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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. JOSHUA CHAVARRIA, Defendant and Appellant.	2d Crim. No. B238632 (Super. Ct. No. 2010001253) (Ventura County)

Joshua Chavarria appeals the judgment entered after a court trial in which he was found guilty of selling and possessing heroin for sale (Health & Saf. Code, §§ 11351, 11352, subd. (a)). The court also found true the allegation that the heroin weighed 14.25 grams or more (Health & Saf. Code, § 11352.5, subd. (1); Pen. Code,[1] § 1203.07, subd. (a)(1)). Appellant was sentenced to three years in county jail. He contends the People failed to establish venue. We affirm.

FACTS AND PROCEDURAL HISTORY

On January 21, 2010, a felony complaint was filed charging appellant with one count of selling, transporting, or offering to sell heroin. Appellant moved to dismiss the case for lack of venue, and the motion was heard in conjunction with the preliminary hearing.

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1 All further undesignated statutory references are to the Penal Code.

Detective Victor Fazio of the Ventura County Sheriff's Department testified at the preliminary hearing on behalf of the prosecution. In January 2010, Detective Fazio was investigating a Los Angeles-based drug enterprise known as "Rudy" that was selling heroin to residents of Ventura County. The enterprise operated similar to a taxi service. An individual seeking heroin would call a phone number and speak to a "dispatcher," who would negotiate the sale and arrange for delivery by a third person at a specified location in Los Angeles.

Detective Fazio met in Thousand Oaks with an informant who was a Ventura County resident. In the detective's presence, the informant made three phone calls to the Rudy enterprise and negotiated to buy 11 grams of heroin for $600. All three calls were made from an undisclosed location in Ventura County. The informant also made another call from somewhere within Los Angeles County.[2] All four of the calls were made on a cell phone with an 805 area code number, which is the area code for Ventura and Santa Barbara Counties.

During one the calls, the informant was told the sale would take place at the intersection of Woodman Avenue and Riverside Drive in the Van Nuys/Sherman Oaks area of Los Angeles County. Detective Fazio and several colleagues followed the informant to the location, where they watched and listened while appellant sold heroin to him. Prior to the sale, Detective Fazio overheard appellant make a phone call and ask whether he was supposed to sell 11 grams for the price of 10. After the sale was completed, appellant was arrested and found to be in possession of 10 or 11 additional bindles of heroin. A search of appellant's phone call revealed that the call he had made prior to the sale was to the same number the informant had called to initiate the transaction.

At the conclusion of the preliminary hearing, the court denied appellant's motion to dismiss for improper venue and found sufficient evidence to hold him to answer on the charged count. The prosecution subsequently filed an information

[2] The record does not disclose whether Detective Fazio was present when this call was made.

charging appellant with one count of selling heroin and one count of possessing heroin for sale (Health & Saf. Code, § 11351) with the allegation that the heroin weighed at least 14.25 grams. Appellant subsequently moved to dismiss the information under section 995 for lack of proper venue. In denying the motion, the court relied on the evidence introduced at the preliminary hearing and found that venue was proper in Ventura County. The court reasoned that this result was "the only correct conclusion" in light of the Supreme Court's decision in *People v. Posey* (2004) 32 Cal.4th 193 (*Posey*).

After several continuances were granted, appellant filed a "Specific Objection to Venue." In his papers, appellant made an "offer of proof" in support of his claim based exclusively on evidence in the preliminary hearing transcript. When the motion was called for hearing on February 8, 2011, appellant argued that the court could not find that venue was proper based on evidence in the preliminary hearing transcript because that evidence was inadmissible hearsay and its admission would violate his constitutional confrontation rights. The court denied the motion. Appellant petitioned this court for a writ of mandate or prohibition, which was denied. The Supreme Court subsequently denied appellant's petition for review.

Appellant waived his right to a jury trial and stipulated to a bench trial. He also stipulated that the court could base its verdict on the preliminary hearing transcript and a stipulation regarding the substances seized from appellant. The court found appellant guilty on both counts, and found the special allegation to be true, and sentenced him to a total term of three years in county jail. This appeal followed.

DISCUSSION

Appellant's appeal consists of a two-fold attack on the trial court's finding that Ventura County is a proper venue for the charges against appellant. He first contends that his third motion to dismiss for lack of proper venue should have been granted "[b]ecause the prosecution presented no admissible evidence on the issue[.]" He next claims that the motion should have in any event been granted because "a phone call placed by law enforcement [cannot] constitute 'a preparatory act' within the meaning of Penal Code section 781[.]" Neither claim is persuasive.

Appellant's first contention is based on the premise that it was improper for the court to rely on the preliminary transcript in adjudicating appellant's third motion to dismiss because the testimony offered at that hearing was inadmissible hearsay. He claims the court was compelled to relitigate the venue issue by holding an evidentiary hearing because vicinage[3] is a right guaranteed by the state and federal Constitutions. Appellant fails to appreciate, however, that he stipulated to a court trial in which the verdict was to be based on the preliminary hearing transcript. Implicit in the court's verdict is a legal finding that venue was proper. Moreover, the cases appellant relies on for the proposition that vicinage is an essential feature of the federal constitutional right to a jury trial have been overruled on that point. (E.g., *Hernandez v. Municipal Court* (1989) 49 Cal.3d 713, 721, overruled in *Price, supra*, 25 Cal.4th at p. 1069, fn. 13.) The right to a trial by the vicinage under the California Constitution "constitutes simply the right of an accused to a trial by an impartial jury drawn from a place bearing some reasonable relationship to the crime in question [citation]." (*Posey, supra*, 32 Cal.4th at pp. 222-223.) That right was vindicated here.

Appellant also fails to demonstrate that the evidence in the preliminary hearing transcript fails to support the finding that venue in Ventura County was proper. "Venue is a question of law that is governed by statute. [Citation.]" (*People v. Thomas* (2012) 53 Cal.4th 1276, 1282 (*Thomas*).) Section 777 provides that "except as otherwise provided by law the jurisdiction of every public offense is in any competent court within the jurisdictional territory of which it is committed." There are statutory exceptions to this general rule, however. "One exception is section 781, which states: 'When a public offense is committed in part in one jurisdictional territory and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more jurisdictional territories, the jurisdiction of such offense is in any competent court within either jurisdictional territory.' Enacted in 1872, section 781

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3 Vicinage is the term used to describe the right of drawing a jury from the locality in which a crime was committed. (*People v. Guzman* (1988) 45 Cal.3d 915, 934, overruled on other grounds in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13 (*Price*).)

closed a loophole in the common law that had often made it difficult to prosecute a crime begun in one county but completed in another[.]" (*Thomas*, at p. 1283.)

""Section 781 is remedial and, thus, we construe the statute liberally to achieve its purpose of expanding criminal jurisdiction beyond rigid common law limits. We therefore interpret section 781 in a commonsense manner with proper regard for the facts and circumstances of the case rather than technical niceties.'" [Citation.] The prosecution has the burden of proving the facts supporting venue by a preponderance of the evidence, and 'on review, a trial court's determination of territorial jurisdiction will be upheld as long as there is "some evidence" to support its holding.' [Citation.]" (*Thomas, supra*, 53 Cal.4th at p. 1283.)

The record contains some evidence to support the court's finding of proper venue. Our Supreme Court has recognized that section 781's reference to '"effects . . . requisite to the consummation' of a crime establishing venue in a county should be liberally construed to embrace *preparatory* effects, such as the placement of a telephone call into a county leading to a crime." (*Posey*, *supra*, 32 Cal.4th at p. 219.) The court has further concluded that "absent from section 781 — as from the general venue provision of section 777 and from other venue provisions as well [citation] — is a requirement that the defendant possess any mental state whatever with respect to a county, for purposes of venue. The requirement of 'effects' in a county 'requisite to the consummation' of a crime satisfies the need for a reasonable relationship between the crime and the county and, as a result, restricts the People's charging discretion within tolerable bounds." (*Id.* at p. 220.)

Here, appellant — unlike the defendant in *Posey* — did not place or otherwise initiate the phone call that was requisite to the consummation of the offense. As the People correctly note, however, "[t]his is a distinction without a difference." Construing section 781 liberally, as we must (*Thomas, supra*, 53 Cal.4th at p. 1283), the fact that the drug purchase was negotiated by a Ventura County resident while he was in Ventura County is sufficient to establish venue in Ventura County. Section 781 does not refer to any requirement that the acts or effects thereof that are requisite to consummation

of the offense must directly involve the defendant who is charged with the crime. (See *People v. Price* (1989) 210 Cal.App.3d 1183, 1189-1192, overruled on another ground in *People v. Meza* (1995) 38 Cal.App.4th 1741, 1748.) As our Supreme Court made clear, the defendant's mental state is irrelevant to the determination of venue. (*Posey*, *supra*, 32 Cal.4th at p. 220.)

Although the principal justification for the venue requirement is to protect the accused from the hardship and unfairness of being charged in a remote location, "venue provisions also serve to protect the interests of the community in which a crime or related activity occurs, vindicat[ing] the community's right to sit in judgment on crimes committed within its territory.'" (*People v. Simon* (2001) 25 Cal.4th 1082, 1095.) Appellant sold a substantial amount of heroin to a resident of Ventura County. Appellant's accomplice negotiated the sale over the telephone with an individual who was in Ventura County talking on a cell phone with an 805 area code number. The residents of Ventura County undoubtedly have an interest in the local prosecution of individuals who are responsible for the influx of illegal drugs into their community, particularly when those individuals are part of an ongoing criminal enterprise that allows purchasers to initiate and negotiate drug sales from within that community. Moreover, it cannot be said that appellant suffered any great hardship as a result of being tried in Ventura County, the border of which is only about 25 miles from the location of the drug sale for which he was prosecuted.[4]

The drug sale of which appellant was convicted was negotiated by an accomplice over the telephone with a resident of Ventura County who was in the county when the call took place. But for that call, there would have been no sale. Because some evidence supports the finding that acts or effects requisite to commission of appellant's

[4] As the People request, we take judicial notice of the fact that the intersection of Woodman and Riverside is approximately 26 miles from Thousand Oaks, the easternmost city in Ventura County. (Evid. Code, § 452, subd. (h).)

crimes took place in Ventura County, his motion to dismiss for lack of proper venue in that county was properly denied.

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Jeffrey Bennett, Judge

Superior Court County of Ventura

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