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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

SERGIO ROJAS LARA,

Defendant and Appellant.

B235853

(Los Angeles County
Super. Ct. No. NA087639)

APPEAL from a judgment of the Superior Court of Los Angeles County, James Pierce, Judge. Affirmed as modified.

Jasmine Patel, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Tannaz Kouhpainezhad, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant, Sergio Rojas Lara, appeals from a July 8, 2011 judgment entered after a jury convicted him of carjacking (Pen. Code,¹ § 215, subd. (a)) and returned a firearm use finding. (§ 12022.53, subd. (b).) In addition, defendant admitted he previously was convicted of a serious or violent felony. (§§ 667, subds. (a)(1), (b)-(i), 1170.12.) Defendant was sentenced to 25 years in state prison. We modify the judgment as to the court facilities assessment and court security charge. We affirm the judgment as modified.

II. THE EVIDENCE

At the June 6, 2011 jury trial, the victim, Rufino Munoz, testified he worked as a barber in Long Beach. Defendant was one of Mr. Munoz's customers. Mr. Munoz testified that he drove a white Grand Marquis. Defendant drove a black Grand Marquis. In November 2010, Mr. Munoz and defendant had exchanged the rims on their Pontiacs. On December 27, 2010, defendant came to the barbershop. Defendant said he wanted his rims back. Mr. Munoz noticed that the rims on defendant's car were "wrecked." Mr. Munoz agreed to accept the rims, if defendant repaired them. Defendant suggested that they go to a tire store. Mr. Munoz went by himself. Defendant went with a male companion. At the tire shop, Mr. Munoz and defendant learned that the rims could not be exchanged. Mr. Munoz said that he had to return to work at his barbershop. Defendant was told he should repair the rims and bring them over to the barbershop and that they would exchange them there. Mr. Munoz returned to the shop and defendant and a companion came back about 15 to 20 minutes later.

Defendant waited until Mr. Munoz left to go home. Defendant followed Mr. Munoz out to the parking lot. Defendant got in front of Mr. Munoz's car and pulled out a

¹ All further statutory references are to the Penal Code except where otherwise noted.

gun. Defendant pointed the gun at Mr. Munoz. Mr. Munoz became scared and got out of his car. Mr. Munoz told defendant to take the car. Mr. Munoz testified defendant replied: "That's what I want. I want to take it away." Mr. Munoz then gave the car keys to defendant. Then, defendant told Mr. Munoz to go back to the barbershop and not to say anything or to call the police. Mr. Munoz returned to the shop. Defendant followed Mr. Munoz and stated: "Tomorrow I'm going to bring your car. Don't call the police." Defendant then drove away in Mr. Munoz's car. Several hours later, Officer Fernando Mayan had Mr. Munoz call defendant on speaker phone. During this call, defendant said he was sorry. Further, defendant acknowledged stealing Mr. Munoz's car. Defendant said he was going to give the car back the next day because he was going to sleep then. Mr. Munoz testified that defendant never brought the car back. But Mr. Munoz testified he was able to get back his car from the police.

Two detectives detained defendant and a female companion in Mr. Munoz's stolen car. They then transported defendant to the police station for questioning. Defendant waived his rights and agreed to speak with the detectives. Defendant provided two different versions of how he was in possession of the stolen car. Defendant said that he "didn't want to rat anybody out" because he did not want to get injured. Defendant admitted being with a "white boy"; the boy was named "Tim"; and Tim possessed a gun.

III. DISCUSSION

A. Opening Brief

We appointed counsel to represent defendant on appeal. After examination of the record, appointed appellate counsel has filed a brief in which no issues are raised. Instead, appointed appellate counsel has asked us to independently review the entire record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441-442. (See *Smith v. Robbins* (2000) 528 U.S. 259, 264.) On December 29, 2011, we advised defendant he had 30 days within which to submit by brief or letter any contentions or

argument he wished this court to consider. On January 27, 2012, defendant filed a supplemental letter brief.

B. Defendant's Supplemental Brief

Defendant's supplemental brief raises five issues: ineffective assistance of counsel for failure to provide him with documents, such as the preliminary hearing transcripts and the police reports, before trial; ineffective assistance of counsel for failure to object to Detective Patrick Lyon wearing a jacket labeled "Gang Enforcement" at trial when the case did not involve gang allegations; a fundamental miscarriage of justice occurred because of false testimony by the police officers and the victim; insufficiency of the evidence to support the conviction; and cumulative error. These contentions have no merit. Defendant has failed to demonstrate in the direct appeal context: the factual predicates of each asserted act of ineffective assistance (*People v. Weaver* (2001) 26 Cal.4th 876, 955-956; *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-268); prejudice resulting from any alleged ineffective assistance (*In re Crew* (2011) 52 Cal.4th 126, 150; *In re Cox* (2003) 30 Cal.4th 974, 1019-1020); the virtually uncontradicted evidence of guilt was insufficient (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Elliot* (2005) 37 Cal.4th 453, 466); or the presence of cumulative prejudicial error. (*People v. McKinnon* (2011) 52 Cal.4th 610, 689; *People v. Hovarter* (2008) 44 Cal.4th 983, 1030.)

C. Pitchess

On April 15, 2011, defense counsel filed a peace officer personnel record disclosure motion pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 537-538. The motion sought all misconduct complaints against two Long Beach Police Department detectives. (Evid. Code, § 1043, subd. (a); see *Galindo v. Superior Court* (2010) 50 Cal.4th 1, 5.) On May 9, 2011, the trial court ordered an in camera hearing be conducted

as to both detectives with respect to complaints of fabrication of probable cause, false testimony and perjury. After an in camera hearing on May 11, 2011, the trial court found there were no discloseable materials.

Appointed appellate counsel requested that we independently review the record of the trial court's in camera hearing for review of peace officer personnel records. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1228-1232; *Pitchess v. Superior Court, supra*, 11 Cal.3d at p. 535.) On February 29, 2012, we assigned the trial court to conduct record correction proceedings pursuant to *People v. Mooc, supra*, 26 Cal.4th at page 1231. On April 17, 2012, the trial court filed under seal with this court the transcripts of its May 11, 2011 in camera hearing on defendant's motion and its March 22, 2012 in camera record correction proceedings. We have reviewed the transcripts of the in camera hearings. No abuse of discretion occurred. (*People v. Myles* (2012) 53 Cal.4th 1181, 1209; *People v. Mooc, supra*, 26 Cal.4th at pp. 1228, 1232.)

D. Sentencing

Defendant was convicted on June 7, 2011 and sentenced on July 8, 2011. He filed his notice of appeal on July 28, 2011. At sentencing, the trial court imposed a \$40 court facilities assessment (Gov. Code, § 70373, subd. (a)(1)) and a \$40 court security fee (§ 1465.8, subd. (a)(1).) The trial court also awarded defendant credit for 193 days in presentence custody plus 28 days of conduct credit for a total presentence custody credit of 221 days. The trial court erred. The court facilities assessment should have been in the amount of \$30 rather than \$40. (Gov. Code, § 70373, subd. (a)(1).) In addition, because defendant was arrested on December 27, 2010 and sentenced on July 8, 2011, he was entitled to 194 days presentence custody credit plus 29 days of conduct credit for a total of 223 days.

On December 6, 2011, while this appeal was pending, the trial court modified the judgment to impose a court security fee in the amount of \$30 rather than \$40, and to award defendant 223 days of presentence custody credit. The amended abstract of

judgment, however, erroneously records the total presentence custody credit as 232 days. On April 27, 2012, unaware of the trial court's December 6, 2011 modifications, we asked the parties to brief the questions whether the trial court erred with respect to defendant's presentence conduct credit and court facilities assessment. Counsel agreed.

On May 1, 2012, we asked the parties to brief the questions whether it was error to modify the judgment (on December 6, 2011) to impose a \$30 court security fee and whether the abstract of judgment must be corrected as to the total presentence custody credit. Counsel agreed.

The judgment must now be further modified: to impose a \$30 court facilities assessment (not \$40) (Gov. Code, § 70373, subd. (a)(1)); and, because defendant was convicted on June 7, 2011, to impose a \$40 court security charge (not \$30) (§ 1465.8, subd. (a)(1) as amended by Stats. 2011, ch. 10, § 8 eff. March 24, 2011; cf. *People v. Davis* (2010) 185 Cal.App.4th 998, 1001 [Gov. Code, § 70373, subd. (a)(1)].) The abstract of judgment dated December 7, 2011 must be amended to so reflect. In addition, the abstract must be corrected to reflect 223 total days of presentence custody credit, not 232.

IV. DISPOSITION

The judgment is modified to impose a \$30 court facilities assessment pursuant to Government Code section 70373, subdivision (a)(1) and a \$40 court security charge under Penal Code section 1465.8, subdivision (a)(1). Upon remittitur issuance, the abstract of judgment dated December 7, 2011 must be corrected to accurately reflect the foregoing and that the total presentence custody credit is 223 days, not 232. The clerk of the superior court shall deliver a copy of the corrected abstract of judgment to the California Department of Corrections and Rehabilitation.

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TURNER, P. J.

We concur:

ARMSTRONG, J.

MOSK, J.