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

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THE PEOPLE,

Plaintiff and Respondent,

v.

KEITH WAYNE CANDLER,

Defendant and Appellant.

C069774

(Super. Ct. No. 10F08164)

A jury found defendant Keith Wayne Candler<sup>1</sup> guilty of possessing marijuana inside prison . The trial court found that defendant had one prior strike and sentenced him to prison for seven years four months.

Defendant contends the trial court erred prejudicially by permitting the People’s expert witness to testify on irrelevant matters outside his expertise. Finding the error harmless, we affirm.

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<sup>1</sup> Defendant testified at trial that his last name is Candler (spelling it out). The trial court confirmed the spelling on at least one occasion and said: “We need to change that, make that the true name on the complaint,” but apparently no one did. We now order the trial court to correct the abstract of judgment to reflect the correct spelling of defendant’s last name and to forward a certified copy to the Department of Corrections and Rehabilitation.

## FACTUAL AND PROCEDURAL BACKGROUND

On May 20, 2010, Correctional Officer Brian Moltzen set out to search defendant's cell at California State Prison, Sacramento. Looking through the window in the cell door, Officer Moltzen saw defendant put something into his boxer shorts. After entering the cell and handcuffing defendant, Officer Moltzen determined that defendant had hidden a cell phone in a homemade pocket inside his shorts. Because having a cell phone violated prison regulations, Officer Moltzen removed defendant from his cell, intending to put him in a holding cell, perform an unclothed body search, and confiscate the cell phone.

After Correctional Officer Burke Scruggs photographed the cell phone on defendant's person, Officers Moltzen and Scruggs searched holding cell No. 3 (which measured about three feet wide, two and one-half feet deep, and seven feet high) and saw that it was empty.<sup>2</sup> The cell was in "kind of like a tunnel," but the sun was out, light was coming in from both sides, and Officer Moltzen could see everything "pretty clearly."

Officer Scruggs testified that there were several adjacent holding cells, which were often used to detain inmates temporarily; however, there were no inmates in the cells at that time. Officer Scruggs did not know how recently anyone had been in any of the cells.

The cells were placed several inches apart. Inmates could pass small items through the wire mesh cell walls, but the items would not make it to the next cell; they would drop to the floor between the cells. Although inmates in adjacent cells could

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<sup>2</sup> Officer Scruggs searched the cell by putting his head inside, looking all around, and looking down at the floor. He did not get down on hands and knees or use a flashlight. The cell had no internal light, but there were floodlights overhead, and the wire mesh screen that covered the top of the cell allowed their light to come through.

theoretically pass an object from one cell to another by stretching out their arms and meeting in the middle, any attempt to do so would be “painfully obvious.”

After Officers Moltzen and Scruggs placed defendant in holding cell No. 3, they closed and locked the door and uncuffed him. Officer Scruggs observed that defendant continued to face the back of the cell, which was unusual for an inmate whose handcuffs had been removed; his hands moved toward the center of his stomach. Defendant then turned around, while standing or leaning at the left rear portion of the cell. Looking down, the officers saw what looked like a cellophane-wrapped bundle next to defendant’s left foot on the floor in the corner of the cell. Officer Moltzen ordered defendant to turn around, handcuffed him, and took him out of the cell. Officer Scruggs photographed and retrieved the bundle, which turned out to contain 1.36 grams of marijuana. It was the size of a ping-pong ball.

The prosecutor stated in limine that he would present testimony about “the possession of contraband in prison . . . why it is significant, why they recover contraband, why they search for it, the dangers involved with having contraband, drugs, deaths, et cetera in prison. [I]t is not unlikely, especially considering the makeup of the prison population, that there may be some reference to gangs and their activities. [¶] I wouldn’t expect it would be significant and there isn’t anything other than straightforward finding of the marijuana in the holding cell with the defendant in it that these officers would testify to, but there may be some testimony probative in that area.” The prosecutor said he would not tie defendant to a gang or to gang activity in prison.

Asserting that testimony as to “why the officers don’t like drugs in prison and all the terrible things drugs in prison can do” would be irrelevant and highly prejudicial, defense counsel moved to exclude any such evidence.

The prosecutor replied: “It is a small amount of contraband and it is marijuana. We have a substantial portion of our population that thinks that drugs should be legalized. [¶] And some of them may look at such a small amount of marijuana and say: So what?

Big deal. [¶] But what I think is important and . . . highly probative is that they understand things are very different in prison. This isn't a college dorm room . . . this is a high-security prison and there is a reason why we have these laws and rules. And I think it flies in the face of people's attitudes and how it may affect their ability to judge this evidence."

The trial court ruled:

"I think it is highly relevant. We have laypeople coming in here that most of them have never been in a prison, don't know what goes on in a prison.

"I think some background how drugs are brought in prisons, what type of drugs are found in prisons, why they are in prison, how they are used, some type of leverage with different inmate groups or gangs, I think all of that is relevant to educate the public, educate these jurors about what life in prison is like . . . .

" [M]y experience in cases over the years, jurors have no idea what it is like in prison. They are shocked to know drugs even show up in prison. They thought prisons were secure.

"So I think they need a general picture of the realm and the environment of prison life, what goes on, how drugs are brought in, what they are used for, that type of I want to say medium of exchange, their use, pressure on someone who has drugs/doesn't have drugs.

"I am going to allow some questions in that area. I don't think it is going to be unduly time consuming. I think the jury needs to be informed what goes on in the prison without any particular emphasis put on this defendant being a leader of a gang or drug dealer in prison or drug enforcer or anything like that. That I would agree is probably not relevant. There is no evidence to that.

"But I think the jury does have to have the picture of prison life, so I will allow the DA to go into that area somewhat."

Consequently, Correctional Officer Ryan Couch, who worked for the investigative services unit of the California Department of Corrections and Rehabilitation, testified that he had taken an 80-hour course on “drug interdiction, drug identification, symptoms, terminology, how inmates traffic narcotics, simple possession, how they consume it, ingest it, inhale it, . . . sales, search warrants.” (By “drug interdiction,” Officer Couch meant “intercepting drugs or contraband coming into the prison itself.”) According to Officer Couch, inmates normally ingest marijuana by smoking and inhaling it in a “pinner” (like a “joint,” but smaller), manufactured by using paper from prison-issued Bibles or Korans to make a two-inch by one-inch piece of “rolling paper” and inserting a “pinch” of marijuana into it.

Officer Couch had also received training as to “crime scenes.” His “main field of expertise” was “asset forfeiture,” or “the seizing of money from the trafficking of controlled substance into the prisons.” He was taught “how the inmates sell the narcotics, traffic it into the prison, how they like to carry it upon themselves, take it across the prison facilities, store it in their cells.”<sup>3</sup>

Officer Couch had made around 20 trafficking arrests inside the prison system and had questioned inmates to find out “how they bring it in, why they bring it in, why they like to ingest it, keep it on them, the symptoms they receive from it, why they desire it so much.” He had also worked closely with narcotics task forces and district attorney’s investigators as to the trafficking and use of marijuana and other controlled substances.

The prosecutor offered Officer Couch as an expert in “the possession of marijuana inside the prison system.” Defense counsel did not object. The trial court found him qualified.

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<sup>3</sup> Defense counsel’s relevance objection to this testimony was overruled.

Over a relevance objection, Officer Couch testified that marijuana in prison is typically packaged in a latex or cellophane wrapping, partly to mask its odor. Inmates secrete it in a body orifice if possible. They typically keep it on their persons because “[t]here is no trust in prison”; if an inmate merely hides it in his cell, his cellmate will probably steal it.

Over a relevance objection and motion to strike, Officer Couch testified that possessing marijuana in prison is dangerous because marijuana “is so highly desired inside the prison setting by inmates -- 90 percent of the inmate population wants and desires these controlled substances -- that they will commit felonies, such as assaults [¶] . . . [¶] or stabbings in order to gain narcotics or possess it from another inmate.” Officer Couch had personally witnessed inmates being robbed of marijuana.

Over relevance and “speculat[ion]” objections, Officer Couch testified that a prisoner can acquire a “drug debt” over marijuana: “When an inmate purchases a controlled substance or narcotics, there is no currency inside the prison so the only way they can pay for it is through canteen items or to get family or a friend on the street to send money . . . . Usually the debts can run up to \$2- to \$500 at a time. They like to -- the drug dealer -- the person selling the narcotics for the drug dealer inside a prison will cap it at 500. To me and you, a \$500 debt is an easy payment, but to an inmate it could be life or limb.” If a debt is not repaid, the drug dealer or his associates will assault the indebted inmate.

Finally, Officer Couch testified that 1.3 grams of marijuana is a usable amount in prison. It could make up the contents of nine to 12 pinner.

Defendant testified on his own behalf. He admitted that he hid a cell phone in a pocket he had sewn inside his shorts, knowing that this was against the rules; however, he denied that he possessed marijuana.

According to defendant, there were five cadets (officers in training) accompanying Officer Moltzen when he removed defendant from his cell and took him to the holding

cell; defendant believed he had told his attorney about the cadets, but defendant did not suggest that his investigator find out who they were. There was already an inmate in the neighboring holding cell when defendant was brought there; defendant did not know who he was and never tried to find out.

Defendant claimed he did not see Officer Moltzen or Officer Scruggs look inside the holding cell before they put him in. He admitted, however, that they could have done so when he had his back to them.

Defendant claimed the officers never completely uncuffed him in the holding cell. Officer Moltzen started to do so, but Officer Scruggs ordered Officer Moltzen to remove defendant from the cell, then claimed to spot an object on the cell floor which he said was marijuana.<sup>4</sup>

#### DISCUSSION

Defendant contends the trial court abused its discretion by allowing “irrelevant and overly prejudicial testimony regarding drug trafficking and dangers posed by drugs in prisons.” (Capitalization omitted.) He also contends the court’s error was prejudicial because the prosecution’s case was “relatively weak.”

The trial court has broad discretion to decide what evidence is relevant and whether the probative value of evidence outweighs its potential for prejudice. (*People v. Lomax* (2010) 49 Cal.4th 530, 581; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.) However, the court has no discretion to admit irrelevant evidence. (*People v. Benavides* (2005) 35 Cal.4th 69, 90.) We review the court’s evidentiary rulings for abuse of discretion. (*People v. Alvarez* (1996) 14 Cal.4th 155, 201.)

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<sup>4</sup> Defendant later amended his testimony to say that Officer Scruggs did not state the object was marijuana; he just said it was “something,” took it, and left.

Evidence is relevant if it has any tendency in reason to prove a disputed point that is of consequence to deciding the action. (Evid. Code, § 210.) Here, the only disputed point was whether defendant possessed the marijuana found in the holding cell. Whether inmates in general conceal drugs on their persons for fear of theft by other inmates, whether 90 percent of inmates crave drugs badly enough to commit violent felonies to obtain them, or whether inmates can incur drug debts over marijuana, had no tendency in reason to prove whether defendant possessed the marijuana at issue. Nor did general information about “what life in prison is like” (as the trial court put it in limine).<sup>5</sup>

Because the evidence offered by Officer Couch on these issues was irrelevant, the trial court erred in admitting it. Therefore, we need not address defendant’s arguments under Evidence Code section 352.

We turn then to prejudice. We reverse only if there is a reasonable probability the jury would have reached a result more favorable to defendant absent the error. (*People v. Watson* (1956) 46 Cal.2d 818, 834-837.)

Defendant’s prejudice argument focuses on what he believes was a “relatively weak case” by the People. This is not an accurate view of the evidence because the evidence against defendant was overwhelming, even taking out the irrelevant evidence that should have been excluded. There was strong circumstantial evidence the marijuana found in holding cell No. 3 was discarded by defendant. Two correctional officers visually inspected that holding cell before placing defendant inside and saw nothing. It

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<sup>5</sup> As defense counsel observed, the appropriate place to educate prospective jurors about the general character of life in prison, if they seem naive on that subject, is jury voir dire.

was a small holding cell, practically closet space, but there were floodlights overhead, and the wire mesh screen that covered the top of the cell allowed their light to come through, and the marijuana bindle later found was a large size, comparable to a ping-pong ball.

Defendants' conduct once inside the cell corroborated an inference defendant possessed the marijuana. After being placed in the holding cell and uncuffed, defendant's behavior was unusual. He continued to face the back of the cell and moved his hands to the center of his stomach. Even when he turned around, he remained toward the left rear portion of the cell. It was on the ground near defendant's left side that the marijuana bindle was found.

Compared to this evidence, defendant's version of events was not believable. Defendant wanted the jury to believe the marijuana was already in the holding cell before he was placed there and could have come from an inmate in an adjacent cell. However, Officer Scruggs testified that the mesh walls and the distance between the cells would make any attempt by an inmate to do so "painfully obvious."

In sum, for the jury to have believed defendant's version of events, it would have to believe that two correctional officers missed the ping-ponged sized bindle of marijuana when they searched the empty, lighted cell but then were able to see that same bindle once defendant was inside the cell with the door closed. On this record, the admission of the irrelevant evidence was harmless.

#### DISPOSITION

The judgment is affirmed. The matter is remanded to the trial court with directions to order the preparation of a corrected abstract of judgment reflecting the

correct spelling of defendant's last name. The corrected abstract of judgment shall be forwarded to the Department of Corrections and Rehabilitation.

ROBIE, J.

We concur:

NICHOLSON, Acting P. J.

BUTZ, J.