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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. ALFONSO RANGEL, Defendant and Appellant.	B226544 (Los Angeles County Super. Ct. No. GA076192)

APPEAL from a judgment of the Superior Court of Los Angeles County. Laura F. Priver, Judge. Affirmed.

Jeffrey Lewis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven E. Mercer and Sonya Roth, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Alfonso Rangel was convicted, following a jury trial, of one count of burglary in violation of Penal Code section 459, one count of petty theft in violation of section 484 and one count of receiving stolen property in violation of section 496, subdivision (a). Appellant admitted that he had served a prior prison term within the meaning of section 667.5, subdivision (b). The trial court sentenced appellant to two years in state prison.

Appellant appeals from the judgment of conviction, contending that the trial court erred in denying his second and third *Pitchess* motions and requesting that this Court review the trial court's in camera *Pitchess* hearing for his first *Pitchess* motion. Appellant further contends that the trial court erred in admitting his statements to police. We affirm the judgment of conviction.

Facts

On March 11, 2009, employees of Aguilar Construction were renovating a strip mall at 2120 Freemont in Alhambra owned by Art Flores. About 4:30 p.m. that day, Gabriel Aguilar locked up the construction site for the day. The door to the construction site was locked with a padlock. Tools, traffic cones and plywood were among the items stored at the construction site.

About 7:15 p.m., Alhambra Police Officer John Stone arrived at a 7-Eleven store next to the strip mall. He was responding to a report that a disturbance was being caused inside the store. Officer Stone spoke with an employee inside the 7-Eleven, went back outside and saw codefendant David Fonseca sweeping the parking lot of the strip mall. Fonseca was wearing a reflectorized vest and a hard hat. Officer Stone then saw appellant walk up to a dumpster and climb inside. Appellant was also wearing a reflectorized vest and a hard hat. The officer did not see where appellant came from. Appellant yelled at Fonseca that he had not packed the dumpster right and was wasting money. He was very loud. Officer Stone got into his patrol car and drove away.

About 8:00 p.m., Alhambra Police Officer Jose Quinones responded to a call that three men were attempting to remove a trailer from a construction site at 2120 Fremont.

At that location, he saw appellant, Fonseca and Manuel Tambris. All three men were wearing reflectorized vests and hard hats. The officer also saw a white pick-up truck and a flatbed trailer loaded with plywood. Appellant was walking around the truck and telling Fonseca and Tambris to make sure everything was cleaned up. As Officer Quinones approached the group, appellant was taking traffic cones from around the area and putting them into the truck.

As Officer Quinones and appellant got near each other, appellant began the conversation by telling Officer Quinones that they had come off the freeway because their trailer broke, that it was now fixed and that they were getting ready to leave. Appellant used hand motions to indicate to Fonseca and Tambris that they should begin cranking up the trailer.

There was a freeway ramp about 40 or 50 yards away, and Officer Quinones asked appellant if he had come off that freeway. Appellant agreed that they had. He added that he was upset that the poor quality of the equipment that his company had given him had almost killed him.

Officer Quinones next ran the license plates on the truck and trailer. There was no match for the trailer. The truck's license plate came back registered to a much older vehicle. At that point, Officer Quinones asked all three men to sit down. By this point, Officer Stone had returned to the scene. He stood by while Officer Quinones conducted his investigation.

Officer Quinones spoke with appellant first. He asked appellant what was going on. Appellant replied that they were wrapping up work for the day and were getting ready to leave. This was not consistent with appellant's early statement that the men had come off the freeway. Officer Quinones told him that the truck's license plates did not match its registration. Appellant replied that he had just purchased the truck and the license plates on it were the ones that came with it. When Officer Quinones asked appellant about the trailer, he said that he worked for Ottoman Construction and that the trailer belonged to his boss or to that company. Officer Quinones asked appellant who the foreman was at the construction site, and he replied that he was. He said that his boss

was a man named Hugo. He then said that he worked for a company called something like "Agrill" but that he had difficulty pronouncing the name. Officer Quinones noticed a banner for Aguilar Construction on top of the construction site.

Someone else at the Alhambra Police Department called Aguilar Construction, but no one knew appellant. Officer Quinones told appellant that no one at Aguilar had heard of him. Appellant said that he was never there, but that his boss Hugo should know who he was. Appellant also said that he and the other men were moving the trailer in order to return the plywood to the Home Depot, but that the trailer broke. They were fixing it when Officer Quinones arrived. Appellant said that they had taken the wood from the construction site earlier, and that Hugo had subsequently locked the site and left with the key.

Officer Quinones then spoke with Fonseca, who told him that appellant had called him earlier in the day and offered to pay Fonseca to assist him. Appellant came by Fonseca's house about 3:30 p.m. in the truck, picked him up and drove to the job site. There, appellant told Fonseca to clean up and to put a banner above a doughnut shop in the mall. When Officer Quinones pointed out the inconsistencies in appellant's statements, Fonseca stated that he was just there to work and did not know anything. When asked about the trailer, Fonseca said that the trailer was not attached to the truck when appellant picked him up. Fonseca said the trailer was at the construction site when he arrived with appellant. After they were there for a while, appellant left and returned with a third man, Tambris.

Officer Quinones then spoke with Tambris, formed the opinion that Tambris was an unknowing participant, and ultimately let him leave.

Officer Quinones arrested appellant and Fonseca. As he was leading Fonseca to the patrol car, Fonseca asked why he was going to jail. Officer Quinones said that he was going to jail for stealing from a construction site. Fonseca replied that appellant worked there, they were just working, and the site was open. When Officer Quinones pointed out the padlock on the door, Fonseca said that you could slide the door from the other side.

Officer Quinones and Officer Stone then walked over to the door. Officer Quinones noticed that the door hinges had been removed. He and Officer Stone were able to open the door to the construction site by pulling the door away from the frame on the hinge side of the door. This was possible because the hinge pins had been removed. The officers were able to enter after the door was moved. They found a hinge pin in the truck bed. After Officer Quinones left, Officer Stone conducted an inventory search of the pick-up truck and found two hinge pins in the back.

At some point that night, Aguilar came to the construction site and did a walk-through with Officer Quinones. Aguilar told the officer that several traffic cones, a concrete cutter and some plywood were missing from the site. Aguilar also told Officer Quinones that a person matching appellant's description had been to the construction site a day earlier looking for a job. That person had signed Aguilar's notebook and identified himself as "Ismael Sandria."

Alhambra Police Detective Edward Rodriguez later showed Aguilar a six-pack photographic lineup. Aguilar identified appellant as the person who came to the site and called himself Ismael Sandria.

At trial, the defense called Israel Sandria, who testified that he had previously met with Aguilar at the Freemont strip mall for a job interview, and had written his name down in a notebook provided by Aguilar. When shown the page from Aguilar's notebook with the name Sandria on it, he recognized the handwriting, name and phone number on it as his own.

Fonseca testified on his own behalf that earlier on the day of his arrest he had been at the Home Depot looking for work. He was hired by Tambris to do construction work. Tambris's name was Manuel Hugo Tambris. Tambris drove Fonseca to the construction site in a white truck. There, Fonseca swept the parking lot, loaded plywood onto a trailer and hung up a sign. The weight of the plywood broke the trailer's jack and so the trailer could not be connected to the truck. When appellant arrived in a white truck and parked in front of the 7-Eleven, Fonseca approached him and asked to borrow a jack. Appellant agreed to lend Fonseca a jack. Appellant drank a beer while Fonseca and Tambris used

the jack on the trailer. Fonseca never saw appellant enter the construction site or move plywood. Fonseca was at the site to work, not to commit a crime.

Discussion

1. *Pitchess* motion

Appellant brought a total of three *Pitchess* motions before trial. He contends that error was involved in the trial court's handling of all three motions, and that the error violated his constitutional right to due process. We discuss each motion in turn.

a. First *Pitchess* motion

Appellant contends in his opening brief that although there are references by the parties which suggest that his first *Pitchess* motion was heard and granted, the record does not show that the motion was in fact heard or granted.

Appellant is correct that the motion was scheduled for June 9, 2009, and that the only minute order for that date in the clerk's transcript does not mention a *Pitchess* motion. In fact, two of appellant's motions were heard on June 9, 2009. The first motion was a motion to dismiss pursuant to Penal Code section 995. It was heard by Judge Robert Applegate in Northeast District Department 4. Appellant's *Pitchess* motion was heard by Judge Jacqueline Nguyen in Department 1. The record on appeal has been augmented with the transcript of the June 9, 2009 hearing by Judge Nguyen.

This first *Pitchess* motion, which sought the personnel records of Officer Quinones, was granted.[1] The trial court held an in camera hearing and found no discoverable complaints.

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[1] Appellant's written motion sought complaints of aggressive behavior, excessive force, racial bias as well as fabrication of evidence, writing false reports and other instances of dishonesty. At the hearing, appellant's counsel withdrew his requests for complaints of aggressive behavior and excessive force. The court granted the motion as to complaints of "fabrication of charges, fabrication of false reports or racial."

We have independently reviewed the transcript of the trial court's in camera *Pitchess* hearing to determine whether the trial court disclosed all relevant complaints. (See *People v. Mooc* (2001) 26 Cal.4th 1216, 1229.) We see no error in the trial court's rulings concerning disclosure.

b. Second *Pitchess* motion

Appellant's second *Pitchess* motion sought the personnel records of Detective Rodriguez and Officer Stone. Appellant was representing himself at the time of this motion. The motion was heard and denied by Judge Laura Priver.

The procedure to obtain peace officer personnel records is set forth in Evidence Code sections 1043 through 1045. "To initiate discovery, the defendant must file a motion supported by affidavits showing 'good cause for the discovery,' first by demonstrating the materiality of the information to the pending litigation, and second by 'stating upon reasonable belief' that the police agency has the records or information at issue. (§ 1043, subd. (b)(3).) This two-part showing of good cause is a 'relatively low threshold for discovery.' [Citation.]" (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1019.)

"To show good cause, as required by section 1043, defense counsel's declaration in support of a *Pitchess* motion must propose a defense or defenses to the pending charges. The declaration must articulate how the discovery sought may lead to relevant evidence or may itself be admissible direct or impeachment evidence [citations] that would support those proposed defenses." (*Warrick v. Superior Court, supra,* 35 Cal.4th at p. 1024.)

The affidavit filed in support of a *Pitchess* motion must also "describe a factual scenario supporting the claimed officer misconduct." (*Warrick v. Superior Court, supra,* 35 Cal.4th at p. 1024.) In some circumstances, the factual scenario "may consist of a denial of the facts asserted in the police report." (*Id*. at pp. 1024-1025.) Such a denial may establish a reasonable inference that the reporting officer may not have been truthful. (*Id*. at p. 1022.) This is not true for all cases. "What the defendant must present is a

specific factual scenario of officer misconduct that is plausible when read in light of the pertinent documents. [Citations.]" (*Id.* at p. 1025.)

A trial court's denial of a *Pitchess* motion is reviewed for an abuse of discretion. (*People v. Mooc, supra*, 26 Cal.4th at p. 1228.)

The trial court denied the second *Pitchess* motion, ruling: "The Pitchess motion is going to be denied for lack of a prima facie showing as well as the procedural problems. He previously – [appellant] previously litigated this issue with your counsel that was previously appointed. So for those reasons the Pitchess motion will be denied. You can't just make blanket broad statements. You have to connect it up a bit."

We see no abuse of discretion in the trial court's ruling that appellant had not made a prima facie showing.[2]

Appellant sought discovery of Detective Rodriguez's personnel records on the theory that the detective had lied to obtain a search warrant of appellant's residence. No evidence was uncovered in the search of appellant's residence, however. No other basis for obtaining the detective's records is given in the motion and there is no mention of Detective Rodriguez in the police report attached to the motion. Thus, appellant did not show that the discovery he sought would lead to relevant evidence that would be admissible at trial.

Appellant sought discovery of Officer Stone's personnel records on the theory that Officer Stone stated that he found hinge pins in the back of appellant's truck, but appellant denied having hinge pins there. It was in fact Officer Quinones who wrote in his report that Officer Stone stated that he found two hinge pins. Thus, Officer Stone may or may not have made such a statement. Further, it appears that the pins were found in the open bed of the truck, during an inventory search after the truck was impounded.

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[2] Judge Laura Priver, who heard the second motion, was not the judge who heard the first motion. The city attorney for Alhambra who appeared at the second motion hearing was not familiar with the details of the first motion. Appellant was representing himself, and it was not entirely clear from his argument that the first motion had only requested the records of one officer, Officer Quinones. The second motion was appellant's first request for the records of Officer Stone and Detective Rodriguez.

Several people, including appellant's companions, had access to the truck bed and could have placed hinge pins there.[3] Thus, appellant's denial that there were hinge pins in the truck bed does not create a reasonable inference that Officer Stone planted the pins in the truck.

c. Third *Pitchess* motion

In his third *Pitchess* motion, appellant sought the personnel records of Officers Quinones and Stone, and Detective Rodriguez.

Appellant was no longer representing himself by the time of the third *Pitchess* motion. This motion was brought by his newly appointed counsel. The motion was heard by Judge Laura Priver. Judge Priver heard the second *Pitchess* motion, but expressly stated at the third hearing that she did not remember whether or not she was the judge at the second hearing. The city attorney representing Alhambra at the third hearing was not present at the second hearing. He nevertheless told the court that the second motion "was denied outright and I thought with prejudice and, you know, another Pitchess motion couldn't have been brought." Nothing in the court's ruling on the second motion made any mention of "prejudice" or told appellant that he could not make another *Pitchess* motion. This city attorney also told the court that the court at the first hearing did grant the *Pitchess* motion as to complaints of dishonesty, and did conduct an in camera hearing for such complaints. The city attorney stated: "This is just duplicative and I request it be denied and the defendant be asked not to bring any more Pitchess motions." The attorney did not explain that only complaints against Officer Quinones had been sought at the first hearing. Appellant's counsel did not agree with the city attorney about the first *Pitchess* motion, contending that the trial court had granted the motion only with respect to complaints of defamatory and racial remarks.

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[3] It was apparently Fonseca who alerted the police to the fact that although the door to the construction site had a padlock on it, the door could be opened by sliding it from the other side. It was this information that led the officers to discover that hinge pins were missing from the door.

The trial court ultimately ruled: "I am going to indicate that I think 1, the defendant doesn't get to benefit from his choice to go pro per but he did choose it again to have counsel which the court appointed counsel and I'd indicate I understand from newly appointed counsel you want to make sure he is doing everything he can to defend his client. However, I will also agree that you don't get to keep bringing Pitchess motions just because of the change of circumstances either in terms of the court and/or in terms of the representation. I am accepting [Alhambra City] counsel's representation and I note it was part of the original Pitchess motion as pointed out by counsel, that ruling was made. I have faith that the bench officer here previously upheld her role in that regard."

Appellant's counsel asked for a continuance to order a transcript of the first motion to clarify the scope of the motion. The court responded: "No, deny the Pitchess motion."

The trial court erred in relying on the city attorney's unsworn representation about the scope of the earlier *Pitchess* motions, and the rulings in those cases, particularly in light of appellant's counsel's contention that those representations were not accurate. Human memory is imperfect. In fact, no one at the third hearing had an accurate understanding of the previous two hearings. The city attorney was correct that appellant's request for complaints of various forms of dishonesty was granted at the first hearing, but incorrect in his implied assertion that complaints were requested for the same three officers who were the subject of the third motion. Appellant's counsel was incorrect in stating that only appellant's request for defamatory and racial remarks had been granted. Further, he did not seem to realize that only one officer had been the subject of the first motion. We see no possibility that the trial court would have reached a different result if the court had been aware of the true procedural facts, however.

The third motion was in fact duplicative of the first motion as to Officer Quinones. Thus, had the true procedural facts been known to the judge, the motion would still have been properly denied on the ground that it was duplicative.

The third motion was not clearly duplicative of the second motion with regard to Detective Rodriguez. The second motion claimed that Detective Rodriguez made an unspecified false statement in support of a search warrant. The third motion involved a

false statement allegedly made by the detective in a supplemental police report. Appellant's counsel declared that Detective Rodriguez stated that the victim reported to him "that there was an additional loss of $1400.00 related to the events for which [appellant] is charged" but that "on information and belief" appellant denied that the victim, Aguilar, had made such an assertion. The supplemental report contains a number of other alleged statements by Aguilar which would tend to incriminate appellant, but appellant did not claim in the motion that those statements were not made by Aguilar. Counsel does not clearly explain the relationship of this one false statement allegedly made by Rodriguez to appellant's defenses, and for that reason alone the motion would fail.[4] (*Warrick, supra,* 135 Cal.4th at p. 1024 [declaration must articulate how the discovery would lead to evidence that would support defendant's proposed defenses].)

Further, appellant gives no explanation of how he knew that Aguilar denied making the statement and does not make it clear what Aguilar supposedly denied. It could be a denial of making any report at all or of making a report to Officer Rodriguez as opposed to some other officer. It could also be a denial that a loss was occurred in whole or in part or a denial that the dollar amount of the loss was correct. Absent more specificity, appellant could as easily be describing a mistranscription or miscommunication as a deliberate falsehood. For these additional reasons, we see no error in the trial court's denial of the *Pitchess* motion as to Detective Rodriguez.

Appellant's request in the third motion for the personnel records of Officer Stone does overlap in part with the request in the second motion. In both declarations, appellant claims that no hinge pins were in the truck bed, in an attempt to create an

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[4] It is possible that this was an attack on the amount of the alleged theft and part of a planned defense to reducing the amount of the theft from grand to petty. It is also possible that it was an attempt to specify the false search warrant statement allegedly made by Detective Rodriguez which appellant referred to in the second motion. At the second hearing, the trial court pointed out in passing that appellant had not specified the false statements made by Detective Rodriguez. As we discuss, *ante,* claims of false statements in a search warrant were unlikely to lead to evidence which would be relevant and admissible at trial.

inference that the hinge pins were planted by police. As we discuss, *ante,* appellant's scenario does not create a reasonable inference that Officer Stone planted evidence. There is no additional information on this topic in the third declaration.

Appellant appears to have attempted to create additional inferences of dishonesty on the part of Officer Stone by relying on a number of statements written by Officer Quinones in his report which appellant claims are not true. These statements are not sufficient to support such an inference. Officer Quinones was working alone when he first contacted appellant. His report is written in the first person singular and signed only by himself. Officer Stone did arrive during Officer Quinones's investigation, but Officer Stones's actions and statements are clearly identified as such in Officer Quinones's report. Appellant does not explain how statements written by Officer Quinones in the first person which do not refer to Officer Stone and were not adopted by him, create a reasonable inference of dishonesty on the part of Officer Stone.

Assuming for the sake of argument that the trial court erred in denying appellant's request for the records of Officer Stone and Detective Rodriguez, we would find any error harmless beyond a reasonable doubt. Officer Stone's testimony was not necessary to the case against appellant. That case rested almost entirely on the eyewitness testimony of Officer Quinones. If there had been discoverable reports of evidence fabrication or planting or similar instances of dishonesty, and if those reports had led to admissible evidence, the prosecution would no doubt have elected not to call Officer Stone. It would not have weakened their case.

The same is also true for Detective Rodriguez. He was apparently the officer who showed Aguilar the lineup, but Aguilar's prior identification of appellant as the man who came to the jobsite earlier was not necessary to the case against appellant. Appellant was caught in the middle of the theft by Officer Quinones. Both Aguilar and Flores were available to and did testify about items missing from the construction site after appellant's arrest.

2. Appellant's statement to police

Appellant contends that the trial court erred in denying his motion to suppress his statements to Officer Quinones made on the ground that the statements were made in violation of *Miranda*. We agree that a small portion of appellant's statements to Officer Quinones should have been excluded, but find the error harmless beyond a reasonable doubt.

"In considering a claim that a statement or confession is inadmissible because it was obtained in violation of a defendant's rights under *Miranda v. Arizona* [(1966)] 384 U.S. 436, the scope of our review is well established. 'We must accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if they are substantially supported. [Citations.] However, we must independently determine from the undisputed facts, and those properly found by the trial court, whether the challenged statement was illegally obtained.' [Citations.]" (*People v. Bradford* (1997) 14 Cal.4th 1005, 1032-1033.)

"It is settled that the *Miranda* advisements are required only when a person is subjected to 'custodial interrogation.' [Citations.] 'Custodial' means 'any situation in which "a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." [Citations.] Interrogation "'refers not only to express questioning, but also to any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect.'" [Citations.]" (*People v. Aguilera* (1996) 51 Cal.App.4th 1151, 1161.)

To determine whether a defendant was taken into custody for purposes of *Miranda*, the circumstances surrounding the interrogation must be measured "against an objective, legal standard: would a reasonable person in the suspect's position during the interrogation experience a restraint on his or her freedom of movement to the degree normally associated with a formal arrest. [Citations.]" (*People v. Aguilera*, *supra*, 51 Cal.App.4th at p. 1161.)

There are a variety of factors to be considered. Among those factors are "whether contact with law enforcement was initiated by the police or the person interrogated, and if

by the police, whether the person voluntarily agreed to an interview; whether the express purpose of the interview was to question the person as a witness or a suspect; where the interview took place; whether police informed the person that he or she was under arrest or in custody; whether they informed the person that he or she was free to terminate the interview and leave at any time and/or whether the person's conduct indicated an awareness of such freedom; whether there were restrictions on the person's freedom of movement during the interview; how long the interrogation lasted; how many police officers participated; whether they dominated and controlled the course of the interrogation; whether they manifested a belief that the person was culpable and they had evidence to prove it; whether the police were aggressive, confrontational, and/or accusatory; whether the police used interrogation techniques to pressure the suspect; and whether the person was arrested at the end of the interrogation. [Citations.]" (*People v. Aguilera*, *supra*, 51 Cal.App.4th at p. 1162.) No one factor is dispositive. (*Ibid*.)

Here, the circumstances surrounding the questioning are somewhat mixed. The contact was initiated by police, and Officer Quinones questioned appellant as a suspect, not a witness. Appellant's movement was somewhat restricted by the officer's request that he sit down and away from the other two men. Appellant was arrested at the end of the questioning. These are circumstances indicating custody.

Some of the circumstances are neutral. Appellant did not expressly agree to an interview, but neither did he object to Officer Quinones's questions, decline to answer them or attempt to leave. The officer did not inform appellant that he was free to terminate that interview and leave, but neither did he tell appellant that he was under arrest or in custody.

Other circumstances weigh against custody. There is nothing to suggest that Officer Quinones was aggressive in his questioning or pressured appellant. Only Officer Quinones questioned appellant. He did not draw his gun or handcuff appellant. The total encounter lasted about 30 minutes, of which about 20 minutes were spent questioning appellant and his companions. The questioning took place in an open parking lot.

Taken as a whole, we find that the circumstances of the encounter were initially very similar to a traffic stop or similar investigatory detention. "Generally, the *Miranda* rule is inapplicable [to traffic stops] because the restraint on liberty often occurs in a nonthreatening or noncompulsive public environment and its duration is limited. (See *People v. Lopez* [(1985)] 163 Cal.App.3d [602] at p. 607; *People v. Montoya* (1981) 125 Cal.App.3d 807, 810 [178 Cal.Rptr. 211].) 'Questioning under these circumstances is designed to bring out the person's explanation or lack of explanation of the circumstances which aroused the suspicion of the police, and thus enable the police to quickly ascertain whether such person should be permitted to go about his business or held to answer charges.' [Citation.]" (*People v. Aguilera, supra,* 51 Cal.App.4th at p. 1165.) That was how the interview began here.

The truck and trailer were in a strip mall parking lot near a freeway off ramp. The mall was under renovation and at least some of the businesses were closed. At the hearing on the motion to exclude appellant's statement, Officer Quinones testified that when he arrived, appellant was putting construction cones in the truck and Tambris was jacking up the trailer. Officer Quinones asked appellant what he and the men were doing. Appellant replied that they had come off the freeway because the trailer had broken, and that he was upset about the quality of the equipment his company had given him. Officer Quinones pointed to the freeway ramp behind them and asked if he came off there. Appellant said that he had. He added that the trailer had "almost killed" them, but that they had fixed it and were ready to go.

When Officer Quinones ran the plates for the truck and trailer, as one would do at a traffic stop, the trailer came back as unregistered and the truck did not match the vehicle listed on the registration. At this point, Officer Quinones asked appellant and his companions to sit down so that he could find out what was going on with the mismatched license plates. Appellant told Officer Quinones that he had just purchased the truck, and the license plates had come with it. He then changed his earlier story of why he was in the strip mall, and said that he was working at the construction site. Officer Quinones checked with Aguilar Construction. Thus far, the stop was an investigatory detention.

Officer Quinones's inquiry produced a response from Aguilar Construction that they had never heard of appellant. At this point, the investigation appears to have shifted from an investigative detention to an investigation of a crime. Officer Quinones certainly had enough information to determine that appellant should be held for charges. Thus, Officer Quinones should have informed appellant of his *Miranda* rights before questioning him about the company's denial that they knew him. Appellant's statements after that point should have been suppressed. These statements did not offer any new information, however, but were merely a re-assertion that he worked for the company. Clearly, the admission of these statements was harmless beyond a reasonable doubt.

Further, even assuming for the sake of argument that, as appellant contends, all the statements he made after he sat down should have been excluded, we would find the admission of the statements harmless beyond a reasonable doubt. (*Arizona v. Fulminante* (1991) 499 U.S. 279, 310; *People v. Peracchi* (2001) 86 Cal.App.4th 353, 363 [standard of review].)

Appellant's initial statement to Officer Quinones, made before he sat down, linked him to the truck and trailer. Further, Officer Quinones observed appellant directing the two other men in their attempt to hook up the trailer to the truck. The officer observed sheets of plywood in the trailer and found a hinge pin in the truck bed. Officer Quinones also saw appellant place traffic cones into the truck. Officer Quinones also discovered that the hinge pins had been removed from the door to the construction site. Aguilar testified that he had locked up all the construction material at the site at the end of the day and that all the hinge pins were in place when he left, and that various items were missing from the site when he inspected it after appellant's arrest. This is compelling evidence that appellant broke into the construction site and took items from it.

Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KRIEGLER, J.