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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDRE LARRY,

Defendant and Appellant.

D059086

(Super. Ct. No. SCD225265)

APPEAL from a judgment of the Superior Court of San Diego County, Melinda J. Lasater, Judge. Affirmed.

The grand jury indicted Andre Larry for selling cocaine (Health & Saf. Code, § 11352, subd. (a)) and possession of cocaine for sale (Health & Saf. Code, § 11351.5). Following a hung jury and mistrial, Larry, appearing in propria persona in his second jury trial, was convicted of both counts. In a separate proceeding, the trial court sustained allegations that Larry had suffered four prior prison commitments (Pen. Code, § 667.5,

subd. (b)) and one prior serious/violent or strike conviction (Pen. Code, § 667, subds. (b)-(i)). The trial court sentenced Larry to nine years in prison.

FACTS

On April 2, 2010, San Diego Police Department Detective Matthew Zdunich, working undercover, approached Larry on 17th Street near Imperial Avenue. Larry asked Zdunich: "You ready to do this." Zdunich, believing that Larry was asking if he wanted to buy drugs, replied: "[Do] [y]ou got a dub?" ("Dub" is street slang for \$20 worth of drugs.) Larry gave Zdunich cocaine in exchange for a \$20 bill, which the undercover officer had earlier photocopied. Zdunich gave photocopies of the \$20 bill to other officers on his team.

After Zdunich walked away, Detective Simon Adams, who was working the surveillance detail, followed Larry as he engaged in hand-to-hand transactions with two other individuals.

Shortly afterward, Adams radioed uniformed officers Brandon Gaines and Joel Tien and directed them to contact Larry. Tien pulled up his police vehicle next to Larry and told him to "hold on." Tien said that there had been a car burglary nearby and Larry matched the suspect's description. The purpose of the "ruse" was to prevent Larry from concluding that he was being stopped because he had sold narcotics to an undercover police officer. Larry showed Tien his identification card. At this point, Officer Gaines pulled up in his patrol vehicle to assist Tien.

When Tien asked Larry if he was on probation or parole, Larry replied that he was on parole. After Gaines confirmed Larry's parole status, Tien searched Larry. Tien

found a "wad" of bills, and Gaines was able to match a \$20 bill from the wad to a photocopy of the \$20 bill that Zdunich had given him earlier. Tien also photographed Larry. The officers returned the wad of money to Larry and did not arrest him that day. The grand jury later indicted Larry and he was arrested.

Testifying in his own defense, Larry said that two police officers stopped and spoke to him on April 15, 2010, not April 2, 2010. Larry said that the officers searched him and did not find any drugs on him. The officers gave Larry his money back and let him go.

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 Larry's request to represent himself, which was made immediately after the trial court denied his motion for substitution of his court-appointed counsel, was unequivocal and whether the court erred in granting the self-representation request; and (2) whether the court abused its discretion by not granting Larry's motion to continue the trial when he received three pages of discovery late.

We granted Larry permission to file a brief on his own behalf. He has responded by filing a supplemental brief in which he asks this court to consider various issues, which can be summarized as inconsistent and untruthful testimony by the officers; false or tainted evidence, entrapment, illegal detention and search, use of the wrong type of

arrest warrant, late discovery, denial of his continuance motion, and ineffective assistance of trial counsel.

As to the factual issues that Larry raises, we construe them as a claim of insufficient evidence to support the jury's verdict. In essence, Larry is asking us to reweigh the evidence, make independent credibility determinations concerning the officers' testimony and resolve conflicts in the evidence in his favor. However, under the applicable standard of review on appeal, we cannot reweigh the evidence or make credibility determinations, and we must resolve all evidentiary conflicts in favor of the judgment. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129.) The credibility of witnesses and the resolution of any inconsistencies are the province of the jury. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

There is substantial evidence to support Larry's convictions. Detective Zdunich testified that he purchased \$20 worth of cocaine from Larry. Detective Adams witnessed the transaction and followed Larry afterward. Subsequently, Adams radioed Officers Gaines and Tien and instructed them to contact an individual matching Larry's description. Tien contacted Larry, who matched the description that Adams had provided. Upon learning that Larry was on parole, Tien and Gaines conducted a search of Larry. The officers found the \$20 bill that Zdunich had earlier photocopied and used in his transaction with Larry.

There was no evidence of entrapment presented at trial. When Zdunich approached him, Larry asked Zdunich: "You ready to do this." Zdunich, believing that Larry was asking if he wanted to buy drugs, replied: "[Do] [y]ou got a dub?" Zdunich

did not entice or pressure Larry into doing anything. Zdunich's acceptance of Larry's offer to sell him drugs did not constitute conduct "likely to induce a *normally law-abiding person* to commit the [offense]. (*People v. Watson* (2000) 22 Cal.4th 220, 223 (italics added); *People v. Van Alstyne* (1975) 46 Cal.App.3d 900, 907.)

Larry's assertion that Officers Tien and Gaines illegally detained him is without merit. Detective Adams observed the transaction between Larry and Zdunich and two subsequent hand-to-hand transactions between Larry and other individuals. Based on these observations, Adams instructed Officers Tien and Gaines to contact Larry. "A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza* (1994) 9 Cal.4th 224, 231.) Larry's detention was reasonable because it was supported by Adams's reasonable suspicion that Larry was engaged in narcotics sales. Use of the "burglary" ruse to prevent disclosure of the ongoing undercover operation did not render the detention unreasonable or illegal.

Larry cannot prevail on his claim that he was searched illegally. Larry told Tien and Gaines that he was on parole. " 'A law enforcement officer who is aware that a suspect is on parole and subject to a search condition may act reasonably in conducting a parole search even in the absence of a particularized suspicion of criminal activity, and such a search does not violate any expectation of privacy of the parolee.' " (*People v. Pearl* (2009) 172 Cal.App.4th 1280, 1288.)

Larry asserts that the government used the wrong type of arrest warrant following the grand jury indictment. Larry may not challenge an arrest warrant for the first time on appeal. (*People v. Groves* (1969) 71 Cal.2d 1196, 1198.)

Larry's claims regarding late discovery and the denial of his continuance motion involve three pages of computer printouts of police dispatch reports. The printouts, known as CADs, include a report of an incident that occurred on April 2, 2010, at 6:16 p.m., an activity log for Officer Tien and an activity log for Officer Gaines. These three pages of discovery were apparently inadvertently omitted from the rest of the discovery that was turned over to Larry after his first trial. On the day set for trial, Larry told the trial court that he did not have the three pages of discovery, which were then provided to him. The next day, Larry told the court that he did not understand the CAD reports and specifically, that he could not "decipher" the numbers and codes on the reports. Larry asked for a continuance of the trial to allow him time to study the CAD reports.

Rather than continuing the trial, the trial court asked the prosecutor to arrange for a police dispatch operator to testify at an Evidence Code section 402 hearing and explain the numbers and codes on the CAD reports. At the hearing, both the prosecutor and Larry questioned the dispatch operator about the numbers and codes that were used in the three pages of CAD reports. At the conclusion of the hearing, Larry asked for more time to figure out the "times and locations" of Tien and Gaines. The court denied the request.

Our review of the record shows that the trial court did not abuse its discretion by denying the continuance request.

We assume that Larry's assertion that he received ineffective representation of counsel pertains to his first trial, at which he was represented by counsel. The reporter's transcripts and pleadings filed in the first trial are not included in the record on appeal. If a claim is based on information outside the record, we cannot properly consider it on direct appeal. (*People v. Smith* (2007) 40 Cal.4th 483, 507; *People v. Barnett* (1998) 17 Cal.4th 1044, 1183.)

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 and the issues that Larry raises in his supplemental brief, has disclosed no reasonably arguable appellate issue. Competent counsel has represented Larry on this appeal.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.