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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN ANTHONY PIERCE,

Defendant and Defendant.

A140626

(San Mateo County  
Super. Ct. No. SC076223)

Defendant Ryan Anthony Pierce appeals from his conviction by jury verdict for felony possession of oxycodone and misdemeanor possession of alprazolam. His counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436; see *Smith v. Robbins* (2000) 528 U.S. 259.) Counsel has notified defendant that he can file a supplemental brief with the court. No supplemental brief has been received. Upon independent review of the record for potential error, we conclude no arguable issues are presented and affirm the judgment.

**STATEMENT OF FACTS AND PROCEDURAL HISTORY**

***Charges***

Defendant was charged by information filed July 31, 2012, with possession of oxycodone (Health & Saf. Code, § 11350, subd. (a); count 1), possession of alprazolam (Health & Saf. Code, § 11375, subd. (b)(2); count 2), a misdemeanor, and possession of

oxycodone not furnished by a prescription (Bus. & Prof. Code, § 4060; count 3), a misdemeanor. Defendant pleaded not guilty to the charges on February 13, 2013.

Jury trial began on December 17, 2013.

### ***Facts***

On February 18, 2012, at 9:00 p.m., Redwood City Police Officer Carmine Galotta and his partner, Reserve Officer Trujillo, were on patrol and driving through the Days Inn parking lot on El Camino Real in Redwood City, when Galotta saw a female in the bushes adjacent to the hotel. The Redwood City Days Inn motel was known to Galotta for narcotics sales and use. The female, who was later identified as Lisa Matthews, said that she was looking for money. When Galotta stepped out of his vehicle and asked what her name was, she began to walk away. As she walked away, she identified herself as Lisa and in response to Galotta's question, admitted she was on probation. Galotta asked Matthews to stop, but she ignored him and, instead, jogged up the motel stairs.

Galotta followed Matthews upstairs and saw her remove something from her pants and put it down the front of her shirt. Galotta ran up the stairs and contacted Matthews as she was knocking at the door of room No. 203. Galotta detained Matthews in handcuffs. As he was doing so, a male later identified as Luther Parker opened the door and identified himself as Matthews's boyfriend. The room was registered to Parker, who knew that Matthews was on probation; he and Matthews had been staying in that room for a "couple days." Parker did not state that defendant was staying with them.

Galotta asked both Parker and Matthews if he could search the room and they both agreed to it. Defendant was seated in a chair between the bed and a sliding glass door at the rear of the room. Parker was seated on the bed, and Matthews was detained outside the room. Parker appeared to be injured, and was not very mobile. He stayed on the bed throughout the contact. No contraband was found on Parker when he was searched.<sup>1</sup>

While surveying the contents of the room, Galotta located a duffel bag on the floor next to the television. Defendant was the closest to the duffel bag. At that time, Parker

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<sup>1</sup> Parker was deceased by the time of defendant's trial.

was seated on the bed, and Matthews was outside of the room on the walkway with another officer. When Galotta asked who the bag belonged to, defendant stated without hesitation that it belonged to him. When Galotta asked defendant if he could search the bag, defendant gave his permission and also stated there was marijuana in the bag. Galotta found 58.9 grams of marijuana, an unmarked Rite Aid pill bottle containing pills, and various items of male clothing in the bag. When Galotta removed the pill bottle, defendant immediately stated, “That isn’t mine. I have no idea where that came from.” At trial, Galotta could not recall where inside the duffel bag the pill bottle was located when he found it.

When Galotta detained defendant in handcuffs, defendant asked if he could speak with the officer privately. Galotta took defendant outside and spoke to him. Defendant told Galotta all of the pills in the room belonged to Parker and he believed Parker had placed the pill bottle in his bag when he was not looking. Defendant did not claim he had a prescription for any of the pills in the bottle. Defendant had a valid cannabis card, and was legally entitled to have the marijuana in his bag.

When a female officer searched Lisa Matthews, she found a large baggie containing two smaller baggies and loose oxycodone pills in the larger bag. One of the smaller baggies contained a usable amount of cocaine salt, and the second smaller baggie contained 33 tablets containing oxycodone, a usable amount.

The pill bottle found in defendant’s duffel bag contained two baggies holding 10 oxycodone pills, a usable amount, and 43 alprazolam tablets, a usable amount. The bottle also held a makeshift bag fashioned from a small piece of plastic, known as a “twist,” containing one tablet of Seroquel, which is not a controlled substance. Galotta described oxycodone as a “fairly common” street drug that can be taken orally, smoked, or crushed and snorted. Defendant and Matthews were arrested at the scene.

The bottle, bottle cap, baggies, and plastic twist were analyzed for fingerprints. A usable partial impression was observed and digitally photographed on the plastic twist that contained the Seroquel tablet. The piece of plastic with the print looked like it had been torn from a plastic shopping bag. The print was preserved for comparison by

photographing it because there was not sufficient detail for it to be lifted using powder. There were no suitable latent impressions on either of the plastic baggies that contained the controlled substances.

A fingerprint comparison analyst opined that the partial impression photographed on the twist matched a portion of defendant's right thumb. Galotta testified that people who use narcotics sometimes use previously used baggies or whatever material is available.

### ***Trial Court Rulings***

Count 3 was dismissed at trial at the prosecution's request, over defendant's objection that he wished to keep the misdemeanor possession count.

At defendant's request, Officer Galotta was questioned outside of the presence of the jury pursuant to Evidence Code section 402 concerning the admissibility of defendant's statements to him about the duffel bag and its contents. Following Galotta's testimony, defense counsel requested that "if the Court is going to allow in [defendant's] statements, I would ask that they all come in in their totality, not just one unique statement." The court stated this would be its inclination, and agreed defendant's exculpatory statements to the officer would come in along with his admission of ownership of the bag.

At defendant's request, the prosecution's fingerprint expert, Katie Lassiter, was examined outside the presence of the jury pursuant to Evidence Code section 403 concerning the preliminary foundational facts relevant to the admissibility of her fingerprint analysis. Over defendant's objection that Lassiter did not use the Federal Bureau of Investigation (FBI) point scaling system in performing her comparison analysis, the court permitted her to testify concerning the fingerprint match she found between the photograph of the partial print found on the twist and defendant's thumb print. The court ruled defendant's questions went to weight, not admissibility. Defendant's counsel did not cross-examine Lassiter about the FBI standard when she testified before the jury.

The trial court denied defendant's motion to admit Luther Parker's prior controlled substance convictions in 1992, 1999, and 2003 as third party culpability evidence. Defendant had argued the evidence about Parker's prior convictions could raise a reasonable doubt about defendant's culpability for the drugs found in his duffel bag. The prosecution maintained the evidence was inadmissible under Evidence Code section 352 since Parker would not be testifying as a witness, his most recent felony conviction dated back to 2003, and Parker's record was irrelevant to whether defendant possessed the oxycodone in the present case.

At the conclusion of the prosecution's case-in-chief, the court denied defendant's motion for acquittal. (Pen. Code, § 1118.1.) The court sustained defendant's objection to a portion of the prosecutor's closing argument for misstating the prosecution's burden of proof, and directed the jury to disregard the statement.<sup>2</sup>

### ***Verdict, Sentence, and Appeal***

The jury found defendant guilty of counts 1 and 2. On December 19, 2013, the court suspended imposition of sentence, placed defendant on three years' supervised probation under specified terms and conditions, and declared him to be eligible for Proposition 36 treatment. Defendant filed a timely notice of appeal on December 30, 2013.

### **DISCUSSION**

Defendant was ably represented by counsel during the jury and nonjury phases and at sentencing.

Defendant's convictions were amply supported by the evidence. The jury was correctly instructed. We find no error with respect to the dismissal of count 3, the admission or exclusion of evidence, the denial of defendant's motion under Penal Code

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<sup>2</sup> The prosecutor stated in relevant part: "I'm confident, ladies and gentlemen, that once you've had a chance to go back in the deliberation room, that your deliberations will be relatively quick. The evidence is relatively straightforward in this case and I'm confident that you know what happened. And if you think he did it, you'll find him guilty of both counts."

section 1118.1, or the sufficiency of the court's admonition during closing argument. We find no meritorious sentencing issues requiring reversal of the judgment. There are no issues requiring further briefing. The judgment is affirmed.

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Margulies, J.

We concur:

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Humes, P.J.

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Banke, J.