state ‘good cause . . . for a new trial.’ ” The asserted good causes for new trial were the ineffectiveness of his counsel,¹⁵ his need for an interpreter, and the alleged “ten errors” in the conduct of his trial Sekona claimed to have discovered after doing research in the prison library. We conclude Sekona was not denied his rights.

“In legal parlance, the term ‘allocution’ has traditionally meant the *trial court’s inquiry of a defendant* as to whether there is any reason why judgment should not be

¹⁵ We note Sekona does not argue in this court that the assistance his trial counsel provided was ineffective. Indeed, at the sentencing hearing, the trial court expressly rejected any suggestion of ineffectiveness. After praising defense counsel’s diligence, thoroughness, and passion in defense of his clients, the court stated, “I can’t conclude from [trial counsel’s] work in this case that his work was in any way deficient. It was completely the opposite of that in my view.”

pronounced. [Citations.] In recent years, however, the word ‘allocution’ has often been used for a *mitigating statement made by a defendant in response to the court’s inquiry*. [Citation.]” (*People v. Evans* (2008) 44 Cal.4th 590, 592, fn. 2 (*Evans*)). As Sekona implicitly recognizes, he is not claiming he was denied his right of allocution in the traditional sense. That is, he does not argue he wished to make a *mitigating statement* in response to the court’s inquiry but was not allowed to do so.¹⁶ (See *ibid.*)

Instead, he claims *Evans* recognized “another form of ‘allocution.’ ” In his view, this other form of allocution is the right under section 1200 to show legal cause why judgment should not be pronounced against him. (See § 1200 [“When the defendant appears for judgment he . . . must be asked whether he has any legal cause to show why judgment should not be pronounced against him.”].) Here, however, “[w]hen the court asked whether there was any legal cause why judgment should not be pronounced and appellant’s counsel replied that there was not, this constituted compliance with . . . section 1200.” (*People v. Sanchez* (1977) 72 Cal.App.3d 356, 359.) Sekona was represented by counsel, and it was counsel’s function to address the court on his behalf. (*People v. Cross* (1963) 213 Cal.App.2d 678, 682.) “[T]he inquiry made by the court and the response thereto of the defendant’s counsel . . . constituted a compliance with the law of this state as to allocution.” (*Id.* at p. 681.) In this instance, the trial court chose to exercise its discretion to permit appellant to speak on his own behalf. (See *People v. Sanchez, supra*, 72 Cal.App.3d at p. 359.) Nevertheless, “[i]t was not an abuse of discretion for the court to interrupt appellant after finding his contentions unmeritorious.” (*People v. Wiley* (1976) 57 Cal.App.3d 149, 166, overruled on other grounds, *People v. Hayes* (1990) 52 Cal.3d 577, 628, fn. 10 and disapproved on another point, *People v. Wheeler* (1978) 22 Cal.3d 258, 286-287 & fn. 35.)

The trial court did not deny Sekona his right to allocution.

¹⁶ In *Evans*, the California Supreme Court “held that noncapital defendants *do not* have a right to allocute under section 1200. Any statement they wish to make in mitigation ‘must be made under oath and be subject to cross-examination.’ ” (*People v. Tully* (2012) 54 Cal.4th 952, 1058, italics added.) As explained above, Sekona has not suggested he wished to make a statement in mitigation of punishment.

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Needham, J.