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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE FLORES HERNANDEZ,

Defendant and Appellant.

G045348

(Super. Ct. No. 09HF1088)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Daniel Barrett McNerney and David A. Thompson, Judges. Affirmed.

Michael Ian Garey for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steve Oetting and Colette C. Cavalier, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted George Flores Hernandez of possessing methamphetamine for sale and transporting methamphetamine. (Health & Saf. Code, §§ 11378, 11379.) Hernandez contends the trial court erred by denying his motion to suppress evidence he claims was the unlawful fruit of a prolonged detention and vehicle search exceeding the scope of his consent. He also argues a patdown search and seating him curbside with ankles crossed rendered his second, subsequent consent involuntary. Alternatively, he argues the canine search officers employed to locate the contraband exceeded the scope of his consent. Hernandez also challenges the sufficiency of the evidence to support the conclusion he possessed methamphetamine for sale, and he argues he was entitled to elicit hearsay to counter the prosecution's improper expert opinion testimony. As we explain, none of these contentions has merit, which dispels Hernandez's cumulative error argument, and we therefore affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

Costa Mesa Police Officer Christopher Walk spotted Hernandez parked three feet from the curb on a city street around 5:15 p.m., activated his amber lights in his marked police vehicle, and pulled behind Hernandez's full-size pickup truck. Walk contacted Hernandez and his passenger, Jennifer Nichols, greeting them, "Hey, how [are] you doing," and he asked, "Why are you guys parked all the way out here in the street like this, man?" Nichols's explanation, if any, was inaudible on the tape Walk made of the encounter on a personal audio recording device, but she did state, "I live right over here," gesturing nearby. Walk noticed Hernandez's City of Newport Beach work uniform, asked what he did ("I work for the water department") and "What are you guys up to right now," to which Hernandez replied, "Nothing."

When Walk requested Hernandez's license and Hernandez asked whether he should turn off his truck, Walk responded, "Yeah, that's probably better." Hernandez and Nichols both denied they were on probation or parole. Walk noticed a beer in the console cupholder, but Hernandez explained he purchased a six-pack after work and the can in the console belonged to Nichols, adding, "I haven't had one yet." Walk answered, "Okay. Just [to] talk to you guys for a second. Anything inside your car that's not supposed to be in your car, George? [¶] . . . [¶] No dope, no weapons, nothing like that; right?" Officer Bang Le, an undercover officer conducting narcotics surveillance, earlier had radioed Walk to contact Hernandez because Le suspected Hernandez might be engaged in narcotics activity.<sup>1</sup>

Hernandez denied he had anything illegal in his vehicle, but when Walk persisted with the inquiry ("other than the beer, right, nothing else") and asked, "You're positive there's nothing inside your car you're not supposed to have," Hernandez affirmed there was nothing. Walk asked, "Mind if we check," and Hernandez consented, "Go right ahead."

Walk had Hernandez exit the vehicle ("Come on out of the car for me. No weapons on you; right?"), but the transcript reveals Walk then raised his voice suddenly, warning Hernandez: "Do not do that. Do not do that. Get out real wide. [¶] Man, you work for Newport, you know how cops are. You don't reach underneath the seat like that. That would be a good way to get shot." Walk patted Hernandez down and verbally confirmed with Hernandez ("Money in here?") when he felt coins or cash in Hernandez's front left pocket, which he left undisturbed. Walk later testified that as Hernandez exited

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<sup>1</sup> Le did not disclose the basis for his suspicions as a reason for Walk to stop Hernandez, and the Attorney General does not rely on them to support the stop or ensuing search.

the vehicle, Walk had him turn around so Walk could pat him down to confirm he had no weapons, but in turning to face the truck, Hernandez reached into the cabin and under the seat, prompting Walk's verbal warning and patdown. While warning Hernandez, "Do not do that," Walk pulled Hernandez away from the cab with one arm and placed his right hand on his holstered gun until he was sure Hernandez would comply. When Hernandez stepped back from the truck, Walk took his hand off of his pistol.

Walk then led Hernandez over to the curb ("Walk on over here to the curb for me. Sit down on the curb"), and the audio recording transcript includes Walk assuring Hernandez, "I'm not going to let you fall. Sit down." Walk explained he said this because he held Hernandez's fingers interlaced together behind him as a safeguard until Hernandez sat down. Walk directed Hernandez to sit "legs straight out, cross [at] your ankles. There you go. Keep your hands on your knees for me." Walk then posed questions to Hernandez about whether he had ever been arrested (yes, "DUI"; "Anything else," "No"), how he knew Nichols ("Friends" for "years, over a year," though he did not know her last name), and other questions like, "What's going on today?" ("Nothing") and "You got anything in the car that's going to concern me?" (inaudible response).

Walk obtained Hernandez's contact information and then engaged him on a variety of topics. Walk stated he also had grown up in Santa Ana, where he lived in "Middle Side's territory." Walk commented, "I'm not saying I [gang]banged or nothing like that, but I grew up around there. And you and I both know there comes a day and time that you get too old to be doing that stuff anymore." Walk continued on about how "I worked for a gang unit for five years and I know you're too old to still be banging and doing all that stuff," at which point Hernandez interjected, "Look at my hair,"

presumably indicating a graying or receding mane, and Walk countered, “Look at *my* hair.” (Italics added.)

Hernandez clarified to Walk that he and his five brothers had not been involved in gangs. When Walk recounted how he had “chased a young (inaudible) [gang member?] all over your old neighborhood . . . when you and I were that age,” Hernandez stated he assumed Walk had formerly been an officer “in Santa Ana,” but Walk clarified he had been in “the target unit so I did *all* of [s]outhern California.” (Italics added.) This prompted Hernandez to quip, “Oh, is that how come some cops kick down doors in Irvine,” to which Walk rejoined, “Yep.”

Walk earlier had commented to Hernandez about Nichols that “I think my wife would go (inaudible) if I got caught and stopped by the police with some other girl in my car,” “[e]specially when I’m supposed to be at work or just getting off work,” adding, “I ain’t saying I’m going to call your wife, I’m just saying appearances,” “I’m saying if your wife were to drive by right now, you’d probably — you’d be done, huh?” Hernandez answered, “I think I’d rather go to jail,” and Walk agreed, “Understood.”

Within two or three minutes of Hernandez’s detention, Le arrived on the scene to assist Walk. According to Le, he approached Hernandez while he was sitting on the curb and obtained his consent to search his truck. Le could not recall if Walk was present, explaining, “He could have been running him,” but at some point Walk returned to his police car. Le and another responding officer searched Hernandez’s truck within 15 to 20 minutes of Le’s arrival on the scene. They found no drugs in their search.

Meanwhile, about 15 minutes after Le obtained Hernandez’s permission to search, a police K-9 unit also arrived and a police dog alerted to methamphetamine stashed in a camera bag held in place on the undercarriage of Hernandez’s truck by

magnets. The camera bag contained individually-packaged baggies of 1.7, 1.3, and 1.7 grams of methamphetamine, and an empty baggie with untested, trace residue. The audio transcript reflects the bag was “reachable . . . right underneath the driver” and the police dog easily detached it, leading Walk to surmise that Hernandez was “going around making deliveries . . . .” The officers found a loose \$20 bill on the floor in the truck, \$2,040 in Hernandez’s pocket, and what Le opined at trial were several “pay/owe” sheets listing names, telephone numbers, and dollar amounts.

The precise timeline is not clear, but it is undisputed Le completed his search of Hernandez’s truck *before* the K-9 unit arrived. Walk updated Hernandez at some unspecified point after escorting him to the curb: “Here’s the deal, George. We are waiting on a K-9 to come over here and make sure there is no dope inside your car. Okay? Now, you know better than I do whether or not there is dope inside your car. If there is dope, he’s going to find it. If there is no[] dope, we’ll have you out of here in a little bit; okay?” Hernandez’s response, if any, was inaudible, but nothing in the record indicates he objected, revoked the earlier consent he separately provided Walk and Le, or restricted the scope of his consent, which the trial court implicitly determined included awaiting the dog’s arrival to complete the search. Le estimated at the pretrial suppression hearing that the police dog arrived about 15 minutes after he (Le) obtained Hernandez’s consent to search. But Le did not specify how much of that 15 minutes his own search consumed or otherwise indicate the interval between the end of his search and the police dog’s arrival.<sup>2</sup>

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<sup>2</sup> Indeed, Le believed he only *began* his search when the police dog arrived, but in light of unanimous witness testimony at the suppression hearing, the court concluded Le was simply mistaken in his recollection and it was not necessary to recall the other witnesses to clarify the point.

The trial court denied Hernandez's suppression motion and the jury convicted Hernandez as noted. The court suspended imposition of sentence and placed Hernandez on probation with a variety of conditions, including 90 days in jail, and he now appeals.

## II

### DISCUSSION

#### A. *No Fourth Amendment Violation*

Hernandez contends the police violated his Fourth Amendment right to be free from unreasonable government searches and seizures, and the trial court therefore erred in denying his suppression motion. The Attorney General relies on Hernandez's consent because "it is no doubt reasonable for the police to conduct a search once they have been permitted to do so." (*Florida v. Jimeno* (1991) 500 U.S. 248, 250-251 (*Jimeno*)). As we explain, we agree Hernandez's consent is dispositive.

The standard of appellate review on a suppression motion is well established. We defer to the trial court's express or implied factual findings if supported by substantial evidence, but with those findings in mind we independently determine the legality of the search under Fourth Amendment principles. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Hernandez contends his continuing detention and "multiple" searches of his vehicle exceeded the proper scope of Walk's initial contact for a parking or traffic violation. But "[a]n investigative detention may be permissibly expanded beyond the reason for its inception if the person stopped consents to that expansion." (*U.S. v. Wood* (10th Cir. 1997) 106 F.3d 942, 946.) Hernandez acknowledges that "questions unrelated to a traffic violation," through which Walk and Le obtained Hernandez's consent, "is not

the issue . . . presented” because the questions the officers posed before obtaining consent did not extend the detention “appreciably,” and therefore do not implicate the Fourth Amendment. (See *Arizona v. Johnson* (2009) 555 U.S. 323, 333.)

Instead, Hernandez suggests he did not provide voluntary consent, but instead merely submitted to police authority. In particular, he focuses on the patdown search as inherently coercive, vitiating his consent. Alternatively, he argues the scope of his consent did not include the canine search; specifically, his failure to object to the canine search did not reflect “genuine” assent to that aspect of the search. We address the voluntariness and scope of Hernandez’s consent in turn.

1. The Evidence Supported the Trial Court’s Finding Hernandez Voluntarily Consented to the Search

Factually, we must view the record in the light most favorable to the trial court’s determination, including an express or implied finding of voluntary consent (*People v. Aguilar* (1996) 48 Cal.App.4th 632, 639; *People v. Miranda* (1993) 17 Cal.App.4th 917), and the record here does not require the conclusion the trial court simply missed or overlooked an overriding atmosphere of police coercion. “[C]onsent must be unequivocal, specific, and freely and intelligently given,” and therefore is invalid if provided “in response to any express or implied assertion of authority.” (*People v. Bailey* (1985) 176 Cal.App.3d 402, 404-405 (*Bailey*)). The voluntariness of consent is a question of fact, to be determined in light of all the circumstances. (*People v. James* (1977) 19 Cal.3d 99, 106.)

Here, Walk activated only his amber lights and contacted Hernandez in a nonthreatening manner about an innocuous matter (“how you doing,” “Why are you guys parked all the way out here in the street like this”) that set the tone for their engagement. Even after Walk arrested Hernandez, the two continued to compare notes on topics

including local politicians and whether certain bars were DUI hotspots. The nature and tenor of Walk's interaction and ongoing dialogue with Hernandez throughout the course of their encounter do not fit the mold of overbearing police coercion, which would render his consent to search involuntary.

Walk's patdown when Hernandez reached into the truck does not require a contrary conclusion. The trial court reasonably could conclude the patdown was justified on concerns for officer safety after Hernandez suddenly reached under the driver's seat, prompting Walk's warning while resting his hand on his gun. But the routine nature of the ordinary detention resumed when Walk escorted Hernandez over to the curb and engaged him further. The touchstone of the Fourth Amendment is reasonableness (*Brigham City, Utah v. Stuart* (2006) 547 U.S. 398, 403), and the trial court could conclude Walk's directions to Hernandez to sit at the curb with his legs crossed and hands on his knees was reasonable under the circumstances and did not taint Hernandez's consent.

In particular, Walk was alone for the first few minutes of the encounter, and he reasonably could direct Hernandez to sit at the curb while awaiting Le's arrival before commencing a search. The record does not reflect Walk forced Hernandez to maintain his hands on his knees and his legs crossed once other officers arrived and, in any event, Hernandez does not suggest how these de minimis measures could impact the validity of consent he already provided Walk.

Several other factors supported the trial court's implied factual determination Hernandez gave his consent voluntarily and not subject to police coercion: Hernandez consented to a search near the outset of the encounter while still in his vehicle during a routine daylight traffic encounter and not, for example, surrounded by multiple

hostile officers in a nighttime raid (e.g., *People v. James* (1977) 19 Cal.3d 99, 110; *People v. Gurtenstein* (1977) 69 Cal.App.3d 441, 451); Walk never handcuffed Hernandez (*People v. Siripongs* (1988) 45 Cal.3d 548, 566); nor did he point his gun at Hernandez, which in any event does not preclude lawful consent (see *People v. Ratliff* (1986) 41 Cal.3d 675, 686 [police had not “kept their guns drawn when . . . the actual request for consent to search was made”].) Walk did not contact (see *Bailey, supra*, 176 Cal.App.3d at p. 406) or detain Hernandez illegally, and nothing suggested Hernandez’s consent was the product of unlawful police conduct (*Florida v. Royer* (1983) 460 U.S. 491, 497; see *People v. Valenzuela* (1994) 28 Cal.App.4th 817, 833 [“it is axiomatic that a consent to search produced by an illegal arrest or detention is not voluntary”]). Rather, Hernandez’s decision to park his car in the street justified Walk’s contact, and Hernandez’s consent to a search justified his continuing detention for that purpose.

Focusing on the patdown as a show of police authority that he argues vitiated his consent, Hernandez emphasized at oral argument that Walk began the patdown process by turning Hernandez around *before* Hernandez lunged into the vehicle. The transcript of the suppression hearing, however, does not indicate Hernandez raised this contention for the trial court’s consideration. (*People v. Partida* (2005) 37 Cal.4th 428, 435 [trial court does not err “in failing to conduct an analysis it was not asked to conduct”].) Hernandez apparently did not contest the patdown at the suppression hearing because Walk found no incriminating evidence on Hernandez. In any event, even assuming the issue was raised that the patdown contributed to an atmosphere of coercion, the trial court reasonably could find it did not impact the voluntariness of Hernandez’s consent.

First, the eventual search was not a product of the patdown, nor of Walk positioning Hernandez for the patdown. To the contrary, Hernandez's consent *preceded* the patdown, unlike in *Williams v. Superior Court* (1985) 168 Cal.App.3d 349, 356. Thus, the initial consent Hernandez provided to Walk logically included detaining him to conduct the ensuing search, and therefore distinguishes the cases on which Hernandez relies (*ibid*; e.g., *Bailey, supra*, 176 Cal.App.3d at p. 406), where an illegal detention or other unlawful police activity produced the suspect's consent to search.

Second, the trial court reasonably could conclude that merely positioning Hernandez for a patdown before he made his lunge did not vitiate the subsequent consent Hernandez provided to Le. Even assuming Walk should not have initiated a patdown because no circumstances implicated officer safety before Hernandez's lunge, Hernandez almost immediately gave Walk reason to pat him down by suddenly reaching under his seat right after Walk asked whether he had any weapons on him. The trial court could determine as a factual matter that completing a justified patdown did not render Hernandez's later consent involuntary. As noted, Hernandez's lunge justified Walk's patdown, and we reject the notion a lawful patdown adds any element of coercion where its basis is immediately evident, as Walk explained to Hernandez ("You don't reach underneath the seat like that"). Simply put, a reasonable person patted down in these circumstances would immediately grasp that the purpose of the limited intrusion is officer safety, dispelling any potential coercion in the physical contact necessary for an ordinary patdown.

Because the patdown was justified and no evidence suggested Walk or Le coerced Hernandez after Walk patted him down, the trial court could find the consent Hernandez separately provided Le was not an implied submission to authority. The

consent Hernandez gave Le was remote in time from Walk's act of turning Hernandez around, and nothing in the record suggests this singular act caused Hernandez to provide consent to Le, who arrived later. As noted, the detention resumed an ordinary course when Walk escorted Hernandez to the curb pending the search. Hernandez may have worried that refusing Le's request to search would appear incriminating after his earlier consent to search, but the Fourth Amendment guards against coercive state activity, not internal motivations. (*Colorado v. Connelly* (1986) 479 U.S. 157, 167.) We may not second-guess the trial court's factual determinations, and we cannot say on the record presented that the trial court abused its discretion in determining Hernandez provided voluntary consent to search his vehicle.

2. The Officers Did Not Exceed the Scope of Hernandez's Consent to Search

Hernandez contends the police exceeded the scope of his consent to search his vehicle, either by searching it multiple times or by unduly prolonging his detention. Hernandez's reliance on *People v. Cantor* (2007) 149 Cal.App.4th 961 (*Cantor*) is misplaced. There, a motorist pulled over for driving violations assented to the officer's vehicle search request ("Mind if I check *real quick* and get you on your way?" (italics added)), but the search was anything but quick, morphing from a hunt through the passenger compartment to the officer removing the keys from the ignition, opening and searching the trunk, closing the trunk, searching under the hood of the vehicle, rummaging through the passenger compartment several more times, reopening the trunk and removing items, and then using a screwdriver to remove the back panel of a wooden device that cleaned vinyl records, where the officer located and opened a brown paper bag containing cocaine. (*Id.* at p. 964.)

As we explained in *Cantor*, in the time it took the officer to search through the passenger compartment, in the trunk and under the hood, “almost 15 minutes had passed since defendant had given his consent and still [the officer] had found nothing incriminating. At that point, if not sooner, the search should have ceased. A typically reasonable person would not have understood defendant’s consent to a ‘real quick’ search to extend beyond that point, much less to include authorization to unscrew the panel of a piece of equipment during a second search of the trunk while awaiting the arrival of a drug-sniffing dog. [¶] The trial court erred as a matter of law by failing to recognize the limited scope of defendant’s consent. Once [the officer]’s exhaustive search of all compartments of the car revealed no contraband, defendant’s consent ended. No justification existed to prolong defendant’s detention.” (*Cantor, supra*, 149 Cal.App.4th at pp. 965-966.)

Here, the scope of Hernandez’s consent was not limited to a “real quick” search as in *Cantor*. The scope of consent is a question of fact. (*Cantor, supra*, 149 Cal.App.4th at p. 965.) “A consensual search may not legally exceed the scope of the consent supporting it. [Citation.]” (*People v. Crenshaw* (1992) 9 Cal.App.4th 1403, 1408.) “The standard for measuring the scope of a suspect’s consent under the Fourth Amendment is that of ‘objective’ reasonableness — what would the typical reasonable person have understood by the exchange between the officer and the suspect? [Citations.]” (*Jimeno, supra*, 500 U.S. at p. 251.) “Whether the search remained within the boundaries of the consent is a question of fact to be determined from the totality of circumstances. [Citation.] Unless clearly erroneous, we uphold the trial court’s determination.” (*Crenshaw*, at p. 1408.)

The trial court reasonably could determine the scope of Hernandez's consent included the undercarriage of his truck. "The scope of a search is generally defined by its expressed object." (*Jimeno, supra*, 500 U.S. at p. 251 [officer could open paper bag on vehicle floorboard in course of consent search for drugs].) Here, Hernandez's authorization for the officers to look for drugs or a weapon provided a reasonable basis to search open areas on the underside of his pickup truck. We note, however, that the Attorney General's reliance on the principle that "[a] 'sniff' by a trained drug-sniffing dog in a public place is not a 'search' within the meaning of the Fourth Amendment" (*People v. Bell* (1996) 43 Cal.App.4th 754, 769 (*Bell*)) is not dispositive because it skirts the issue of prolonged detention. Here, for example, Le completed his search of areas other than the undercarriage unaided by a dog or other instrumentality some brief but measurable period of time before the K-9 unit arrived. Thus, the issue is whether Hernandez's search authorization, which a reasonable observer would understand included the truck undercarriage, also included waiting briefly for canine assistance to complete the search.

In our view, the question is no different than whether an officer who has received consent to search a vehicle may delay beginning the search, or pause and thereby prolong the duration of the search, to retrieve a flashlight, gloves, or another tool from his vehicle to aid in the search. We think the answer to that question is "yes," and that given the brief delay here, the answer is no different for awaiting the K-9 unit's arrival. Simply put, nothing in Hernandez's consent included a temporal limitation as in *Cantor* preventing a de minimis delay for the K-9 unit to arrive.

Had the delay been longer, the answer might be different, but we cannot say on this record that the trial court violated constitutional norms when it implicitly

concluded as a factual matter that “seizure of the property” (Hernandez’s truck) for an additional few minutes until “the dog sniffs it” fell within the scope of consent. (*People v. \$48,715 United States Currency* (1997) 58 Cal.App.4th 1507, 1516 (*U.S. Currency*); accord, *Bell, supra*, 43 Cal.App.4th at p. 769.) Hernandez cites no authority the officers were required to obtain separate, express consent for the use of a K-9 unit. To the contrary, the trial court reasonably could conclude a dog sniff was within the scope of a general consent for a vehicle drug search (*U.S. Currency*, at p. 1516; *Bell*, at p. 769) and that the officers were entitled to use a dog to complete their search after a brief delay. (See generally *People v. Jenkins* (2000) 22 Cal.4th 900, 975 [“consent to search generally implies consent to complete search, unless a limitation is expressed”].) Accordingly, there was no Fourth Amendment violation.

**B. *Expert Opinion and Other Evidence Supports the Possession for Sale Verdict***

Hernandez challenges the sufficiency of the evidence to support the jury’s conclusion he possessed for sale the methamphetamine found under his truck. On appeal, we must view the record in the light most favorable to the judgment below. (*Jackson v. Virginia* (1979) 443 U.S. 307, 318–319; *People v. Johnson* (1980) 26 Cal.3d 557, 576–578.) The test is whether substantial evidence supports the verdict (*Johnson*, at p. 557), not whether the appellate panel is persuaded the defendant is guilty beyond a reasonable doubt. (*People v. Crittenden* (1994) 9 Cal.4th 83, 139.) It is the jury’s exclusive province to weigh the evidence, assess the credibility of the witnesses, and resolve conflicts in the testimony. (*People v. Sanchez* (2003) 113 Cal.App.4th 325, 330.) The fact circumstances can be reconciled with a contrary finding does not warrant reversal of the judgment. (*People v. Bean* (1988) 46 Cal.3d 919, 932–933 (*Bean*).) Consequently,

an appellant “bears an enormous burden” in challenging the sufficiency of the evidence. (*Sanchez*, at p. 330.)

Hernandez insists the evidence may be reconciled with drug possession for personal use instead of sale. Specifically, he notes that Le acknowledged the one-eighth ounce quantity of methamphetamine, its packaging in baggies, and its hidden location while in transit were all “consistent with” personal use. But there was more. In particular, the pay/owe sheets pointed to sales activity, and so did the substantial cash sum in Hernandez’s pocket and the lack of paraphernalia for personal drug use.

Hernandez argues he received the cash from a friend reimbursing him for rent payments, and the pay/owe sheets and other factors Le relied upon in opining Hernandez possessed the methamphetamine for sale — including the quantity and packaging of the methamphetamine, the \$20 on the floorboard suggesting a recent sale, and Hernandez’s high volume of cell phone activity while making frequent stops — all could be explained as not involving drug distribution. Based on this overlap between legal (or at least nonsale activity) and seemingly illegal activity, Hernandez relies on cases involving prescription drugs, where courts have held expert testimony improper because it does not aid the jury “absen[t] some circumstances not to be expected in connection with a patient lawfully using the drugs as medicine.” (*People v. Hunt* (1971) 4 Cal.3d 231, 238 (*Hunt*); accord, *People v. Chakos* (2007) 158 Cal.App.4th 357, 368-369 [record failed to show officer was “any more familiar than the average layperson . . . with the patterns of lawful possession for medicinal use,” italics omitted].) Based on these and similar cases, Hernandez argues the expert’s opinion did not “properly assist the trier of fact,” but instead amounted simply to a conclusion that Hernandez “was guilty as charged,” thereby “invade[ing] the province of the jury.”

But these authorities are inapposite for illegal drugs, where it is “settled that an officer with experience in the narcotics field may give his opinion that the narcotics are held for purposes of sale . . . .” (*Hunt, supra*, 4 Cal.3d at p. 237; see also, e.g., *People v. Parra* (1999) 70 Cal.App.4th 222, 227.) The trial court therefore did not err in following well-established precedent by allowing the expert to express an opinion on possession for sale. The court did not err in allowing the prosecution to utilize an expert witness because illegal drug trade details concerning quantities, typical recordkeeping, and patterns in methods of distribution are beyond the experience of most jurors. (Evid. Code, § 801, subd. (a); e.g., *Hunt*, at p. 237.) Nor, given the pay/owe sheets, packaging, ready access, and cash on hand was the evidence so “equivocal” (*People v. Hernandez* (1977) 70 Cal.App.3d 271, 281) to bar expert testimony.

Hernandez’s reliance on *People v. Brown* (1981) 116 Cal.App.3d 820 (*Brown*) is also misplaced. There, the expert described a “runner” in typical drug transactions as someone who for compensation guides a potential buyer to a narcotics dealer, which the reviewing court found was proper expert testimony. (*Id.* at p. 828.) But the expert went further and essentially opined that as a runner the defendant was necessarily guilty of selling drugs, which the reviewing court found invaded the jury’s province to determine guilt. (*Id.* at pp. 828-829.) Here, in contrast, Le in no way directed the jury’s conclusion; rather, the jury was free to evaluate and reject Le’s opinion that Hernandez possessed methamphetamine for sale.

We recognize there is some tension in *Brown*’s conclusion an expert may not opine a defendant is a runner, while *Hunt* declared it settled law that an expert may give his opinion the defendant held his narcotics for sale. Of course, the Supreme Court’s conclusion in *Hunt* controls. While an opinion that a person is a narcotics seller

embraces the ultimate issue in a prosecution for the sale of narcotics, the Evidence Code expressly provides an expert may offer opinion testimony that “embraces the ultimate issue to be decided by the trier of fact.” (Evid. Code, § 805.) Moreover, an opinion that narcotics are held for sale is not tantamount to a conclusion the defendant is guilty because the jury must decide other elements of the offense, including that the defendant actually possessed and intended to possess the salable quantity in question. (See *People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1417, fn. 3 [recognizing general intent possession offenses require intentional possession].) Consequently, *Brown* does not suffice to require reversal.

Hernandez also complains his pre-stop activities, including numerous brief calls on his cell phone and successive “quick stops” to meet with people in his car, did not furnish adequate foundation for the expert to opine Hernandez possessed for sale the methamphetamine found under his car. He argues that because Nichols and the other people Hernandez interacted with before his arrest denied engaging in narcotics transactions, and the police found no drugs on any of them, Le could not reasonably rely on these pre-arrest encounters to support his possession-for-sale conclusion. The trial court therefore should have sustained his objection to bar Le from mentioning these incidents, according to Hernandez.

But Hernandez’s challenge goes to the weight of Le’s opinion, which was for the jury to evaluate. In particular, the question for the jury’s consideration was not whether this evidence by itself supported Hernandez’s sales conviction; rather, the jury was to evaluate that evidence in conjunction with evidence recovered in the search, including Hernandez’s pay/owe sheets and his ready access to individually prepackaged drugs under the driver’s side of the car. In any event, the fact the evidence may be

reconciled with a contrary conclusion does not warrant reversal of the judgment. (*Bean, supra*, 46 Cal.3d at pp. 932-933.) Similarly, Hernandez's assertion the stop and Le's sales opinion were based on such tenuous evidence that they amounted to illegal, unsupported "profiling" of suspected drug activity is also without merit. Walk had independent, traffic-enforcement grounds to contact Hernandez and, as discussed, the evidence the police found with his consent amply supported his possession for sale conviction.

Hernandez next argues that in cross-examining Le, he should have been allowed to elicit hearsay statements Nichols and another third party made, which Hernandez contends undermined the foundation for Le's sales opinion. Specifically, Nichols denied at the scene that she was purchasing drugs from Hernandez, and a man who earlier entered and then left Hernandez's car, Doug Connelly, told officers the encounter was not drug related and that he simply gave Hernandez a large sum of cash Hernandez previously lent him for rent. Connelly admitted, however, he had obtained drugs from Hernandez on other occasions. The trial court expressed confidence that when these potential witnesses "[are] called to the witness stand the jury will hear all about" their exonerating testimony. But Hernandez declined to have Connelly testify, presumably because he did not want Connelly's inculpatory statement introduced, and the record does not reveal why he did not call Nichols to testify.

Hernandez contends that instead of calling Nichols or Connelly he was entitled to have the jury consider their pretrial statements to investigating officers as part of the background facts or foundation Le necessarily considered in reaching his sales opinion. As his attorney explained, he wanted to elicit from Le that Nichols denied a drug transaction occurred, which would "undermine . . . the basis of [Le's] expert opinion

. . . .” Specifically, Le “didn’t take [Nichols’s denial] into account and should have and I think the jury should know that.” The trial court responded, however, “So you are not offering it, then, to challenge his opinion, you are offering it to — as evidence that Ms. Nichols wasn’t there to buy drugs. If you want to call Ms. Nichols, call her, but that statement is not coming in through the back door to show she was not there to buy drugs.” Defense counsel answered: “Then I won’t pursue it any further. I think it’s a proper question, but I’m not going to argue with you.”

The trial court’s conclusion Hernandez sought to introduce Nichols’s statement for its truth supports the court’s ruling to exclude it. (Evid. Code, §§ 352 [court may exclude evidence to prevent confusion of issues], 1200 [generally prohibiting hearsay].) As phrased, counsel’s explanation why he sought admission of the statement was ambiguous: mentioning the *basis* of Le’s opinion arguably suggested he sought to introduce these statements for the limited purpose of impeaching the expert’s opinion by providing the full context in which Le reached his sales conclusion, and not for the truth of the matter asserted in these statements. (See, e.g., *People v. Gardeley* (1996) 14 Cal.4th 605, 618-619 (*Gardeley*); but see *People v. Hill* (2011) 191 Cal.App.4th 1104, 1129-1132 [critiquing this view], citing *People v. Goldstein* (2005) 6 N.Y.3d 119, 127-128 [“We do not see how the jury could use the statements . . . to evaluate [the expert’s] opinion without accepting as a premise either that the statements were true or that they were false”].)

In the next breath, however, counsel suggested his proffer was *not* basis evidence; rather, Le “*didn’t* take [Nichols’s denial] into account” as a consideration in reaching his opinion, but “*should* have” (italics added), presumably because it reflected the true state of affairs (i.e., Hernandez was not dealing drugs). The Attorney General

suggested at argument that counsel had the additional hurdle of showing Nichols's or other prospective drug customers' denials were reliable, but this presumes Hernandez was offering the statements for their truth, and not simply to reveal the expert's allegedly biased *manner* of reaching an opinion by ignoring statements favorable to the defense. Had counsel offered a limiting instruction or otherwise made it clear he was not seeking admission of the evidence for its truth, it would have been error for the court to exclude the statement, since cross-examination includes the right to dissect the basis of an adverse expert's opinion testimony (*Gardeley, supra*, 14 Cal.4th at p. 618 [“Like a house built on sand, the expert's opinion is no better than the facts on which it is based”]). But because Hernandez's proffer was ambiguous, we cannot say the trial court erred. (*People v. Waidla* (2000) 22 Cal.4th 690, 717 [abuse of discretion standard governs review of evidentiary rulings].)

In any event, even assuming the trial court should have admitted Nichols's or Connelley's statements, any error was harmless under the most stringent standard. Admission of a statement by an alleged buyer denying a drug transaction — which the jury could not consider for the truth of the matter asserted — would not have materially undermined Le's opinion. The force of the evidence against Hernandez lay elsewhere, in the pay/owe sheets, the substantial sum of cash in Hernandez's pocket, and the prepackaged individual doses of methamphetamine he secreted in a manner for ready sale from his vehicle, within easy reach under his door.

III  
DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.