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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Appellant,

v.

RAYSHON DERRICK THOMAS,

Defendant and Appellant.

F056337

(Super. Ct. No. CR10473)

OPINION

APPEAL from a judgment of the Superior Court of Madera County. John W. DeGroot, Judge.

Carlo Andreani, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr. and Kamala D. Harris, Attorneys General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Darren K. Indermill, Deputy Attorneys General, for Plaintiff and Respondent.

This court previously reversed, on grounds of improper venue, a judgment of appellant's conviction for possession of cocaine for sale and possession of a firearm by a convicted felon. The California Supreme Court found venue to be proper, reversed this court's judgment, and remanded for consideration of appellant's other contentions. (*People v. Thomas* (2012) 53 Cal.4th 1276.) Appellant contends: (1) the trial court erred in denying his pretrial motion to suppress evidence found in a storage locker; (2) the trial court erred in admitting evidence of a handwritten poem ("All hail to the Mad Nigga") also found in the storage locker; and (3) there was insufficient evidence to support the jury's true findings on the prior strike allegations. We agree with appellant's third contention, which respondent concedes, and remand the matter for retrial of the prior strike allegations. In all other respects, the judgment is affirmed.

FACTS

On November 2, 2001, appellant's parole agent, Raquel Merigian, was riding in a patrol vehicle driven by Madera Police Officer Morrell when they saw appellant driving a red Honda Civic on Clinton Street in Madera. This caught Merigian's attention because, the week before, appellant had declined to provide his vehicle registration, as required of all parolees, claiming his vehicle was inoperable.

Merigian and Officer Morrell initiated a traffic stop. Appellant got out of the vehicle and left it running with the keys in the ignition. The officers told appellant to stop, but he walked away from them, increasing his pace from a walk to a jog. The officers drew their guns and again told appellant to stop. Appellant dropped his backpack, took a few more steps, and then stopped.

A search of appellant's backpack revealed over \$12,500 in cash. Appellant, whom Merigian knew to be unemployed, told her he got \$12,500 from cashing a certificate of deposit.

Merigian called the Madera Narcotics Enforcement Team and requested the assistance of Madera Police Officer Robert Blehm. Officer Blehm arrived and conducted

a patdown search of appellant, finding several sets of keys in appellant's possession. A search of appellant's vehicle uncovered a receipt for Derrel's Mini Storage, two cell phones and a pager, as well as several receipts for rental cars. Officer Blehm, who testified as an expert on narcotics trafficking, explained that it is common for drug dealers to transport narcotics in rented vehicles and that cell phones and pagers are often used by narcotics traffickers.

Although appellant had told Merigian that he lived at 524 Adelaide Street, No. 103, in Madera, his vehicle contained numerous papers that bore his name and an address of 522 Adelaide Street, No. C. Merigian and other officers went to 522 Adelaide Street, No. C and discovered that a key seized from appellant opened the front door. Inside the apartment, Merigian recognized clothing belonging to appellant and there was also "tons of paperwork" in appellant's name. Two more receipts from Derrel's Mini Storage were also found in the apartment.¹

In the kitchen, officers uncovered over \$700 cash in a clothes dryer. The kitchen also contained two microwaves, pleated sandwich bags, and a disposable filter face mask. Officer Blehm believed the apartment "was being used to traffic controlled substances, but also to convert cocaine hydrochloride to cocaine base" and explained how the items found in the kitchen were commonly used in these activities.

Officer Blehm went to Derrel's Mini Storage, which was located on Herndon Avenue in Fresno, and opened the padlock on the storage locker specified in the receipts using a key seized from appellant. Inside the storage locker, Officer Blehm found a cardboard box. Inside the cardboard box was a backpack containing 2.4 pounds of cocaine. The cocaine was divided into a number of plastic sandwich bags similar to those found in the apartment. Underneath the backpack inside the box, Officer Blehm found appellant's high school diploma, along with numerous other documents that bore

¹ The Derrel's Mini Storage receipts seized by officers bore the name of Tarica Howard.

appellant's name.² Just a few feet from the backpack, Officer Blehm found a black nylon compact disc storage case. This case contained a steel Smith & Wesson revolver and six live rounds of ammunition. The revolver was wrapped inside a handkerchief with the letter "R" stitched into the side. Based on the circumstances, including the presence of the gun, Officer Blehm opined that the cocaine found inside the storage locker was possessed for purposes of sales.

Tarica Howard testified that she had three children with appellant. In 1999, she entered into a contract for the storage locker. She gathered things in her and her parents' home that did not belong to her and moved them into the locker. She was not sure to whom everything belonged. The cocaine and revolver found in the storage locker did not belong to her.

Appellant's brother Fredrick Thomas testified that he lived right around the corner from the storage locker and that he had visited it a few times. According to Thomas, the locker belonged to Howard and appellant's things were being kept there. Thomas never kept a key to the locker but would get it from Howard when she wanted him to move appellant's things there. Thomas acknowledged making, on Howard's behalf, a number of payments for the storage locker. He explained she would call him when she was unable to pay, and he would go down to the facility and make payments using his credit card. Thomas denied that the cocaine and revolver in the storage locker belonged to him.

Officer Blehm interviewed Howard and Thomas on November 6, 2001. They both told him the storage locker belonged to appellant. Howard said she opened the storage locker when she and appellant were in a fight and her mother wanted appellant's belongings out of the house. Appellant moved to Fresno, found the storage locker he

² Officer Blehm testified that he found a few miscellaneous papers that bore the names of Tarica Howard and appellant's brother, Fredrick Thomas, but the majority of the "reams of paperwork" seized from the storage locker bore appellant's name.

wanted, and then Howard went and opened it in her name. Thomas told Officer Blehm he gave appellant \$2,000, but he had “no idea” where the money in appellant’s backpack came from.

Jason Nichols, a special agent working with the Madera County Narcotics Enforcement Team, served a search warrant on the main office of Derrel’s Mini Storage in Fresno. Nichols seized a manila folder, which contained Howard’s rental agreement for the storage locker and a total of 16 receipts for payments received by the storage facility. The receipts reflected payments made by Howard and showed that Thomas made four payments. The paperwork reflected that Howard did not give anyone, besides herself, written authorization to enter the storage locker.

The defense

Thomas testified that the items he placed in the storage locker came mainly from “Howard’s house and other associates of [appellant].”

Officer Blehm confirmed he did not seize all the paperwork in the storage locker. He took only what he thought was relevant and “left plenty of things at the locker.”

Howard testified that she did not rent the storage locker for appellant. The key to the storage locker was not in her possession at all times. Sometimes the keys were “just lying around” so “[i]f you need[ed] to use it, you could.” Howard had no personal knowledge that appellant sold drugs or cocaine.

Howard’s stepfather, James Murphy, testified that after appellant’s father died, he took appellant in to help him get back on track with school and sports and possibly to go to college.

Following a jury trial, appellant was convicted of possession of cocaine for sale (Health & Saf. Code, § 11351; count 1) and possession of a firearm by a convicted felon (Pen. Code, § 12021 subd. (a)(1); count 2). With respect to count 1, the jury found that appellant possessed 57 grams or more of cocaine (§ 1203.073, subd. (b)(1)), the weight of the cocaine exceeded one kilogram (Health & Saf. Code, § 11370.4, subd. (a)(1)), and

appellant was personally armed with a firearm in the commission of the offense (§ 12022, subd. (c)). The jury further found that appellant suffered two prior convictions for serious or violent felonies within the meaning of section 667, subdivisions (b) through (i). The trial court sentenced appellant to prison for a total of 33 years to life.

DISCUSSION

I. The Trial Court Properly Denied Appellant's Motion to Suppress.

Appellant contends the trial court erred in denying his pretrial motion to suppress evidence seized from the storage locker. We disagree and conclude that the record supports the trial court's finding that, assuming appellant had standing to contest the search, the warrantless search of the storage locker was justified as a valid parole search.³

In reviewing the trial court's ruling on a motion to suppress evidence, "[w]e defer to the trial court's factual findings, express or implied, where supported by substantial evidence." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) We apply an independent review to pure questions of law and to mixed questions of law and fact. (*People v. Ayala* (2000) 23 Cal.4th 225, 255.) Moreover, a trial court's denial of a motion to suppress will be upheld if there is any basis in the record to sustain the ruling. (*People v. Marquez* (1992) 1 Cal.4th 553, 578.)

All California parolees are subject to a parole search condition that permits any law enforcement officer to search him, his residence, and any property under his control. (*People v. Reyes* (1998) 19 Cal.4th 743, 746.) In *Samson v. California* (2006) 547 U.S. 843, the United States Supreme Court held that a suspicionless search of a parolee is lawful and does not violate the Fourth Amendment, so long as the officer conducting the search is aware of the parolee's status. (*Id.* at p. 857.)

³ Appellant also contends the trial court erred in finding that he lacked standing to contest the search, based on his disclaimer of ownership regarding the contents of the storage locker. In light of the valid parole search, it is unnecessary for us to reach this issue.

No party disputes that the searching officer had knowledge of appellant's parolee status and was authorized to conduct a parole search. Rather, the parties dispute whether the area searched was one under appellant's control and thus within the ambit of his parole search condition. (See *People v. Boyd* (1990) 224 Cal.App.3d 736, 745, 749-751 (*Boyd*) [under standard parole search condition, searching officer may look into areas or containers it is reasonable to believe are within complete or joint "control" of parolee].)

In asserting that the storage locker was not under his control and therefore its search exceeded the limits of a valid parole search, appellant points to factors such as the absence of his name on the rental agreement and the lack of written authorization to access the storage locker. None of these factors, however, precluded a finding that the storage locker was subject to appellant's control. The record of the preliminary hearing, on which the parties relied at the suppression hearing, discloses substantial evidence that the storage locker was within appellant's control.⁴ The receipts revealing the storage locker's existence were found at the scene of the initial traffic stop and in the subsequent search of the apartment linked to appellant by paperwork discovered in his vehicle. More importantly, *a key seized from appellant opened the padlock on the storage locker.* Despite appellant's attempts to downplay these circumstances, we conclude the facts confronting the searching officer supported a reasonable belief that the storage locker was within appellant's control and therefore within the proper scope of a parole search. Accordingly, the search of that area was lawful.

⁴ Officer Blehm was the only witness called to testify at the suppression hearing. Officer Blehm testified that he interviewed appellant on November 5, 2001, appellant denied that the storage locker was his and said it belonged to a female without identifying her. When asked to explain why the key seized from appellant opened the lock, appellant said it was her key, not his.

II. The Trial Court Properly Admitted Evidence of Poem Found in Storage Locker.

Appellant contends the trial court erred in admitting evidence of a handwritten poem found among paperwork seized from the storage locker.⁵ Appellant argues that the evidence (particularly Officer Blehm’s interpretation of it) was irrelevant and unduly prejudicial. He further argues that the poem constituted inadmissible character evidence, that Officer Blehm’s testimony improperly reached the ultimate issue of whether appellant was a narcotics trafficker, and the evidence’s admission violated his due process right to a fair trial under the Fourteenth Amendment. For reasons discussed below, we reject appellant’s arguments and conclude the trial court did not abuse its discretion in admitting evidence of the poem found in the storage locker.

A. Background

Initially, the trial court agreed with the prosecutor that the poem at issue was relevant as circumstantial evidence of drug trafficking. The court, however, found its admission would be unduly prejudicial under Evidence Code section 352, unless the handwriting could be authenticated as appellant’s handwriting. Subsequently, the prosecution presented the testimony of a handwriting expert who opined that the writing in the poem was by the same person whose handwriting appeared on two forms the expert compared with the poem. Two county employees testified that appellant handed them these forms and that the handwriting on the forms was similar to other forms appellant had handed to them in the past. The court then allowed the prosecution to admit the poem and to question Officer Blehm about its meaning and significance.

Officer Blehm’s opinions concerning the poem found in the storage locker are reflected in the following exchange with the prosecutor:

⁵ The poem reads verbatim: “All hail to the Mad Nigga. Ain’t tripping off the shit that I had, hustling to the morning and I’m still doing bad. [¶] Running these streets for the cash, and never lag, pushing my wy [*sic*] in a brown paper bag, Popo’s hate me cause player like sag. But I’m a keep reel [*sic*]. And never.”

“[OFFICER BLEHM:] I’ve seen this type of writing before in previous narcotics sales cases that I’ve investigated. And it’s common for street level traffickers to— [¶] ... [¶] To write raps, if you will, or poems about the lifestyle that they’re involved in. It’s sort of a bragging, a way of bragging.

“[THE PROSECUTOR]: Q. Okay. And can you go through [the poem] with this ... laser pointer.

“Could you go through the first—I guess the first sentence, which is two lines?

“A. Yes. Did you just want me to read it?

“Q. Well, I want you to tell us what the significance is to you.

“A. Okay. The first sentence, which is ‘All hail to the mad nigga, ain’t tripping off the shit that I had, hustling to the morning and I’m still doing bad.’ [¶] ... [¶] ‘All hail to the mad nigga.’ This to me means that the individual wants everybody to look up to him, respect him for his position on the street as being a respected trafficker and somebody you don’t want to cross, otherwise there will be repercussions.

“Q. Does ‘mad’ mean anything in and of itself?

“A. It means two things, to me. It means that the individual is referring to himself as crazy, violent in nature. And also ‘mad’ is very commonly used slang term to refer to Madera.

“Q. Okay. And what’s ‘tripping off of’?

“A. Well, the next portion that would be relevant would start with, ‘Ain’t tripping off the shit that I had, hustling to the morning and I’m still doing bad.’

“To me that’s a reference to ain’t—I’m not worried about my past. I’m not worried about what I’ve done, the things that I’ve had. And ‘hustling to the morning,’ means they’re out all night selling dope, doing various crimes that are related to the trafficking of controlled substances. But they’re still doing bad, it hasn’t gotten them anywhere in life. It hasn’t given them monetary—hasn’t made them rich, basically.

“Q. The next sentence beginning with ‘Running.’

“A. ‘Running the streets ... for the cash and never lag.’ To me, running is a slang term, much the same as hustling. And it means to be out in as what’s known as the game. Drug trafficking, street life, ‘running the streets for the cash’ is pretty self-explanatory. Through that lifestyle is how that individual generates their living, drug trafficking.

“And ‘never lag,’ to me that means that they’re always on top of things, that they’re not going to make mistakes, get apprehended, or also get retaliated against by rival dealers.

“‘Pushing my way in a brown paper bag,’ to me, it just simply means they’re selling drugs. Having their drugs in a brown paper bag on the street selling it. [¶] ... [¶]

“... And then ‘popos hate me,’ I have to read it on here, ‘because player likes sag.’ ‘Popos hate me,’ popo is obviously a common term that’s used to refer to the police. And ‘player,’ again, is an individual who’s involved in that type of lifestyle. It’s often referred to as ‘playing a game.’

“‘Player like sag,’ to me, that’s not particularly significant, like sag.

“And the end it appears to me not to have been finished. Because it says, ‘But I’m going to keep real and never,’ period, without anything further. Just that particular last end, that’s not significant to me.”

B. Legal Analysis

“No evidence is admissible except relevant evidence.” (Evid. Code, § 350.)

Evidence is relevant if it has “*any* tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (*Id.*, § 210, italics added.)

“‘Evidence is relevant if it tends “‘logically, naturally and by reasonable inference’ to establish [a material fact], such as identity, intent or motive.’”” (*People v. Lee* (2011) 51 Cal.4th 620, 642.) Evidence is relevant if it tends to prove an issue before the jury, even though it may be weak. (*People v. Freeman* (1994) 8 Cal.4th 450, 491.) “Except as otherwise provided by statute, all relevant evidence is admissible.” (Evid. Code, § 351.)

One statutory exception allows a trial court to exclude relevant evidence if its probative value is “substantially outweighed” by the probability its admission will take too much time, “create substantial danger of *undue* prejudice,” confuse the issues or

mislead the jury. (Evid. Code, § 352, italics added.) Evidence is not likely to cause *undue* prejudice simply because it supports the proponent's case or damages the opponent's; the evidence is likely to cause undue prejudice, and should therefore be excluded, *only* when the evidence is of such a nature that it likely would induce the jury to reward or punish one side due to an emotional or other reaction that is not based on a logical evaluation of the evidence in relation to the issue to which it is relevant. (*People v. Scott* (2011) 52 Cal.4th 452, 490-491 (*Scott*).

We apply the deferential abuse of discretion standard when reviewing a trial court's rulings on relevance, including rulings under Evidence Code section 352. (*Scott, supra*, 52 Cal.4th at p. 491; *People v. Zepeda* (2008) 167 Cal.App.4th 25, 35.) Under that standard, the trial court's ruling will not be disturbed on appeal unless the court exercised its discretion in an arbitrary, capricious or patently absurd manner that caused a manifest miscarriage of justice. (*People v. Foster* (2010) 50 Cal.4th 1301, 1328-1329; *People v. Garcia* (2008) 168 Cal.App.4th 261, 275.)

Here, the trial court did not abuse its discretion by admitting the poem because it was relevant to show intent and motive for the charged crimes. The prosecution was required to prove, *inter alia*, that appellant possessed the cocaine with the intent to sell it. (See CALCRIM No. 2302.) According to Officer Blehm's expert testimony, the poem was typical of writings he had seen in previous narcotics cases, and it was common for narcotics traffickers to write such poems or rap lyrics bragging about their lifestyle. The poem was therefore relevant and admissible because it supported an inference that appellant intended to sell the cocaine found in the storage locker with the poem. Although some of the language in the poem is offensive and suggests a violent attitude, we cannot say that any potential prejudice the language produces outweighs the probative value on appellant's intent in possessing the cocaine.

In concluding the trial court did not abuse its discretion in admitting the evidence, we disagree with appellant's contention that the poem and Officer Blehm's interpretation

of it were irrelevant because the prosecution failed to establish when the poem was written and because the poem was “open to various interpretations.” It was for the jury to determine the persuasiveness of Officer Blehm’s interpretation, as well as the significance of any questions the defense may have raised concerning the poem’s origins.⁶ Moreover, the cases appellant cites in support of his relevancy challenge are dissimilar to this one. (See *In re George T.* (2004) 33 Cal.4th 620, 624 [ambiguous nature of poem given by minor to two high school classmates, along with circumstances surrounding its dissemination, failed to establish that poem constituted a criminal threat]; *People v. Moten* (1991) 229 Cal.App.3d 1318, 1321, 1325-1327 [evidence of appellant’s drug use during pregnancy was irrelevant and unduly prejudicial in first degree murder prosecution where eight-month-old daughter died from severe malnutrition and dehydration and appellant’s prenatal drug use did not contribute to her death].)

We also disagree with appellant’s contention that the poem “unduly prejudiced appellant with the offensive, inflammatory, racial slur expressive of racial hatred and bigotry, nigga.” We agree with appellant that the term is offensive and “has a long and ignominious history.” However, it does not appear the term was used as a racial slur in the poem. The single reference to the term appears in the opening line, which extollingly begins, “All hail.” Officer Blehm reasonably interpreted the line as commanding respect from the speaker’s audience. In light of the context in which it appeared, we conclude the term “nigga,” while offensive, would not have tended to evoke an emotional bias against appellant for reasons unrelated to his guilt and was, therefore, not unduly prejudicial. We reach the same conclusion concerning the term “mad” to the extent it

⁶ In this regard, appellant, who represented himself at trial, elicited testimony from Officer Blehm acknowledging he lacked personal knowledge of when the poem was written and whether appellant was its author. Appellant also elicited admissions from the county employees that they did not personally observe appellant fill out the forms the handwriting expert compared to the poem.

connotes the speaker of the poem is one of violent character. The violence suggested by concrete physical evidence—namely, the revolver and live ammunition found in close proximity of the cocaine—subsumed any additional prejudice from the language of the poem.

Appellant’s remaining claims of error regarding the admission of the poem and Officer Blehm’s interpretation are based on objections not raised in the trial court and were thus forfeited. Appellant was required to make a timely objection on the specific grounds to preserve such claims for appellate review. (Evid. Code, § 353, subd. (a); *People v. Ramos* (1997) 15 Cal.4th 1133, 1172; see *People v. Waidla* (2000) 22 Cal.4th 690, 717.)

However, even if these claims were preserved for appellate review, we would reject them on the merits. As discussed above, the poem and Officer Blehm’s interpretation were relevant to prove issues of motive and intent, rendering the evidence admissible even if it otherwise might have been improper character evidence. (See Evid. Code, § 1101, subd. (b).) Nor did the officer’s testimony constitute, in appellant’s words, “improper expert opinions on the ultimate issue that [appellant] was a drug trafficker and dope seller.” In analyzing the poem, the officer spoke in general terms and did not directly express an opinion regarding appellant’s guilt as he claims. Furthermore, the cases appellant cites to support this claim are inapposite. (See *People v. Castaneda* (1997) 55 Cal.App.4th 1067, 1071-1072 [trial court erred in permitting prosecution to elicit testimony from police officer that “typical” heroin dealer was Hispanic adult male]; *People v. Killebrew* (2002) 103 Cal.App.4th 644, 658 [gang expert’s opinion regarding subjective knowledge and intent of each occupant in vehicle “did nothing more than inform the jury how [the expert] believed the case should be decided”].) Finally, appellant’s due process claim rests on the premise that the poem was unduly prejudicial and inflammatory, a premise we have already rejected.

Because evidence of the poem was highly probative of appellant's motive and intent and not unduly prejudicial, the trial court did not abuse its discretion in admitting the evidence.

III. The Evidence Did Not Support the Prior Strike Allegations.

The jury returned true findings on allegations that appellant had two prior strike convictions for unlawful discharge of a firearm and discharge of a firearm in a grossly negligent manner. To prove the allegations, the prosecution introduced an abstract of judgment/prison commitment showing that appellant was sentenced to three years in prison for convictions of violating sections 247, subdivision (b), and 246.3. Appellant contends, and respondent concedes, the abstract of judgment was insufficient to prove that the prior convictions qualified as strikes because it did not prove that appellant personally used a firearm in the commission of the offenses. (See *People v. Golde* (2008) 163 Cal.App.4th 101, 110-113.)

In *People v. Barragan* (2004) 32 Cal.4th 236, 239, the court held a retrial is permissible when an appellate court reverses a prior strike finding for insufficient evidence. Accordingly, we vacate sentence, and remand solely for the purpose of retrying the prior strike allegations and resentencing.

DISPOSITION

The sentence is vacated and the matter remanded for retrial of the prior strike allegations and for resentencing. In all other respects, the judgment is affirmed.

HILL, P. J.

WE CONCUR:

CORNELL, J.

POOCHIGIAN, J.