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

THE PEOPLE,

Plaintiff and Respondent,

v.

SEAN DARION LADIA,

Defendant and Appellant.

F068275

(Super. Ct. No. BF148332A)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Kern County. Michael E. Dellostritto, Judge.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Detjen, Acting P.J., Peña, J. and Smith, J.

A jury convicted appellant Sean Darion Ladia of possession for sale of marijuana (Health & Saf. Code, § 11359) and found true a gang enhancement (Pen. Code, § 186.22, subd. (b)(1)).<sup>1</sup> In separate proceedings Ladia pled no contest to resisting arrest (§ 148, subd. (a)(1)) and the court found true allegations that Ladia had a prior conviction within the meaning of the three strikes law (§ 667, subds. (b)-(i)). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

On May 5, 2013, at approximately 12:50 a.m., Bakersfield Police Officers Ryan Vaughan and Keegan Gavin responded to the location of a reported shooting behind a Panda Express restaurant on Stockdale Highway. While searching for evidence at the scene, the officers heard a loud argument between two groups occurring just north of the officers' location. The officers contacted dispatch and were advised that approximately 30 subjects were involved in a physical altercation at that location. The officers walked to that location and Officer Vaughan saw Ladia standing with two other people yelling at a large group of people. Ladia was talking on his cell phone as he began jaywalking across the street. He then raised his right hand almost over his head and shoulder as he made jabbing motions toward the other group and yelled out, "[O]n East Side Crips."

Officer Vaughan identified himself as a police officer and told Ladia to stop, but Ladia kept walking. Officer Vaughan continued identifying himself as a police officer as he walked toward Ladia. Ladia then turned to face the officer and stated, "Man, I ain't on probation or parole. I ain't doing shit." Simultaneously, Ladia reached out with his left hand and pushed Officer Vaughan in the center of his chest hard enough to cause the officer to lose his balance and move backwards. Officer Vaughan grabbed Ladia, took him to the ground, and with Officer Gavin's help, placed him in custody. Officer Gavin

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Penal Code.

searched Ladia and found a plastic baggie containing 10 individually wrapped bindles of marijuana weighing a combined total of 1.5 grams.<sup>2</sup>

On May 30, 2013, the district attorney filed an information charging Ladia with possession of marijuana for sale (count 1), resisting arrest (count 2), a gang enhancement in count 1, and with having a prior conviction within the meaning of the three strikes law (§ 667, subd. (b)-(i)).

On July 10, 2013, the court denied Ladia's motion to dismiss.

On July 12, 2013, the court denied Ladia's motion to suppress.

On August 29, 2013, Ladia pled no contest to resisting arrest.

On September 3, 2013, the court denied Ladia's *Batson/Wheeler*<sup>3</sup> motion.

On September 9, 2013, the jury found Ladia guilty of possession for sale of marijuana and found true the gang enhancement. In a separate proceeding, the court found true the three strikes allegation.

On October 7, 2013, the court denied Ladia's motion for a new trial and his motion to strike his prior conviction. It then sentenced him to an aggregate term of five years eight months, the mitigated term of 16 months on his possession conviction, doubled to 32 months because of Ladia's strike conviction, and a three-year gang enhancement.

Ladia's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) However, in a document filed on September 16, 2014, Ladia contends: (1) the evidence is insufficient to sustain the true

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<sup>2</sup> During the trial, the People introduced expert testimony establishing that: the East Side Crips are a criminal street gang within the meaning of section 186.22; Ladia was a member of the gang; Ladia possessed the marijuana for sale; and he did so in association with or for the benefit of the East Side Crips.

<sup>3</sup> *Batson v. Kentucky* (1986) 476 U.S. 79, *People v. Wheeler* (1978) 22 Cal.3d 258.

finding on the gang enhancement because there was no evidence presented that he was with other gang members when he committed the possession for sale offense or that he possessed the marijuana in association with or for the benefit of a criminal street gang; (2) the evidence is insufficient to prove that he had the specific intent to sell the marijuana found in his possession; (3) the court committed instructional error because it did not instruct on any lesser included offenses; (4) the marijuana was seized as a result of an illegal detention and search; (5) the search was invalid because it was part of a pattern of harassment; (6) he was denied the effective assistance of counsel because defense counsel did not raise these issues in the trial court, did not call any of his witnesses, and dissuaded him from testifying; (7) the court did not explain its decision to deny the motion to dismiss; (8) the court erred in denying his *Batson/Wheeler* motion; (9) the court may have exceeded the statutory time for trying him by a few days; and (10) the judge should have recused himself because he was a former coworker of his mother and he presided over the preliminary hearing. There is no merit to these contentions.

The evidence in the record is sufficient to support the jury's verdict. (*People v. Holt* (1997) 15 Cal.4th 619, 667.) The court was not required to instruct on lesser included offenses because the evidence did not raise a question whether all the elements of the charged offenses were present. (*People v. Breverman* (1998) 19 Cal.4th 142, 154.) The court did not err in denying Ladia's suppression motion because: (1) Officer Vaughan lawfully attempted to detain Ladia because he saw Ladia jaywalking and in order to search him pursuant to the search conditions of his misdemeanor probation; and (2) the search of Ladia was lawful based on these conditions and as a search incident to arrest. (*People v. Ingham* (1992) 5 Cal.App.4th 326, 330.) The record does not support Ladia's contention that the search was invalid because it was part of a pattern of harassment because it discloses only one search. His contention that his counsel rendered ineffective assistance is not supported on the present record. (*People v. Mendoza Tello*

(1997) 15 Cal.4th 264, 267.) Ladia's contention that the court should have recused itself because the judge was a former coworker of his mother is not cognizable on appeal because it relies on facts outside the record. (*People v. Neilson* (2007) 154 Cal.App.4th 1529, 1534.) Further, the court presiding over the preliminary hearing is not grounds for the court to recuse itself from presiding over Ladia's trial. (Code Civ. Proc., § 170.1.) Even if his trial was conducted a few days after the statutory time limits for doing so, Ladia is not entitled to relief because he has not shown how he was prejudiced by the delay. (*People v. Abel* (2012) 53 Cal.4th 891, 908-909.) The court was not required to explain its reasons for denying Ladia's motion to dismiss. (§ 995.) Finally, the court did not err when it denied Ladia's *Batson/Wheeler* motion because the record supports the court's finding that defense counsel did not make a prima facie showing that the prosecutor exercised a peremptory challenge to remove a Black juror because of her race. (*People v. Davis* (2009) 46 Cal.4th 539, 583.)

Further, following an independent review of the record we find that no reasonably arguable factual or legal issues exist.

#### **DISPOSITION**

The judgment is affirmed.