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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.

NATHAN MARTINEZ,

Defendant and Appellant.

2d Crim. No. B264715  
(Super. Ct. No. VA138210)  
(Los Angeles County)

Nathan Martinez appeals a judgment after his conviction of carrying a dirk or dagger. (Pen. Code, § 21310.)<sup>1</sup> We conclude that the trial court’s response to a jury question during deliberations about whether jurors could render a non-unanimous verdict did not constitute reversible error. We affirm.

FACTS

Martinez resided in a motel. On the morning of January 31, 2015, he went to the motel manager to complain “that somebody” had been “knocking” on his door. Martinez’s

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<sup>1</sup> All statutory references are to the Penal Code.

neighbor at the motel had a dispute with Martinez and called the police. Police Officer Victor Arana arrived and talked with the manager and Martinez's neighbor. He then spoke with Martinez.

Arana "recognized" Martinez from a "prior contact." He "patted down . . . Martinez" and seized "a large knife" from his "sweater pocket." It was a "stainless steel-type fixed blade knife." Arana testified, "It was eight and a half inches long. The blade itself was approximately four to five inches long, and the [handle] was another three or four inches long, and it was wrapped in green tape." Martinez was arrested.

At trial, the court told jurors the knife "is going to be marked for reference because it cannot be admitted into evidence by court rules."

The trial court instructed the jury, "Your verdict on each count and any special findings must be unanimous." It told jurors that to find the defendant guilty of carrying a concealed dirk or dagger (§ 21310), "the People must prove that: 1. The defendant carried on his person a dirk or dagger; 2. The defendant knew that he was carrying it; 3. It was substantially concealed on the defendant's person; 4. The defendant knew that it could readily be used as a stabbing weapon."

In closing argument, Martinez's counsel told the jury that the People presented evidence about "a knife." But there was no testimony that the knife was "a dirk or dagger." She claimed the People did not present evidence on all four elements of the section 21310 offense. There was no evidence that the knife "was capable of readily being used as a stabbing weapon." She said, "[T]his item is blunted, it's kind of curved at the end where you would typically believe or think that a knife would be pointed. It doesn't have the serrated edges . . . ."

### *The Jury's Question*

During deliberations, the jury informed the trial court that it was having difficulty reaching a verdict. It said, “[W]hat should we do if we cannot come to a unanimous decision?” It requested the transcript of the police officer’s testimony.

The jury also asked: “*Do we have to be unanimous on all four points or can it be majority and then unanimous on the verdict?*” (Italics added.)

The trial court responded to this question by stating, “Please refer to the instructions regarding the crime charged. Each of the elements must be proven beyond a reasonable doubt.”

The jury found Martinez guilty.

### DISCUSSION

#### *The Court's Response to the Jury's Question*

Martinez contends the trial court’s response to the jury’s question was so inadequate that the judgment must be reversed. We disagree.

The jury asked the trial court whether it could render a guilty verdict even though one or more jurors felt all four of the required elements of the offense were not proven.

“In a criminal case, a jury verdict must be unanimous.” (*People v. Russo* (2001) 25 Cal.4th 1124, 1132.) “Unanimity obviously requires that each juror must vote for and acquiesce in the verdict. Acquiescence simply because the verdict has been reached *by the majority is not an independent judgment*, and if permitted, would undermine the right to a unanimous verdict.” (*People v. Superior Court* (1967) 67 Cal.2d 929, 932, italics added.) “[I]n order to return a guilty verdict, the jury *must agree unanimously that each element of the charged crime has*

*been proved . . . .*” (*People v. Jenkins* (2000) 22 Cal.4th 900, 1025, italics added.)

“To perform their job properly and fairly, jurors must *understand* the legal principles they are charged with applying. It is the trial judge’s function to facilitate such an understanding by any available means. . . . A jury’s request for reinstruction or clarification should alert the trial judge that the jury has focused on what it believes are the critical issues in the case. The judge must give these inquires serious consideration.” (*People v. Thompkins* (1987) 195 Cal.App.3d 244, 250.) The court must answer the jury’s question and respond “in as simple and direct a manner as possible.” (*Id.* at p. 253.)

Martinez contends the trial court should have told the jurors that they could not render a compromise verdict and the verdict had to be unanimous.

We agree that would have been the best response. But the trial court had previously given a unanimity instruction. The response the court selected emphasized that “each of the elements must be proven beyond a reasonable doubt.” This was a message to the juror or jurors who felt that all of the elements of the crime had not been established. It informed them about their individual responsibility as jurors before they could find the defendant guilty.

After receiving the guilty verdict, the trial court asked the clerk to “poll” the jury. The clerk told the jury, “Ladies and Gentlemen of the jury, I will inquire as to each of you whether this is your true and correct verdict.” The clerk then asked each juror, “[I]s this *your* verdict?” (Italics added.) All 12 *individually* responded that it was.

We have reviewed Martinez's remaining contentions and conclude he has not shown grounds for a reversal.

DISPOSITION

The judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Yvonne T. Sanchez, Judge

Superior Court County of Los Angeles

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Benjamin Owens, under appointment by the Court of Appeal, for Defendant and Appellant.

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