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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JAMES LAMAR ROSSUN, Defendant and Appellant.	B233202 (Los Angeles County Super. Ct. No. TA115303)

APPEAL from a judgment of the Superior Court of Los Angeles County, Arthur M. Lew, Judge. Affirmed.

Renee Paradis, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

James Lamar Rossun (also known as James Lamar Rossum) appeals from the judgment entered following his conviction of possession of a controlled substance (Health & Saf. Code, § 11350),[1] a lesser included offense of the sole charged offense, possession for sale of cocaine base (§ 11351.5).

On November 12, 2010, Los Angeles County Sheriff's Deputies Christopher Galassi and Timothy Lee were patrolling a residential neighborhood in Compton at about 2:51 p.m. when they saw appellant standing between two houses and peering into a window. As the deputies stopped to investigate a possible property crime, appellant walked toward them while tucking something into his rear waistband. Based on appellant's statement that he did not live at the location and was homeless, the deputies detained him for further investigation. While checking appellant for weapons, Deputy Galassi noticed a brown paper bag protruding from his rear waistband. When appellant stated that the bag contained "rock cocaine," Deputy Lee looked inside the bag and saw what appeared to be rock cocaine. Laboratory testing later confirmed that the bag contained .55 grams of cocaine base. The deputies handcuffed and searched appellant, who had $97 in cash but no narcotics pipe. On the way to the station, a woman on a bicycle "looped around" to look inside the patrol car. Appellant saw the woman and appeared to recognize her. Appellant chuckled and said, "I was going to sell drugs to her." After appellant was given a *Miranda*[2] warning, he agreed to speak with the deputies and stated that "he had the rock cocaine to sell it." Although appellant was asked to put this statement in writing, he declined to do so.

Appellant testified to a very different version of events in which he claimed that the deputies had falsely manufactured all of the evidence used against him, including the rock cocaine and his purported statements. According to appellant, he was not homeless but was living at the Bronco Motel and working as a day laborer. After work on the day

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[1] Unless otherwise indicated, all further undesignated statutory references are to the Health and Safety Code.

[2] *Miranda v. Arizona* (1966) 384 U.S. 436.

of his arrest, he rode his bicycle to his friend Soneeta's house. He talked to Soneeta's boyfriend in back of the house and was walking toward the street when the deputies pulled up. He recognized Deputy Galassi, who had stopped and searched him 10 or 15 times in the last six months. On this occasion, Deputy Galassi ordered him to turn around, handcuffed him, and placed him inside the patrol car. Deputy Galassi then searched the grassy area between the houses and bent over as if to pick something up from the ground. Deputy Galassi told appellant that he would be allowed to leave if he gave them the location of a drug dealer named Skip. When appellant did not provide the information, they drove him to the station. On the way to the station, a lady rode by on her bicycle, but he did not say that he knew her or that he was going to sell her drugs. No drugs were found in his possession, nor did he admit to possessing any drugs for sale.

On cross-examination, appellant admitted seven prior felony convictions: (1) possession for sale of marijuana (§ 11359); (2) robbery (Pen. Code, § 211); (3) possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)); (4) possession for sale of a controlled substance (§ 11351.5); (5) possession for sale of a controlled substance (§ 11351); (6) possession for sale of a controlled substance (§ 11351.5), and (7) unlawful sex with a minor under the age of 16 (Pen. Code, § 261.5, subd. (d)). Appellant testified that he knew Flossy, the woman on the bicycle, and that when he was asked if he had sold drugs to her, he had answered no. Appellant denied being given a *Miranda* warning.[3]

In rebuttal, Deputy Lee corroborated Deputy Galassi's version of events. Deputy Lee denied knowing Skip and denied that either he or his partner had asked appellant to provide Skip's location. Deputy Lee did not recall stopping appellant on any prior occasions. Deputy Lee was present when appellant was informed by Deputy Galassi of his *Miranda* rights.

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[3] On direct examination, defense counsel did not elicit appellant's testimony that he did not receive a *Miranda* warning, nor did defense counsel move to suppress defendant's custodial statement based on a *Miranda* violation.

In light of the conflicting prosecution and defense testimony, the trial court instructed the jury on the numerous factors, including prior felony convictions, which are relevant to evaluating the credibility of a witness. The trial court also instructed the jury that it could not convict appellant based solely on his extrajudicial statements, which could only be used to support a conviction if it found there was other evidence to show that the charged offense (or a lesser included offense) was committed. In addition, the jury was instructed that it could only convict appellant of the lesser included offense of possession of a controlled substance if it found that he was not guilty of the greater offense of possession for sale of a controlled substance.

After the jury deliberated for about an hour, it informed the trial court that it was "hung" on the charged offense of possession for sale of a controlled substance. The trial court spoke with the jury and noted that it had deliberated for "barely an hour." After questioning the jury and determining that "[a] lot of jurors haven't really spoken," the court encouraged the jurors to continue speaking "with one another. Whatever your mind is, discuss it and hear what the others have to say. So I'm going to send you back into the jury room to continue your deliberations."

After further deliberations, the jury found appellant not guilty of the charged offense of possession for sale of cocaine base, but found him guilty of the lesser included offense of possession of a controlled substance.

Appellant waived a jury trial on his prior convictions and stipulated to six prior convictions for purposes of the one-year prior prison term enhancement. (Pen. Code, § 667.5.) He also stipulated to one prior strike within the scope of the "Three Strikes" law. (Pen. Code, §§ 1170.12, subds. (a)-(d) & 667, subds. (b)-(i).) The trial court denied appellant's motion to dismiss the prior strike under *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497.

The trial court sentenced appellant to the high term of three years, doubled to six years by reason of the Three Strikes law, imposed three one-year enhancements for the prior prison terms, and struck the remaining allegations for a total sentence of nine years.

After reviewing the record, appellant's court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

Counsel specifically asked that we examine the *Pitchess*[4] motion transcript in which the trial court reviewed in camera portions of Deputy Galassi's and Deputy Lee's personnel records relevant to appellant's defense that the deputies had fabricated evidence, including the drugs and his purported statements, against him. After the *Pitchess* hearing, the trial court released a single complaint involving Deputy Lee but none involving Deputy Galassi. Based on our examination of the *Pitchess* transcript, which contains the court's verbal descriptions of relevant portions of each deputy's personnel file, we find the trial court disclosed all records to which appellant was entitled.

On December 22, 2011, we advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. On January 20 and March 7, 2012, he filed letters raising four issues:

First Issue. Appellant contends that after the jury announced that it was "hung" on the charged offense and 10 of the jurors stated that further deliberations would be futile, the trial court forced the jury to continue deliberating until it reached a verdict. We conclude that appellant has misconstrued the record. The jury had been deliberating for "barely" an hour when it informed the trial court that it was "hung" on the charged offense. Given the very brief period of deliberations, the trial court reasonably inquired whether all of the jurors had participated in the discussion. When it learned that several jurors had not fully expressed their opinions, the trial court reasonably concluded it would be premature to terminate deliberations before the jury had had an opportunity to thoroughly discuss the evidence.

Second Issue. Appellant challenges the prosecution's failure to disclose the incident pertaining to the woman on the bicycle in either the police report or at the

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4 *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

preliminary hearing. However, appellant provides no argument or authority or record citations in support of his contention.

Based on our independent review of the record, we note that the prosecution first learned about the woman on the bicycle on the morning of trial and promptly alerted defense counsel and the trial court of the new information before the first witness was called. Defense counsel immediately moved to suppress the newly-discovered evidence on the ground that it was not mentioned in the arrest report or at the preliminary hearing. The trial court denied the motion but allowed defense counsel to interview Deputy Galassi before he testified.

Defense counsel did not revisit the matter of the woman on the bicycle until after both sides rested and the prosecutor made her initial closing argument to the jury. Although the record is unclear as to the relief being sought at that point and under what authority, defense counsel again argued that the information was not timely disclosed. In opposition, the prosecutor argued that: (1) the record contained no informal discovery request by defendant; (2) she fully complied with her obligation to turn over the newly discovered evidence as soon as it was brought to her attention; (3) the trial court allowed defense counsel to question the deputy about the new information; and (4) defendant could have sought leave to investigate the matter earlier but did not do so.

The trial court then stated: "Okay. Mr. Blacknell [defense counsel] did ask to have the evidence suppressed. I denied that and chose to give him time to interview the officer about that statement with which I think is sufficient in this case. I don't think there is anything you could have done differently about it even if you knew about it ahead of time. So I don't see any reason — so your request is denied basically."

Based on the above record, we conclude that appellant has failed to establish any error or abuse of discretion. It is appellant's obligation to provide both argument and authority to support his contention that the evidence concerning the woman on the bicycle should have been suppressed. He has not done so here. The rule is that "'[w]here a point is merely asserted by counsel without any argument of or authority for its proposition, it is deemed to be without foundation and requires no discussion.' (*People v.*

Ham (1970) 7 Cal.App.3d 768, 783, disapproved on another ground in *People v. Compton* (1971) 6 Cal.3d 55, 60, fn. 3.)" (*City of Arcadia v. State Water Resources Control Bd*. (2006) 135 Cal.App.4th 1392, 1431.)

Third Issue. Appellant lists several cases involving *Miranda* but offers no explanation or argument as to how those cases relate to this appeal. The only incriminating evidence allegedly obtained in violation of *Miranda* was appellant's statement that he was planning to sell drugs. Given that appellant did not seek to suppress this statement below, his claim based on *Miranda* was forfeited. (*People v. Williams* (2010) 49 Cal.4th 405, 424.) In any event, appellant is incapable of establishing prejudice. We conclude he could not have been harmed by evidence of his statement that he intended to sell drugs, given his acquittal of the charged offense of possession for sale.

Fourth Issue. Appellant alleges there was a discrepancy as to when the criminalist received the drugs for testing and suggests that the deputy lied. He is incorrect. The narcotics were booked into evidence on November 12, the date appellant was arrested. The criminalist tested the narcotics on November 15. The deputy did not testify that he submitted the narcotics for testing on the same day the criminalist conducted the test.

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.