

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
JOSE PAZ-GONZALEZ,  
Defendant and Appellant.

A142020  
(Sonoma County  
Super. Ct. No. SCR630205)

Defendant Jose Paz-Gonzalez was charged in an information with the felony offenses of engaging in sexual intercourse and sodomy with a minor under 10 years of age (Pen. Code, § 288.7, subd. (a)) (count one) and oral copulation and sexual penetration of a minor under 10 years of age (Pen. Code, § 288.7, subd. (b)) (count two), concerning the sexual assault on five-year-old Jane Doe. Defendant pleaded not guilty to the charges.

Before defendant’s change of plea, the court held a hearing on defendant’s contested motion to suppress evidence of a “DNA (buccal swab sample)” and the subsequent test results and other evidence as fruits of an unlawful search and seizure. The DNA swab had been secured from defendant while the police were at his residence conducting a search for evidence against his roommate who had been initially charged with sexually assaulting Jane Doe. At the time of the search defendant’s roommate had been detained at a different location and defendant was not a suspect. The court heard testimony from several law enforcement officers present at the residence during the

search including Detective Christopher Mahurin who had tape-recorded a portion of his conversation with defendant. The court read the transcript and listened to the audio recording of the conversation between defendant and Detective Mahurin. The court found that before Detective Mahurin's arrival at the residence defendant had not been detained there by the other officers. The court further found defendant had voluntarily consented to give a DNA swab at Detective Mahurin's request. The court found there was no showing of the use of force that would have caused a person to believe he was being interrogated or coerced into submitting a DNA swab. After listening to the audio recording, the court believed Detective Mahurin's demeanor on the witness stand was "absolutely consistent" with his voice on the tape recording; he was "very soft-spoken," "very professional," and spoke in a "conversational" tone. Defendant had similarly responded in "a very conversational manner" to the detective's questions. The audio recording did not include the detective's request and defendant's actual consent to give a DNA swab. Nevertheless, the court found credible and saw no basis to disbelieve the detective's testimony that after the audio recording ended he continued his conversation with defendant and defendant agreed to give a DNA swab.

At the change of plea proceeding, defendant pleaded no contest to the felony offense of oral copulation and sexual penetration of a minor under 10 years of age (count two). In his written plea agreement, defendant indicated that he understood probation would be denied, his "custody term" on count two would be for the stipulated term of 15 years to life, and count one would be dismissed at sentencing. Defense counsel filed a sentencing memorandum and the probation department also submitted a presentence report; both recommended that the court sentence defendant to the stipulated term of 15 years to life on count two. At sentencing, the court heard argument from both counsel and the victim's mother made a statement. Pursuant to the plea agreement, the court denied probation, imposed a term of 15 years to life in state prison on count two, and dismissed count one.

Defendant's appellate counsel has filed a brief asking us to independently review the record under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). As required under

*People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note that appellate counsel has informed defendant of his right to file a supplemental brief and he has not filed such a brief. We have independently examined the record in accordance with *Wende*, and agree with appellate counsel that there are no issues warranting further briefing. In his notice of appeal defendant sought to challenge only the denial of the motion to suppress evidence. We see no error or abuse of discretion in the court's ruling denying defendant's motion to suppress evidence.

**DISPOSITION**

The judgment is affirmed.

---

Jenkins, J.

We concur:

---

Pollak, Acting P. J.

---

Siggins, J.