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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

CRISTPIN SOLORIO GARCIA,

Defendant and Appellant.

D059759

(Super. Ct. No. SWF027815)

APPEAL from a judgment of the Superior Court of Riverside County, John D. Molloy, Judge. Affirmed.

A jury convicted Cristpin Solorio Garcia of first degree murder and found he personally used a deadly weapon within the meaning of Penal Code sections 12022, subdivision (b), and 1192.7, subdivision (c)(23). The trial court sentenced Garcia to an indeterminate prison term of 25 years to life plus a one-year weapon enhancement.

FACTS

On the evening of February 12, 1996, Garcia, then 17 years old, telephoned Sophia Briseno at her home and asked her to meet him at the nearby Murrieta Market. Briseno, who was 13 years old, had a dating relationship with Garcia that she had not shared with her mother, who believed they were just friends.¹ After the call, Briseno told her mother that she was going to pick up some compact discs (CDs) from Garcia at the market and would be right back. When Briseno did not return home by midnight, her mother called the police.

The following day, Garcia told his friend and next door neighbor, Victor Toro, that he and another friend, Francisco Ochoa, had killed Briseno. Garcia said he had taken Briseno to a local cemetery, which was known as a place where high school students hang out, to party and engage in sexual relations with her, but she started irritating him. Garcia told Briseno either to shut up or he was going to kill her, but she began mocking him. Garcia told Ochoa to get screwdrivers from the vehicle. As Garcia started to stab Briseno, he said: "Do you believe me now, bitch, that I'm gonna kill you? Ochoa also started to stab Briseno with a screwdriver. When the handle of Garcia's screwdriver broke off while he was stabbing Briseno in the mouth, he kept stabbing her with the metal part of the screwdriver.

¹ Briseno had professed to her friends that she was in love with Garcia and, it was generally known within their circle of friends that they had engaged in sexual relations. By mid-February 1996, Garcia had a new girlfriend. Garcia told one friend he did not care for Briseno and wanted to end the relationship and tell her to stop calling him and bothering him.

At first, Toro did not believe that Garcia had killed Briseno. Garcia suggested that Toro go to the cemetery with him because he wanted to look for the screwdriver handle. Toro agreed. After viewing the body, Toro ran back to his off-road vehicle. Garcia was not able to find the screwdriver handle.

Garcia was not as forthcoming with others. When mutual friends of Briseno and Garcia questioned him about her whereabouts, Garcia said he left her at the market after receiving a call from someone who needed a ride. Garcia told the same story to Briseno's mother and a police officer, both of whom questioned him about the missing 13-year-old girl.

On February 17, Garcia and Ochoa went to Mexico. They stayed with Ochoa's family in Mexico City for one or two weeks. Garcia then took a bus to Michoacan, where he had relatives.

On the morning of February 18, a Murrieta resident and his daughter telephoned police after they discovered a dead body while walking in a rural area. Murietta Police Officers Jeff Stotts and Sean Hadden responded to the report and found Briseno's body in a field just outside of Laurel Cemetery. Police recovered Briseno's three-inch hoop earrings, two small eyebrow pencils, clumps of her hair and a three-inch piece of a screwdriver handle near the body.

Briseno died from multiple puncture wounds. The wounds were consistent with having been inflicted by flathead screwdrivers. Briseno had a total of 64 puncture wounds with most of them on her head. There also were puncture wounds to her back,

neck, chest and arms. Three puncture wounds went into her skull, four punctured her lung and one punctured her heart.

On June 1, 2007, a FBI agent assigned to the United States consulate in Guadalajara Mexico accompanied Mexican federal police as they arrested Garcia in Michoacan. Garcia told the FBI agent that he killed Briseno because he believed she had told gang members where he lived and his residence was the target of a drive-by shooting. Garcia also said Ochoa had nothing to do with the stabbing.

On August 13, 2008, Lieutenant Michael Baray and Detective Victor Carrillo interviewed Garcia at the Murrieta police department. Garcia said that three or four days before the homicide, he and Ochoa discussed killing Briseno, but no specific date or method was agreed upon. As to motive, Garcia said he was upset with Briseno for talking about him and he wanted to keep her quiet. Garcia also said it was a way to show his friends that he was tough. Ochoa became involved because they were close friends and he did not like what Briseno had been saying. Garcia said he did not implicate Ochoa when he talked to the FBI agent in Mexico because Ochoa's family in Mexico had helped him and the two of them had agreed not to implicate each other if arrested.

The version that Garcia related to Baray and Carrillo was for the most part the same that he had related to Toro 14 years earlier. One discrepancy was Garcia told the police interviewers that Ochoa started stabbing Briseno and he subsequently joined in the attack.

At the time of the trial in 2010, Ochoa was still at large.

DISCUSSION

Appointed appellate counsel has filed a brief setting forth evidence in the superior court. Counsel presents no argument for reversal, but asks that this court review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible, but not arguable issues: (1) whether the juvenile court erred by overruling the defense demurrer, which argued the court's jurisdiction had lapsed; (2) whether the trial court erred by admitting Garcia's statements to the FBI agent in Mexico; (3) whether the court erred by admitting Garcia's statements to police at the Murrieta police station; (4) whether the court abused its discretion by admitting photographs of the victim's body and her school photograph; and (5) whether the court erred by denying Garcia's mistrial motion after a police officer testified that he was a member of a gang task force when he assisted Murrieta police in attempting to locate Garcia.

We granted Garcia permission to file a brief on his own behalf. He has responded.

Garcia contends he received ineffective assistance of counsel because his court-appointed attorney did not do enough to refute the prosecution's version of the events leading to Briseno's murder. However, Garcia's claim is too general; he does not cite specific ways in which his attorney had been ineffective. Garcia's vague assertion is insufficient to deem the attorney's representation ineffective. To prevail on an ineffective assistance of counsel claim, an appellant must show his or her " 'counsel's representation fell below an objective standard of reasonableness . . . under prevailing professional norms' " and counsel's deficient performance was prejudicial. (*People v. Ledesma* (1987)

43 Cal.3d 171, 216-218.) Garcia has not established either of these prerequisites. To the contrary, the record indicates counsel actively and competently represented Garcia at trial by, among other things, objecting to evidence and vigorously cross-examining the prosecution's witnesses.

During five *Marsden* (*People v. Marsden* (1970) 2 Cal.3d 118) hearings, Garcia voiced similar vague complaints against his trial counsel in unsuccessful attempts to have the trial court appoint substitute counsel. To the extent Garcia is claiming the denial of his *Marsden* motions was error, we disagree. In each of the hearings, the trial court listened to Garcia explain his dissatisfaction with counsel and heard from counsel as well. Our review of the transcripts of the hearings shows that at no point did Garcia show ineffective representation or irreconcilable conflict that warranted the replacement of counsel. (*People v. Cole* (2004) 33 Cal.4th 1158, 1190.) The trial court did not abuse its discretion by denying the *Marsden* motions. (*Ibid.*)

One of the few specific complaints Garcia has raised about his trial counsel was that she told him that the most she would do for him was to get him a sentence of 25 years to life and " 'she was not going to do more.' " However, the reporter's transcript of the final *Marsden* hearing reveals that counsel denied making that statement, explaining that she told Garcia that if he was convicted of the first degree murder charge he would receive a 25-year-to-life sentence and an additional year if the weapon allegation was sustained. Counsel also pointed out that at one point the prosecution had alleged a special circumstance that would have exposed Garcia to a sentence of life without the possibility of parole, and she had successfully worked to have the prosecution drop that

allegation. Garcia's complaint is also belied by counsel's argument to the jury in which she urged a manslaughter verdict or second degree murder verdict. To the extent that Garcia complains counsel argued to the jury that he was "guilty of the [h]omicide," we view it as a disagreement between Garcia and counsel over trial tactics—whether to seek a conviction on a lesser offense or attempt to persuade a jury that Garcia was not involved in Briseno's death. Defense counsel's closing argument " 'is a matter of trial tactics and strategy that a reviewing court generally may not second-guess.' " (*People v. Williams* (1997) 16 Cal.4th 153, 219.)

Garcia admits "[t]he evidence does put me [at] the scene of the crime," but argues the evidence does not show he killed Briseno or was the "main perpetrator." Garcia points to the forensic evidence showing that DNA, which was retrieved from Briseno's clothing, was from her and an unknown male, who was not Garcia. To the extent Garcia is raising a sufficiency of the evidence argument, he cannot prevail. Evidence that his DNA was not on the items retrieved from the crime scene does not establish Garcia's lack of guilt. In determining whether substantial evidence support's the jury's verdict, we do not reweigh evidence and make credibility determinations; rather, we resolve all evidentiary conflicts in favor of the judgment. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129.) It is the jury's province to determine the credibility of witnesses, such as Toro, and to resolve any inconsistencies. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

Substantial evidence supported Garcia's murder conviction. The day following Briseno's disappearance, Garcia told his friend Toro that he and Ochoa had stabbed her to death with screwdrivers, and he later took Toro to the murder site. The 64 puncture

wounds on Briseno's body were consistent with having been inflicted by flathead screwdrivers. Within a week of Briseno's disappearance, Garcia fled to Mexico, where he lived for more than a decade. Upon his capture Garcia admitted to a FBI agent that he had killed Briseno. After he was extradited to the United States, Garcia told Murrieta police that he had killed Briseno. Despite the lack of DNA evidence linking Garcia to the crime scene, there was overwhelming evidence of his guilt.

Garcia asserts his statements to the FBI agent in Mexico and to police officers in Murrieta were coerced and should not have been admitted at trial. Before trial, these assertions were litigated, along with claims Garcia was not properly admonished under *Miranda v. Arizona* (1966) 384 U.S. 436. Our review of the record shows Garcia did not establish his statements were coerced and his *Miranda* claims were without merit.

Garcia claims he should have been tried as a minor in juvenile court rather than as an adult in superior court. We reject the claim. On February 28, 1996, the Riverside County District Attorney filed a petition in juvenile court under Welfare and Institutions Code section 602 alleging Garcia, who was at large, murdered Briseno and personally used a deadly weapon in committing the offense. On August 14, 2008, the District Attorney filed a motion pursuant to Welfare and Institution Code section 707, subdivision (c), to have Garcia declared unfit to be tried in juvenile court. On March 24, 2009, the juvenile court granted the motion, and, subsequently, Garcia was tried as an adult in a court of criminal jurisdiction. The standard of review for findings of fitness or unfitness is the abuse of discretion standard. (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 680.) Our review of the record shows the juvenile court did not abuse its discretion

in finding Garcia was not a fit and proper subject to be dealt with under the juvenile court law.

Garcia complains that jurors saw his hands and feet shackled. Before trial, the court and counsel discussed the issue of shackling. The court said that during voir dire it would inform the prospective jurors that a defendant's custody status was irrelevant and that if a particular defendant was observed in chains while being transported between the jail and the courtroom it should not be considered an indication that the sheriff believed that the individual was a dangerous person because all jail inmates were transported to court in chains. Once the jury was impaneled, the court said it would instruct the jury to report to the jury assembly room, where they would be met by the bailiff who would escort them to the courtroom. The purpose of this was to avoid having jurors see Garcia transported in chains. These procedures were followed throughout the trial. However, during jury deliberations, the bailiff reported a few jurors who were standing in the hallway outside the courtroom saw Garcia being transported in chains for a readback of testimony. Defense counsel declined the court's offer to admonish the jury again about chains because she did not want to draw more attention to it. In light of the court's earlier admonition, we do not discern any prejudice to Garcia.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the possible issues referred to by appellate counsel, has disclosed no reasonably arguable appellate issue. Competent counsel has represented Garcia on this appeal.

DISPOSITION

The judgment is affirmed.

MCDONALD, J.

WE CONCUR:

McCONNELL, P. J.

HUFFMAN, J.