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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

GENE NEVILLE HALL III,

Defendant and Appellant.

E052631

(Super.Ct.No. SWF018032)

**OPINION**

APPEAL from the Superior Court of Riverside County. Dennis A. McConaghy, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Catherine White, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Senior Assistant Attorney General, and A. Natasha Cortina and Ronald A. Jakob, Deputy Attorneys General, for Plaintiff and Respondent.

After being removed from the custody of defendant Gene Neville Hall III, defendant's oldest son disclosed that defendant had sodomized him and forced him to orally copulate defendant. This had gone on for years, first in Texas and then in California. Evidence was introduced that defendant had also sodomized another one of his sons and had committed additional sexual offenses against an unrelated 14-year-old female.

After a jury trial, defendant was found guilty on three counts of aggravated sexual assault on a child by means of sodomy (Pen. Code, § 269, subd. (a)(3)) and three counts of aggravated sexual assault on a child by means of oral copulation (*id.*, subd. (a)(4)). Defendant was sentenced to a total of 90 years to life in prison, plus the usual fines and fees.

Defendant contends:

1. Convictions based on "generic testimony" violate due process.
2. Defendant should have been prosecuted under Penal Code section 288.5, rather than Penal Code section 269.
3. Using prior sexual offenses to prove a propensity to commit sexual offenses violates due process.
4. The jury instruction regarding uncharged prior sexual offenses unconstitutionally lightened the prosecution's burden of proof.
5. The trial court failed to instruct on the proper use of uncharged prior sexual offenses against the same victim.

6. The trial court erroneously failed to instruct that aggravated sexual assault on a child requires force, violence, duress, menace, or fear.

7. The trial court erred by refusing to let defendant address the amount of the restitution fine.

We find no prejudicial error. Indeed, many, if not most, of defendant's contentions fly in the face of settled California case law; he explains that he is raising them mainly to preserve them for further review. Hence, we will affirm.

## I

### FACTUAL BACKGROUND

#### A. *Living Arrangements.*

Defendant and M.B. were married from 1994 to 1998, but they lived together, off and on, even after they were divorced.

Their eldest son — the victim — was born in 1995. In 1996, the family moved to Texas. In 2000, their second son — the brother — was born.

In 2001 or 2002, the family moved back to California. They moved around a lot, living in various motels, including several in Hemet. The victim attended third grade at an elementary school in Hemet.

During this period, defendant and M.B. both used methamphetamine. They both also sold drugs.

In July 2005, their children were removed from their custody.

B. *Forensic Interview of the Victim.*

Around June 2006, the victim told a foster parent that defendant had sexually abused him. As a result, a social worker conducted separate forensic interviews of the victim and the brother.

At the time, the victim was 11. He said that, when his family lived in Texas, defendant repeatedly “made [him] suck [defendant’s] private parts” in the shower. The victim would spit out “white and clear stuff” that came from defendant’s penis.

Defendant told him, “[D]o it or else I’ll spank you.” The victim complied because “[he] had to listen to grownups.” When he did not listen to defendant, defendant would spank him with a leather belt.

These incidents of oral copulation occurred “constantly,” “every day,” sometimes more than once a day; the victim had lost count. They happened when his mother was not home. Defendant told the victim “never to tell anybody . . . .”

Defendant also repeatedly sodomized the victim. When they were both naked, he would make the victim sit on his lap, put “[h]is number one” “inside [the victim’s] number two,” and move the victim back and forth. “It hurted.” The victim would cry and say, “[O]w, ow, ow,” but defendant ignored him. Afterwards, the victim would bleed. The sodomy happened “constantly,” even more often than the oral copulation.

After the family moved to Hemet, defendant kept doing “[t]he same things.” He was doing them when the victim was going to elementary school in Hemet. The abuse continued until the victim was nine and went to live with foster parents.

The victim never told his mother, because he thought “she would get mad at [him].” She would have wanted to know if he asked for it, and defendant would have made him say yes. The victim also never told the brother what happened to him, and the brother never told the victim about anything happening to him.

During the forensic interview, the victim said he never wanted to see defendant again, and he hoped defendant “goes to jail for life.”

At the time of trial, the victim was 15. He testified that he did not remember any of the things that he had described in the forensic interview. However, he also testified:

“Q Were you lying when you said that he made you suck his penis?”

“A I never – I’m pretty sure I wasn’t lying.”

C. *Forensic Interview of the Brother.*

At the time of the forensic interviews, the brother was five.

He said that, when he was three, he was lying on his stomach, coloring, when defendant “pulled down my pants and then he put his weenie in my butt.” It hurt “a little bit.” This happened three times, at three different motels. His mother and brothers were away, first camping and then fishing.

The brother also said that he and the victim “did it” with each other.

D. *Sexual Assault Examinations.*

On the same day as the forensic interviews, Dr. Sandra Murray conducted sexual assault examinations of the victim and the brother. She found no physical evidence of

sexual abuse. She testified, however, that she would not expect to find any, because the anus is elastic and heals rapidly.

E. *Child Sexual Abuse Accommodation Syndrome.*

Dr. Jody Ward testified about child sexual abuse accommodation syndrome. She explained that children often react to sexual abuse in “counter[-]intuitive” ways. They feel helpless, because they are dependent on the adults around them. They will “accommodate to” the abuse, “put up with [it] . . . to receive . . . love and care . . . , to receive their food, clothing and shelter . . . .” If the abuse begins when they are very young, they may even assume it is normal.

Children tend to keep sexual abuse a secret, even for years, especially if the perpetrator has threatened them. They may not disclose until they are out of the abuser’s home, so that they feel safe. When they do disclose, they may do so “little by little over a period of time[.]” Even after disclosing, they may recant.

F. *Uncharged Consensual Sexual Intercourse with a 14-Year-Old Female.*

At the time of trial, C.M. was 34. She testified that when she was 14, defendant had sex with her approximately 60 times.

When she first met him, she did not want to “be with him,” romantically or sexually. However, the first time “it happened,” she was “too scared to say no.”

She tried to end the relationship “[m]any times,” but defendant said that, if she tried to leave, he would kill her. He also threatened to tell her parents everything. He

started “stalk[ing]” her. “He had . . . people at [her] school watching, reporting what [she] was doing, where [she] was going, who [she] was talking to.”

Finally, one day, when defendant showed up at her school, she told him she did not want to see him anymore. He said, “I told you not to fuck with me, bitch.” He then went to the principal’s office and reported that C.M. had repeatedly ditched school to have sex with him.

G. *Defense Evidence.*

M.B. testified that she never saw any signs of abuse.

Defendant, testifying on his own behalf, denied ever touching his sons in a sexual way. He did not “understand why they would say these things[.]” He believed that they had been molested, but by someone else.

Defendant admitted having sex with C.M., but he claimed that when he first met her, she told him she was nearly 17. About a month later, he found out that she was actually 14. He also admitted threatening to get her in trouble at school and with her parents.

## II

### THE USE OF GENERIC TESTIMONY

Defendant contends that basing his convictions on “generic testimony” — i.e., testimony that he committed a series of indistinguishable crimes, with no specifics as to dates, places, or other details — violated due process.

As defendant concedes, the California Supreme Court rejected an identical argument in *People v. Jones* (1990) 51 Cal.3d 294, 316-322. He indicates that he is raising this issue “to preserve it [for] further review in state and federal court.” That is his privilege. At this stage, however, we are constrained to reject it. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

### III

#### THE EFFECT OF PENAL CODE SECTION 288.5

Defendant contends that Penal Code section 288.5, as the more specific statute, barred a prosecution under Penal Code section 269, the more general statute.

Penal Code section 288.5 defines the crime of continuous sexual abuse of a child. At the time of the crimes, it provided:

“(a) Any person who either resides in the same home with the minor child or has recurring access to the child, who over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with a child under the age of 14 years at the time of the commission of the offense, under subdivision (b) of Section 1203.066, or three or more acts of lewd or lascivious conduct, as defined in Section 288, with a child under the age of 14 years at the time of the commission of the offense is guilty of the offense of continuous sexual abuse of a child . . . . [¶] . . . [¶]

“(c) No other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is

charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved in which case a separate count may be charged for each victim.”

*People v. Hord* (1993) 15 Cal.App.4th 711 rejected an identical argument. It began by “trac[ing] the history surrounding the enactment of section 288.5.” (*Id.* at p. 717.) First, in 1988, *People v. Van Hoek* (1988) 200 Cal.App.3d 811 had held that it was a violation of due process to convict “a resident child molester” based solely on “the uncorroborated, unspecific testimony of the victim.” (*Hord*, at p. 718.) In 1989, in response to *Van Hoek*, the Legislature enacted Penal Code section 288.5. (*Hord*, at p. 718.) Finally, in 1990, the Supreme Court overruled *Van Hoek* in *People v. Jones*, *supra*, 51 Cal.3d 294. (*Hord*, at p. 719.)

*Hord* concluded: “‘The doctrine that a specific statute precludes any prosecution under a general statute is a rule designed to ascertain and carry out legislative intent.’ [Citation.] The Legislature’s intent in passing section 288.5 was not to enact a specific statute to apply in lieu of a general statute. The intent was to enact a statute for an area which the Legislature believed was not covered by any other law. That this statute’s necessity was nullified by the *Jones* decision does not transform this statute into a specific statute . . . since this was clearly not the Legislature’s intent at the time of the enactment.” (*People v. Hord, supra*, 15 Cal.App.4th at p. 720, fn. omitted.)

Defendant takes issue with this reasoning. He argues that *Jones*, decided in 1990, is irrelevant to the Legislature’s intent in 1989, when it enacted Penal Code section 288.5.

However, this misses the point. It is *Van Hoek* — not *Jones* — that shows that the Legislature did not intend Penal Code section 288.5 to be a specific statute that would control over other, more general statutes. At the time, under *Van Hoek*, it was simply impractical to prosecute a residential child molester under such other statutes. The significance of *Jones* is that it made it practical once again to prosecute a residential child molester under other statutes, including Penal Code section 269. The conclusion is that the Legislature did not intend to preclude such a prosecution, as in this case.

We also note that Penal Code section 288.5, subdivision (c) expressly *allows* the People to charge a defendant with a violation of Penal Code section 288.5 and another sexual offense against the same victim during the same time period, as long as “the other offense is charged in the alternative.” This shows that the Legislature did not intend Penal Code section 288.5 to preclude a prosecution — and even a conviction — under other, more general statutes; it only meant to preclude a *dual* conviction. (*People v. Torres* (2002) 102 Cal.App.4th 1053, 1059.)

#### IV

##### CONTENTIONS REGARDING PROPENSITY EVIDENCE

###### A. *The Use of Propensity Evidence as a Violation of Due Process.*

Defendant contends that “the admission of . . . prior sexual offenses to prove a defendant’s propensity to commit aggravated sexual offenses violates due process . . . .” (Capitalization omitted.)

Once again, as defendant concedes, the California Supreme Court rejected an identical argument, in *People v. Falsetta* (1999) 21 Cal.4th 903, 912-922. He argues that “the Supreme Court’s reasoning in *Falsetta* is flawed . . . .” Flawed or not, however, we are obligated to follow it.

B. *Jury Instruction Regarding Propensity Evidence.*

Defendant also contends that the jury instruction regarding uncharged prior sexual offenses unconstitutionally lightened the prosecution’s burden of proof.

1. *Additional factual and procedural background.*

Concerning uncharged prior sexual offenses, the trial court gave CALCRIM No. 1191, as follows:

“The People presented evidence that the defendant committed the crimes of oral copulation and/or sodomy on [the brother] and annoying and molesting and statutory rape on [C.M.] that were not charged in this case. These crimes are defined for you in these instructions.

“You may consider this evidence only if the People have proved by a preponderance of the evidence that the defendant in fact committed the uncharged offenses. Proof by a preponderance of the evidence is a different burden of proof from proof beyond a reasonable doubt. A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true.

“If the People have not met this burden of proof, you must disregard this evidence entirely.

“If you decide that the defendant committed the uncharged offenses, you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit sexual offenses, and based on that decision, also conclude that the defendant was likely to commit the crimes charged in Counts 1 through 6, as charged here. If you conclude that the defendant committed the uncharged offenses, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of the crimes charged in Counts 1 through 6. The People must still prove each charge beyond a reasonable doubt.”

2. *Analysis.*

Defendant argues that CALCRIM No. 1191 was erroneous because it indicated that, as long as the People proved the uncharged offenses by a preponderance of the evidence, the jury could infer that defendant was guilty.

Yet again, as defendant acknowledges, the Supreme Court has rejected a virtually identical contention. (*People v. Reliford* (2003) 29 Cal.4th 1007, 1015-1016.) We therefore reject it here.

C. *Failure to Instruct on Uncharged Offenses Involving the Victim.*

Defendant argues that, although the trial court did instruct on uncharged offenses against the brother and C.M. (see part IV.B, *ante*), it failed to instruct on the uncharged offenses against the victim that defendant committed in Texas.

As defendant admits, the trial court has no duty to give a limiting instruction *sua sponte*. (Evid. Code, § 355.) This includes a limiting instruction regarding other-crimes

evidence. (*People v. Padilla* (1995) 11 Cal.4th 891, 950, overruled on other grounds in *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1.)

Defendant therefore argues that the limiting instruction that the trial court did give was misleading because it referred only to uncharged offenses against the brother and C.M., and it did not refer to uncharged offenses against the victim. We disagree. It correctly stated the law concerning the uncharged offenses against the brother and C.M. If defense counsel felt that an instruction concerning the uncharged offenses against the victim was necessary, he was free to request one. Moreover, this situation falls within the rule that “[g]enerally, a party may not complain on appeal that an instruction correct in law and responsive to the evidence was too general or incomplete unless the party has requested appropriate clarifying or amplifying language.” [Citation.]’ [Citation.]” (*People v. Castaneda* (2011) 51 Cal.4th 1292, 1348.)

Defendant does not contend that the failure to request such an instruction constituted ineffective assistance. We note, however, if only out of an excess of caution, that defense counsel could have reasoned that the omission benefited defendant, to the extent that it implied that the uncharged offenses against the victim had to be proven beyond a reasonable doubt, rather than merely by a preponderance.

Separately and alternatively, even if not forfeited, the claimed error was not prejudicial. As defendant concedes, the underlying evidence was admissible as additional evidence of propensity. (Evid. Code, § 1108.) Defendant argues, however,

that because the jury was never told that the sexual offenses in Texas “were not charged in this case,” it may have believed that it could convict defendant of those offenses.

The jury was also instructed, however, that “[i]t is alleged that the crime occurred between the dates of January 1, 2003 and May 1, 2006. The People are not required to prove that the crime took place exactly on that day but only that it happened reasonably close to that day.” The evidence clearly showed that defendant and his family all moved to California in 2001. Thus, the jury would have been well aware that it could not convict defendant based on the Texas crimes.

The prosecutor also made this clear in her closing argument, stating: “[M.B.] confirmed that they moved to California in 2003. And this is basically for jurisdictional purposes. . . . They moved from motel to motel within our jurisdiction of Riverside County.” She added, “[T]hey lived within our county limits.”

In sum, then, we conclude that defendant forfeited the claimed error; even if not, however, the error was harmless.

FAILURE TO INSTRUCT THAT AGGRAVATED SEXUAL ASSAULT  
ON A CHILD REQUIRES FORCE, VIOLENCE, DURESS, MENACE, OR FEAR

Defendant contends that the trial court erroneously failed to instruct that aggravated sexual assault on a child requires force, violence, duress, menace, or fear.<sup>1</sup>

A. *Additional Factual and Procedural Background.*

1. *Instruction on “sodomy by force,” which defined “sodomy.”*

Regarding sodomy, the trial court gave the following instruction:

“The defendant is charged in Counts 1, 2 and 3 with *sodomy by force* in violation of Penal Code section 286.

“To prove that the defendant is guilty of this crime, the People must prove that:

“1. The defendant committed an act of sodomy with another person;

“2. The other person did not consent to the act;

“AND

“3. The defendant accomplished the act:

“by force, violence, duress, menace, or fear of immediate and unlawful bodily injury to someone.

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<sup>1</sup> Originally, we raised this issue on our own motion; we asked the parties to submit further briefing addressing it. In that briefing, defendant adopted the position that the trial court did err.

*“Sodomy is any penetration, no matter how slight, of the anus of one person by the penis of another person. Ejaculation is not required.*

“An act is accomplished by force if a person uses enough physical force to overcome the other person’s will.

“Duress means a direct or implied threat of force, violence, danger, hardship, or retribution that causes a reasonable person to do or submit to something that he or she would not otherwise do or submit to. When deciding whether the act was accomplished by duress, consider all the circumstances, including the age of the other person and his relationship to the defendant.

“Menace means a threat, statement, or act showing an intent to injure someone.

“An act is accomplished by fear if the other person is actually and reasonably afraid.” (CALCRIM No. 1030, italics added.)

2. *Instruction on “oral copulation by force,” which defined “oral copulation.”*

Regarding oral copulation, it gave the following instruction:

“The defendant is charged in Count 4, 5 and 6 with *oral copulation by force* in violation of Penal Code section 288a.

“To prove that the defendant is guilty of this crime, the People must prove that:

“1. The defendant committed an act of oral copulation with someone else;

“2. The other person did not consent to the act;

“AND

“3. The defendant accomplished the act by[:]

“force, violence, duress, menace, or fear of immediate and unlawful bodily injury to someone.

*“Oral copulation is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.*

“An act is accomplished by force if a person uses enough physical force to overcome the other person’s will.

“Menace means a threat, statement, or act showing an intent to injure someone.

“Duress means a direct or implied threat of force, violence, danger, hardship, or retribution that causes a reasonable person to do or submit to something that he or she would not otherwise do or submit to. When deciding whether the act was accomplished by duress, consider all the circumstances, including the age of the other person and his relationship to the defendant.

“An act is accomplished by fear if the other person is actually and reasonably afraid.” (CALCRIM No. 1015, italics added.)

3. *Instruction on aggravated sexual assault on a child, which required  
“oral copulation” or “sodomy.”*

Finally, the trial court gave the following instruction on the elements of aggravated sexual assault on a child:

“The defendant is charged in Counts 1 through 6 with aggravated sexual assault of a child who was under the age of 14 years and at least seven years younger than the defendant in violation of Penal Code section 269(a).

“To prove that the defendant is guilty of this crime, the People must prove that:

“1. The defendant committed *oral copulation or sodomy* on another person;

“AND

“2. When the defendant acted, the other person was under the age of 14 years and was at least seven years younger than the defendant.

*“To decide whether the defendant committed oral copulation or sodomy, please refer to the separate instructions that I have given you on that crime.”* (CALCRIM No. 1123, italics added.)

B. *Analysis.*

At the time the crimes were committed, the statute defining aggravated sexual assault on a child, as relevant here, provided:

“(a) Any person who commits any of the following acts upon a child who is under 14 years of age and 10 or more years younger than the person is guilty of aggravated sexual assault of a child: [¶] . . . [¶]

“(3) Sodomy, in violation of Section 286, when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

“(4) Oral copulation, in violation of Section 288a, when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. [¶] . . . [¶]” (Pen. Code, former § 269, subd. (a).)

Thus, in this case, the jury should have been instructed that aggravated sexual assault on a child requires force, violence, duress, menace, or fear. The instructions did define the crimes of “sodomy by force” and “oral copulation by force” and did state that these crimes require force, violence, duress, menace, or fear. Unfortunately, the instruction on aggravated sexual assault on a child merely required the commission of “oral copulation or sodomy”; it failed to require the commission of sodomy *by force* or oral copulation *by force*.

Admittedly, it also provided, “To decide whether the defendant committed oral copulation or sodomy, please refer to the separate instructions that I have given you on that crime.” The separate instructions, however, *did* define both oral copulation (as “any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person”) and sodomy (as “any penetration, no matter how slight, of the anus of one person by the penis of another person”). The element of force was defined separately and was stated to be an element of sodomy *by force* and oral copulation *by force*. Thus, giving these instructions a literal but reasonable construction, they erroneously failed to state that aggravated sexual assault on a child requires force, violence, duress, menace, or fear.

We therefore turn to whether the error was prejudicial. “[A]n erroneous instruction that omits an element of an offense is subject to harmless error analysis under *Chapman v. California* (1967) 386 U.S. 18 [17 L.Ed.2d 705, 87 S.Ct. 824]. [Citations.] In general, the *Chapman* test probes ‘whether it appears “beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” [Citations.]’ [Citation.]” (*People v. Gonzalez* (2012) 54 Cal.4th 643, 662-663.) Thus, “even when jury instructions completely omit an element of a crime, and therefore deprive the jury of the opportunity to make a finding on that element, a conviction may be upheld under *Chapman* where there is no ‘record . . . evidence that could rationally lead to a contrary finding’ with respect to that element. [Citations.]” (*People v. Davis* (2005) 36 Cal.4th 510, 564.)

Here, there was ample evidence that the sexual acts were accomplished by means of force, violence, duress, menace, or fear; there was *no* evidence that they were *not*.

The victim testified that he complied with defendant’s demands for oral copulation because defendant said, “[D]o it or else I’ll spank you,” and because defendant usually spanked him with a belt whenever he did not obey. This was substantial, uncontradicted evidence of duress, menace, and fear.

To accomplish the sodomy, defendant made the victim sit on his lap, penetrated him, and moved him back and forth. This was painful; the victim said, “ow,” and afterwards, he bled from his anus. As the trial court correctly instructed, force in this context means “‘physical force of a degree sufficient to support a finding that the [sexual]

act . . . was against the will of the [victim].’ [Citation.] . . . “‘‘*The kind of physical force is immaterial*; . . . it may consist in the taking of indecent liberties with a woman, or laying hold of and kissing her against her will.’’’ [Citation.]” (*People v. Griffin* (2004) 33 Cal.4th 1015, 1024 [forcible rape].) Thus, this was substantial, uncontradicted evidence of force.

In light of this evidence, this element was uncontested. The theme of the defense was that either the victim was not molested, or else it was not defendant who molested him. Defense counsel did not even try to argue that, if defendant did molest the victim, the molestation was not forcible.

We therefore conclude that the instructional error was harmless beyond a reasonable doubt.

## VI

### CUTTING DEFENDANT OFF AT SENTENCING

Defendant contends that, at sentencing, the trial court erred by refusing to let him address the amount of the restitution fine.

#### A. *Additional Factual and Procedural Background.*

After pronouncing the bulk of the sentence, including a \$10,000 restitution fine and a \$10,000 parole revocation restitution fine, the trial court asked:

“[THE COURT:] Any questions about your parole rights, sir?”

“THE DEFENDANT: I have a question about the total amount of the fine that I’m —

“THE COURT: I haven’t gotten to that yet.

“THE DEFENDANT: I apologize.”

The trial court finished pronouncing sentence, then asked:

“[THE COURT:] Is there anything else that I have to do?

“[DEFENSE COUNSEL]: No, your Honor.

“THE DEFENDANT: Thank you.”

B. *Analysis.*

Defendant had appointed counsel. His counsel was free to raise any legal argument. His counsel was also was free to call witnesses, including defendant, to testify under oath. Otherwise, however, defendant had no right to address the court in any way regarding the appropriate punishment. (Pen. Code, § 1204; *People v. Evans* (2008) 44 Cal.4th 590, 598-600.) Accordingly, the trial court could properly prevent defendant from personally addressing the amount of the restitution fine.

We also reject this contention for the separate and alternative reason that the trial court did not prevent defendant from speaking. It simply asked him to wait. Thereafter, it explicitly asked, “Is there anything else that I have to do?” Defense counsel said no. Defendant was allowed to speak, but all he said was “Thank you.” We can only conclude that he had decided not to ask his question.

VII  
DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI  
J.

We concur:

HOLLENHORST  
Acting P. J.

McKINSTER  
J.