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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
JASON J. COLLINS,  
Defendant and Appellant.

A134039

(San Francisco City & County  
Super. Ct. No. 215049)

A jury found defendant guilty of the sale of cocaine base (Health & Saf. Code, § 11352, subd. (a)), and giving false information to a police officer (Pen. Code, § 148.9, subd. (a)). The jury found him not guilty of possessing cocaine for sale (Health & Saf. Code, § 11351.5). On appeal, defendant challenges his conviction for giving false information to a police officer. He claims that his extrajudicial statements were the only evidence in support of his conviction and the trial court erred by failing to instruct the jury sua sponte on corpus delicti. We conclude that the corpus delicti rule does not apply and affirm the judgment.

**BACKGROUND**

***The Charges***

A first amended information filed on September 22, 2011, charged defendant in count 1 with the sale of cocaine (Health & Saf. Code, § 11352, subd. (a)) with a probation ineligibility allegation under Penal Code section 1203.073,

subdivision (b)(7), in count 2 with possession for sale of cocaine base (Health & Saf. Code, § 11351.5), and in count 3 with giving false information to a police officer (Pen. Code, § 148.9, subd. (a)). The information alleged prior convictions under Health and Safety Code section 11370.2 and Penal Code section 1203.07, subdivision (a)(11). The information also alleged one prior strike under the Three Strikes law (Pen. Code, §§ 667, subds. (d) and (e), 1170.12, subds. (b) and (c)), and three prior prison terms (Pen. Code, § 667.5, subd (b)).

### ***The Prosecution***

Evidence at trial showed that on March 9, 2011, Sergeant Robert Doss of the San Francisco Police Department was in plain clothes in the Tenderloin area of San Francisco. Doss approached defendant and asked for a “20,” which indicated that he wanted \$20 worth of narcotics. Defendant gave Doss a piece of crack cocaine and Doss gave him a marked \$20 bill. Doss signaled Officer Joseph Salazar. Salazar alerted others on the arrest team who were in three nearby parked cars. Salazar, who was in plain clothes, tried to stall defendant by asking him in Spanish for heroin. Defendant responded that he did not speak Spanish.

Officer Alejandro Cortes and another officer walked towards defendant and announced that they were police. Defendant ran away and the officers pursued him. Cortes saw defendant make an underhanded throwing motion in the alley. Other officers on the arrest team chased defendant in their vehicle and observed defendant climbing over two fences. Eventually, Inspector Jimmie Lew, who was part of the arrest team, was able to stop defendant; both defendant and Lew fell to the ground. The officers arrested defendant who had injuries to his head and hands. Defendant did not possess the marked money or drugs when arrested. The officers were able to find two plastic baggies with suspected crack cocaine and a cell phone in the alley where defendant had fled, but they did not locate the marked money.

Salazar testified that defendant told him that his name was Deandre Collins. Later, Salazar saw an incoming message on the cell phone recovered in the alley

and the message referred to someone named Jason. Salazar searched the records of the Department of Motor Vehicles (DMV) and discovered defendant's photograph with the name of Jason Collins.

Officer Michael Shavers testified that defendant also told him that his name was Deandre Collins. Shavers stayed with defendant at the hospital and later confronted defendant with the information Salazar had obtained from the DMV. Shavers testified that defendant then admitted that his name was Jason Collins.

Jason Otis, a criminalist, testified that he tested the item defendant gave to Doss and determined that it contained cocaine base and weighed 0.19 grams. Otis did not test the other two rocks recovered in the alley because of a lack of time and resources, but he opined that they had an appearance consistent with cocaine. Lew testified that in his expert opinion the three rocks of presumed cocaine were possessed for the purpose of sale because they were separately packaged.

***Defense's Motion Pursuant to Penal Code Section 1118.1***

Defense counsel moved for a judgment of acquittal under Penal Code section 1118.1 as to counts 2 and 3. As to count 3, which was based on defendant's giving a false name to the officers, counsel argued that the prosecution presented no evidence that defendant in fact gave a false name. The prosecutor responded that the evidence showed that defendant gave his name as Deandre Collins but defendant later confirmed that his name was Jason Collins. Defense counsel argued, "[U]nder the corpus delicti rule, the defendant's own statements cannot be the evidence in which the prosecution relies on to convict him. They have to have more than just his words alone."

The court denied defendant's motion for acquittal as to counts 2 and 3. With regard to the false information count, the court found that "there is sufficient circumstantial evidence of an intent to evade proper identification." The court concluded that there was "sufficient compliance with the corpus delicti rule" and explained that the corpus delicti rule "does not apply to issues of identity or when the statements themselves constitute the crime or an element of the crime, such as

in a robbery case or in other cases . . . .” The court then cited *People v. Carpenter* (1997) 15 Cal.4th 312, 394 (*Carpenter*), superseded by statute on another issue.

### ***Defense***

Timothy Kingston, an investigator for the Public Defender’s Office, testified that he took photographs of defendant’s head and these photographs showed a bruise mark and a scab.

### ***Conference on Instructions***

Prior to closing argument, defense counsel objected to instructing the jury with CALCRIM No. 362, which told the jury that it could consider any intentionally false or misleading statement made by a defendant before trial as evidence that he was aware of his guilt. The court indicated that it was not planning to give this instruction, but added that it might decide to give it depending upon the closing arguments of counsel.

After hearing closing argument, the court instructed the jury with CALCRIM No. 362, as follows: “If the defendant made a false or misleading statement before this trial relating to the charged crime or crimes knowing the statement was false or intending to mislead, that conduct may show he was aware of his guilt and you may consider it in determining his guilt. [¶] If you conclude that the defendant made such a statement, it is up to you to decide its meaning and importance. [¶] However, evidence that the defendant made such a statement . . . cannot prove guilty by itself except as to Count III.”

Outside the presence of the jurors, the court explained that it had decided to give CALCRIM No. 362 based on the prosecutor’s closing argument that defendant gave a false name to distance himself from the cell phone and drugs found nearby after the officers chased him.

### ***Verdict and Sentence***

On September 30, 2011, the jury found defendant guilty of counts 1 and 3, and not guilty on count 2. Defendant waived a jury trial on the prior allegations and, on October 21, 2011, the trial court found true the prior allegations.

Defendant moved for a new trial, which the court denied. The court also refused to exercise its discretion to dismiss defendant's prior strike conviction.

On December 2, 2011, the trial court sentenced defendant to a total prison term of seven years. On count 1, defendant received the lower term of three years, which was doubled under Penal Code section 1170.12, and one year was added for one prior prison term. As to count 3, the court sentenced defendant to six months, which was to run concurrently.

Defendant filed a timely notice of appeal.

### **DISCUSSION**

Defendant argues that the trial court had a sua sponte duty to instruct on corpus delicti and the failure to give CALCRIM No. 359 denied him due process and a fair trial on his conviction for violating Penal Code section 148.9, subdivision (a). Such an instruction, he argues, would have required the jury to find evidence independent of his own statements that he falsely represented his identity to police officers. Defendant asserts that his statements to the officers that he was Deandre Collins constituted the only evidence that he gave a false name. He maintains that we must therefore reverse his conviction on count 3.

“To convict an accused of a criminal offense, the prosecution must prove that (1) a crime actually occurred, and (2) the accused was the perpetrator. Though no statute or constitutional principle requires it, California, like most American jurisdictions, has historically adhered to the rule that the first of these components—the corpus delicti or body of the crime—cannot be proved by *exclusive* reliance on the defendant's extrajudicial statements. [¶] . . . Whenever such statements form part of the prosecutor's case, the jury must be instructed that conviction requires some additional proof the crime occurred.” (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1164-1165 (*Alvarez*).) CALCRIM No. 359 satisfies this

instructional requirement.<sup>1</sup> “This rule is intended to ensure that one will not be falsely convicted, by his or her untested words alone, of a crime that never happened.” (*Alvarez*, at p. 1169.)

The corpus delicti instruction applies to “preoffense statements of later intent as well as to postoffense admissions and confessions [citation], but not to a statement that is *part of the crime itself*.” (*Carpenter, supra*, 15 Cal.4th at p. 394.) In *In re I.M.* (2005) 125 Cal.App.4th 1195, the court explained that a misleading statement to the police was made to aid the principal to the crime and therefore was itself a part of the crime of being an accessory after the fact of murder. (*Id.* at pp. 1203-1204; see also *Park v. Chan* (2005) 128 Cal.App.4th 408, 420-421 [false statement on sex offender registration card was itself part of the crime of failing to register as a sex offender].) The court in *In re I.M.* held that extrajudicial statements that “are themselves a part of the conduct of the crime, are not subject to the corpus delicti rule. [Citation.] Defendant’s attempt to mislead police, therefore, can be used to establish the corpus delicti of his crime.” (*In re I.M.*, at p. 1204, italics omitted.)

Here, defendant was charged in count 3 with violating Penal Code section 148.9, subdivision (a). This statute reads: “Any person who falsely represents or identifies himself or herself as another person or as a fictitious person to any peace officer . . . , upon a lawful detention or arrest of the person, either to evade the process of the court, or to evade the proper identification of the person by the investigating officer is guilty of a misdemeanor.” (Pen. Code, § 148.9, subd. (a).)

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<sup>1</sup> CALCRIM No. 359 provides: “The defendant may not be convicted of any crime based on (his/her) out-of-court statement[s] alone. You may only rely on the defendant’s out-of-court statements to convict (him/her) if you conclude that other evidence shows that the charged crime [or a lesser included offense] was committed. [¶] That other evidence may be slight and need only be enough to support a reasonable inference that a crime was committed. [¶] The identity of the person who committed the crime [and the degree of the crime] may be proved by the defendant’s statement[s] alone. [¶] You may not convict the defendant unless the People have proved (his/her) guilt beyond a reasonable doubt.”

Thus, defendant's statements to the police officers that his name was Deandre Collins were part of the crime in count 3 of falsely representing his identity and fell outside the corpus delicti rule.

Defendant argues that *Carpenter* does not represent the proper application of the corpus delicti rule in light of the recent case of *People v. Fuiava* (2012) 53 Cal.4th 622 (*Fuiava*). In *Fuiava*, an officer testified during the penalty phase of a capital trial that defendant admitted to having committed two armed assaults on people he believed were members of rival gangs. (*Id.* at pp. 717-718.) The *Fuiava* court stressed that it was not error to admit this testimony but the trial court did not instruct the jury concerning the requirement that there be independent evidence corroborating defendant's admissions to the deputy concerning the earlier two shootings and the prosecution presented no independent evidence to support those offenses. (*Fuiava*, at p. 719.) The court concluded that failing to give the corpus delicti instruction constituted harmless error. (*Ibid.*)

Contrary to defendant's assertion, the discussion in *Fuiava* does not contradict or modify the reasoning or holdings in *Carpenter* or *Alvarez*. The corpus delicti rule applied in *Fuiava* because the extrajudicial statements on prior shootings were admissions to crimes. In contrast, here, defendant's statements that his name was Deandre Collins were not admissions to an offense but constituted the crime itself. As explained in *Carpenter* and *Alvarez*, defendant's statements that he was Deandre Collins were part of the charged offense and thus the corpus delicti rule did not apply.

Defendant argues that even if the corpus delicti rule did not apply to his statements that he was Deandre Collins, it did apply to his admission that his real name was Jason Collins. To the extent that the court should have given the corpus delicti rule because defendant's true identify was based on his extrajudicial statement, we conclude such error was harmless.

"Error in omitting a corpus delicti instruction is considered harmless, and thus no basis for reversal, if there appears no reasonable probability the jury would

have reached a result more favorable to the defendant had the instruction been given. [Citations.] ¶ Of course, as we have seen, the modicum of necessary independent evidence of the corpus delicti, and thus the jury's duty to find such independent proof, is not great. The independent evidence may be circumstantial, and need only be 'a slight or prima facie showing' permitting an inference of injury, loss, or harm from a criminal agency, after which the defendant's statements may be considered to strengthen the case on all issues. [Citations.] If, as a matter of law, this 'slight or prima facie' showing was made, a rational jury, properly instructed, could not have found otherwise, and the omission of an independent-proof instruction is necessarily harmless." (*Alvarez, supra*, 27 Cal.4th at p. 1181.)

Defendant contends that his federal constitutional right to due process was violated and that we should automatically reverse or use the harmless error standard under *Chapman v. California* (1967) 386 U.S. 18. (*Id.* at p. 24 [prosecution must prove error harmless beyond a reasonable doubt].) He acknowledges that the corpus delicti rule is not compelled by federal law but claims that the arbitrary deprivation of a purely state law entitlement violates the Due Process Clause of the Fourteenth Amendment. No court has held that the failure to provide CALCRIM No. 359 results in an automatic reversal. Defendant also fails to cite any California case that has applied *Chapman* to the court's failure to instruct on corpus delicti.

The California Supreme Court has consistently stressed that the corpus delicti rule "is neither a rule of constitutional magnitude nor statutorily mandated. It is a common law rule of evidence the purpose of which is to 'ensure that one will not be falsely convicted, by his or her untested words alone, of a crime that never happened.'" (*People v. Jablonski* (2006) 37 Cal.4th 774, 826-827; see also *Alvarez, supra*, 27 Cal.4th at p. 1173.) Thus, we apply the harmless error standard under *People v. Watson* (1956) 46 Cal.2d 818. (*Watson*, at p. 836 [defendant must show reasonable probability the error affected the verdict].)

Here, the prosecution submitted independent evidence of defendant's true identity. Officer Salazar testified that he searched DMV records and found a photograph of defendant with the name of Jason Collins. Additionally, the officer's testimony that the cell phone recovered had a recorded message for a person named Jason also was independent proof of defendant's true identity. Thus, defendant's true identity was not simply based on defendant's statement and even if the trial court had instructed the jury with CALJIC No. 359, there is no reasonable probability defendant would have obtained a more favorable outcome.<sup>2</sup>

Accordingly, we reject defendant's argument that his conviction on count 3 must be reversed.

### **DISPOSITION**

The judgment is affirmed.

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Lambden, J.

We concur:

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Haerle, Acting P.J.

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Richman, J.

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<sup>2</sup> Defendant also criticizes the court for instructing the jury with CALCRIM No. 362 (consciousness of guilt). However, defendant mounts no argument and fails to cite any authorities on this point and therefore has waived any challenge to this instruction. (See, e.g., *People v. Stanley* (1995) 10 Cal.4th 764, 793.)