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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Lassen)

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL ANTHONY MORALES,

Defendant and Appellant.

C068357

(Super. Ct. No.
CR027772)

Defendant Paul Anthony Morales pleaded guilty to failing to register as a sex offender (Pen. Code, § 290.012, subd. (a))¹ and engaging in lewd conduct (§ 647, subd. (a)). He also admitted to serving a prior prison term. (§ 667.5, subd. (b).) A jury then convicted defendant of indecent exposure (§ 314, subd. 1).

¹ Further statutory references are to the Penal Code unless otherwise indicated.

The trial court sentenced defendant to an aggregate term of four years in state prison; defendant timely appealed.

On appeal, defendant contends the trial court failed to instruct the jury on the required union of act and intent and imposed an unauthorized misdemeanor sentence. The People concede the latter point. We shall modify the judgment and affirm.

BACKGROUND²

Defendant was charged with misdemeanor failing to register as a sex offender (§ 290.012, subd. (a)), indecent exposure (§ 314, subd. 1), and misdemeanor lewd conduct in a public place (§ 647, subd. (a)). As a sentencing enhancement pursuant to section 667.5, subdivision (b), it was further alleged that defendant previously served a term in prison.

Defendant pleaded guilty to both misdemeanor charges and admitted to serving a prior term in prison, and a jury found him guilty of indecent exposure.

The trial court subsequently sentenced defendant to an aggregate term of four years in state prison: three years for indecent exposure, one year for the prior prison term, and two years for the misdemeanor convictions (to be served concurrently). Defendant was ordered to pay various fines and fees.

² The facts regarding the underlying crime are irrelevant to the issues on appeal. Accordingly, we do not include them in our opinion.

DISCUSSION

I

Defendant contends the trial court erred in failing to instruct the jury that the crime of indecent exposure requires the concurrence of an act and specific intent. (CALCRIM Nos. 251, 252.) We agree the trial court erred; however, we find the error harmless because the point was covered by another instruction given to the jury. (See *People v. Alvarez* (1996) 14 Cal.4th 155, 219-220 (*Alvarez*).)

When a charged crime "requires a specific mental state" the trial court should instruct the jury with CALCRIM No. 251. (Bench Note to CALCRIM No. 251 (2009-2010 ed.) p. 70.) Had the trial court given this instruction, the jury would have been told "that [a] person must not only intentionally commit the prohibited act, but must do so with a specific intent and/or mental state. The act and the specific intent and/or mental state required are explained in the instruction for that crime."

However, in evaluating a claim of instructional error, we must consider all of the instructions given to the jury, because we presume the jury is capable of understanding and correlating the instructions. (See *People v. Jablonski* (2006) 37 Cal.4th 774, 831; *People v. Kelly* (1992) 1 Cal.4th 495, 525-526; *People v. Kegler* (1987) 197 Cal.App.3d 72, 80.) Although a pattern instruction on the union of act and specific intent should have been given in this case, any error was necessarily harmless, because the point was covered by another instruction. Here, the trial court instructed the jury as follows:

"The defendant's charged in Count II with indecent exposure in violation of Penal Code section 314.

"To prove that the defendant is guilty of this crime, the People must prove that one, the defendant willfully exposed the genitals in the presence of another person or persons who might be offended or annoyed by the defendant's actions.

"And two, when the defendant exposed himself, he acted lewdly by intending to direct public attention to his genitals for that purpose of sexually arousing or gratifying himself or another person or sexually offending another person.

"Someone commits an act willfully when he or she does it willingly or on purpose. It does not require that he or she intend to break the law, hurt someone else or gain an advantage. It is not required that another person actually see the exposed genitals."

Thus, the jury was instructed that to convict defendant of indecent exposure, the jury had to find "*when the defendant exposed himself, he acted lewdly by intending to direct public attention to his genitals*" for purposes of sexual arousal, gratification, or affront. The point made by the omitted instruction was adequately covered by this given instruction.

Defendant argues the court's failure to give the required instruction effectively eliminated the People's burden to prove there was a union of the act and the required intent. We disagree. As stated, reading the instructions as a whole, the jury would understand the required mental state necessary to convict defendant of indecent exposure.

Therefore, although the trial court should have instructed on the concurrence of act and specific intent, the error was harmless because the point was covered by another instruction. (See *Alvarez, supra*, 14 Cal.4th at p. 220.)

II

The trial court imposed a concurrent term of one year in county jail on the lewd conduct charge. The People concede the maximum sentence for misdemeanor lewd conduct is six months. (§§ 19 & 647, subd. (a).) Having reviewed the applicable law and the record, we accept the People's concession and modify the judgment to reduce defendant's sentence on the lewd conduct conviction to six months, to be served concurrent to the four-year term imposed on defendant's conviction for indecent exposure. (See § 1260.)

DISPOSITION

The judgment is affirmed as modified and corrected. The trial court is directed to amend its minute order from the sentencing hearing and the abstract of judgment to be consistent with this opinion.

BLEASE, Acting P. J.

We concur:

ROBIE, J.

DUARTE, J.