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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. DELROY HENDERSON, Defendant and Appellant.	B227827 (Los Angeles County Super. Ct. No. NA083854)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles D. Sheldon, Judge. Affirmed as modified with directions.

Renée Paradis, 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, Roberta L. Davis and Tasha G. Timbadia, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Delroy Henderson challenges his conviction for the transportation or attempted transportation of marijuana. He contends that his conviction was based on evidence from an illegal search, that there was evidentiary error at trial, and that there is insufficient evidence to support his conviction; in addition, he contends that unauthorized fees and fines were imposed in connection with his sentence. We direct the trial court to correct errors in the minute order from the sentencing hearing, and otherwise affirm the judgment.

RELEVANT PROCEDURAL BACKGROUND

Appellant was arrested on October 30, 2009. At the preliminary hearing, the trial court denied appellant's motion to suppress evidence that a package he allegedly brought to a UPS shipping center contained marijuana (Pen. Code, § 1538.5, subd. (a)). On February 18, 2010, a one-count information was filed, charging appellant with the sale or transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)). After appellant pleaded not guilty, the trial court denied appellant's motion to set aside the information on the ground that it relied on evidence from an illegal search, as well as his renewed motion to suppress evidence.

A jury found appellant guilty as charged. On September 17, 2010, the trial court suspended appellant's sentence, placed him on formal probation for three years, and required him to serve 300 days in jail.

FACTS

A. *Prosecution Evidence*

On October 29, 2009, Darlene Walker, a general manager for Staples, was working at the UPS copy center in a Staples store in Long Beach. When appellant

presented a package to be shipped to New York City, Walker noticed that he consulted a piece of paper in filling out his name and address on the shipping information. The package gave off "a very strong smell." According to Walker, appellant said the package contained cleaning supplies. After appellant left, Walker asked Yesenia Soltero, a co-employee, to look at the package. Soltero noticed that it had brown tape "all the way around," and that there was an odor that Soltero believed to be from mounting spray, a form of glue. According to Soltero, the package resembled three or four other packages that appellant had brought to the UPS center.

Because Walker viewed the package as suspicious, Soltero tried to open it, but found its wrapping too strong to remove. She asked Jason Gilhuys, another store manager, to open it. When he did so, they discovered its interior was lined with styrofoam panels. Inside the panels was a "a weird green dome" covered with plastic wrap. When they moved the dome, they could hear liquid moving within it. Because they could not identify the object, they showed it to Amanda Lee, a store supervisor, who called the store's security service. The security service notified the Long Beach Police Department, which directed an evacuation of the store.

Los Angeles County Sheriff's Department Sergeant Joseph Acevedo, a member of the arson explosives unit, went inside the store to examine the package. Because Acevedo could not recognize the object within the box and there was some visible condensation, he believed it necessary to determine what the object was. He x-rayed the package, which showed "light gray matter." He next used a knife to cut through the plastic wrap surrounding the object. As he did so, he saw a "liquid or condensation," and "maybe some fabric softener sheets." Upon withdrawing his blade, he found a green leafy substance on it that he recognized as

marijuana. Acevedo then gave the package to Long Beach police officers. The package was later determined to contain approximately 15.8 pounds of marijuana.

On October 30, 2009, appellant phoned the Staples store and asked Lee about the package. When Lee told appellant that she needed a tracking number in order to locate the package, he said that he would come to the store. Lee informed the police. After appellant arrived at the store, Lee and Soltero pretended to look for the package to delay him until the police arrived. When Lee told appellant that she needed more time to locate the package, he passed his cell phone to Lee and Soltero and asked them to tell his "boss" that Lee was looking for the package. They did so.

Appellant was arrested outside the Staples store. After an arresting officer told appellant he was under arrest for possession with the intent to transport or sell drugs, appellant asked, "If this is my first time, what happens?"

Long Beach Police Officer David A. Jones, an expert on the transportation of marijuana, participated in the investigation of the package. According to Jones, criminal organizations on the East Coast buy relatively inexpensive high quality marijuana in the Los Angeles area and ship it east, often using private carriers. The organizations send "drug shipper[s]" to Los Angeles, where they buy marijuana and arrange for its transfer. The packages of marijuana are routinely sent to the addresses of vacant tenement buildings, where members of the organizations intercept the packages as they arrive. Jones opined that although a shipper would not necessarily seal the boxes containing the marijuana himself, he would want to see the marijuana before it was placed in the boxes, and would not simply accept sealed boxes.

According to Jones, the evidence regarding appellant's conduct comported with the activities of a drug shipper. Upon appellant's arrest, police officers found

a New York driver's license in his name, an airline ticket, three bank receipts, three cell phones, a T-Mobile receipt, ten business cards, and some papers listing addresses. The airline ticket was for a flight two days earlier from New York City to Los Angeles. The bank receipts disclosed that on the same date, a $5,000 deposit was made into an account and $4,700 was withdrawn from it. The T-Mobile receipt indicated that a quantity of minutes of cell phone use had been purchased at a store in Inglewood. The business cards were from four different private parcel shipping firms in the Los Angeles area. The papers in appellant's possession listed "to" and "from" addresses. The "from" addresses were for fictional locations or locations within strip malls and shopping centers in the Los Angeles area; the "to" addresses were for residences within a confined region of New York City. Jones noted that the package identified its sender as "Garfield Mantle," provided a nonexistent address for him, and was sealed in a manner often adopted to conceal the presence of marijuana; in addition, he observed that appellant had asked the Staples store employees to confirm to his "boss" that he had shipped the package.

B. *Defense Evidence*

Appellant presented evidence that several finger prints on the plastic wrapping surrounding the dome-like object did not match his own.

DISCUSSION

Appellant contends (1) that the trial court incorrectly declined to suppress evidence regarding the marijuana in the package, (2) that there is insufficient evidence to support his conviction, (3) that expert opinion was improperly admitted, (4) that the trial court erred in ruling on his motions to bar items of

evidence, and (5) that he has been subjected to unauthorized fees and fines. As explained below, we reject these contentions, but conclude that the sentencing minute order must be amended to correct certain errors.

A. *Suppression of Evidence Regarding Marijuana*

Appellant contends the trial court erred in denying his motions to suppress evidence and his motion to set aside the information on the ground that it relied on illegal evidence. We disagree.

1. *Governing Standards*

Under Penal Code section 1538.5, subdivision (a), a defendant may move to suppress evidence gathered in violation of the state or federal Constitution. The California Constitution bars the exclusion of evidence obtained as a result of an unreasonable search or seizure unless this remedy is required by the federal Constitution. (Cal. Const., art. I, § 28, subd. (d); *People v. Camacho* (2000) 23 Cal.4th 824, 830.) "The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures by police officers and other government officials. [Citation.] This constitutional proscription is enforced by an exclusionary rule, generally prohibiting admission at trial of evidence obtained in violation of the Fourth Amendment. [Citations.]" (*In re Tyrell J.* (1994) 8 Cal.4th 68, 75, overruled on another ground in *In re Jaime P.* (2006) 40 Cal.4th 128, 139.)

"When reviewing a ruling on an unsuccessful motion to exclude evidence, we defer to the trial court's factual findings, upholding them if they are supported by substantial evidence, but we then independently review the court's determination that the search did not violate the Fourth Amendment. [Citation.]" (*People v. Memro* (1995) 11 Cal.4th 786, 846, overruled on another ground in

People v. Gaines (2009) 46 Cal.4th 172, 181, fn. 2.) "Our review is confined to the correctness or incorrectness of the trial court's ruling, not the reasons for its ruling. [Citations.]" (*People v. Dimitrov* (1995) 33 Cal.App.4th 18, 27.)

Here, the key question before us concerns Sergeant Acevedo's search of the package, as appellant does not suggest that the Staples employees' inspection of the package contravened the Fourth Amendment. Generally, "[t]he Fourth Amendment's prohibition against unreasonable searches and seizures does not apply to searches by private citizens, even if the private citizens act unlawfully, unless the private citizen can be said to be acting as an agent for the government." (*People v.Wilkinson* (2008) 163 Cal.App.4th 1554, 1564.) Appellant does not dispute that the Staples store employees were entitled to search the package in view of its suspicious packaging. As our Supreme Court has explained, "because a common carrier has a general duty of care towards all the goods it transports, it also has the right to open and inspect a package which it suspects contains a dangerous device or substance which may damage other goods in the shipment or the vehicle carrying them." (*People v. McKinnon* (1972) 7 Cal.3d 899, 913.) Moreover, the record contains no evidence that the Staples employees, in examining the package, acted as government agents.

The propriety of Sergeant Acevedo's examination hinges on whether exigent circumstances justified his warrantless search. Sealed packages transmitted by private carriers are entitled to protection under the Fourth Amendment, which safeguards the legitimate expectations of privacy that both senders and receivers have in their mail. (*People v. Pereira* (2007) 150 Cal.App.4th 1106, 1111-1112.) Thus, "[e]ven when an officer lawfully seizes a package, the Fourth Amendment requires that in the absence of exigent circumstances, the officer obtain a warrant before examining the contents of the package. [Citations.]" (*Id*. at p. 1112.) One

sort of exigency obviating the requirement for a warrant is the need to protect people from serious imminent injury. (*Brigham City v. Stuart* (2006) 547 U.S. 398, 403.) Accordingly, "[e]xigent circumstances are frequently found when dangerous explosives are involved." (*U. S. v. Lindsey* (9th Cir. 1989) 877 F.2d 777, 781.)

The reasonableness of Acevedo's warrantless search is assessed by reference to an objective standard of conduct. (*People v. Sanders* (2003) 31 Cal.4th 318, 334.) The United States Supreme Court has explained: "Fourth Amendment reasonableness 'is predominantly an objective inquiry.' [Citation.] We ask whether 'the circumstances, viewed objectively, justify [the challenged] action.' [Citation.] If so, that action was reasonable "*whatever* the subjective intent" motivating the relevant officials. [Citation.]" (*Ashcroft v. al-Kidd* (2011) 563 U.S. __, __ [131 S.Ct. 2074, 2080].) Under this standard, whether a search is reasonable is determined in light of "the circumstances known to the officer when the search was conducted," not the officer's subjective intent. (*People v. Sanders*, *supra*, 31 Cal.4th at p. 334.)

2. *Underlying Proceedings*

The rulings on appellant's motions were predicated entirely on the evidence presented at the preliminary hearing, which was conducted by Judge Judith L. Meyer. Regarding the search, Soltero testified that on October 29, 2009, Walker directed her attention to a brown wrapped box that had been left at the UPS center within the Staples store. The box was 18 inches square at the base and approximately 24 inches tall, was covered with an unusual amount of tape on all sides, and gave off a smell of what Soltero believed to be mounting spray. According to Soltero, mounting spray is not ordinarily used for packaging.

As UPS has a policy that suspicious packages are subject to inspection, Soltero tried to cut open the box, but found that she could not do so, as the box's exterior appeared to be "melted" onto styrofoam within the box. Soltero called another manager, Jason Gilhuys, who pulled the box open. Inside the box was a bowl-like object covered with plastic wrapping. Beneath the wrapping was a liquid that moved when Gilhuys touched the wrapping. They brought the package to the attention of Amanda Lee, who notified the store's private security. Shortly afterward, the store was evacuated.

Sergeant Acevedo testified that the bomb squad's policy is "to completely render an object safe." Upon seeing the object within the box, he followed a "render safe" procedure in order to determine whether the object was safe. Under the wrapping, there were air bubbles and "a little bit of liquid." Acevedo x-rayed the object, but did not see a "completed device," that is, a fusing system and explosive. He then decided to probe the object with a knife. He gave the following reason for doing so: "As a bomb tech, you're always trained that . . . you always go down the range, and confirm what you've done or what you've seen in that x-ray. [¶] X-rays are not conclusive. Many times, there's ghost [images] on x-rays, so you always have to go down range and render that package safe." As Acevedo pushed his knife into the object, he smelled fabric softener and saw duct tape. When he withdrew the knife, he discovered marijuana residue.

Acevedo further testified that although a dog capable of detecting bombs through smell was available, he did not use the dog. According to Acevedo, dogs are not generally used with respect to packages that have already been identified as suspicious.

Following the presentation of evidence, Judge Meyer denied appellant's motion to suppress. Judge Meyer found that the package was very suspicious; that

it motivated Staples employees with considerable experience regarding UPS packages to call store security, resulting in an evacuation; and that it was reasonable under the circumstances for Acevedo to determine whether or not the package held a bomb. Noting the unusual features of the object within the box, including the presence of a liquid, Judge Meyer further found that Acevedo properly probed the object after the x-ray failed to disclose a "completed device," as x-ray machines "miss stuff all the time," including dangerous nonmetallic items. Judge Meyer also found that Acevedo's failure to use a dog was reasonable under the explosives unit's normal procedures.

Without receiving further evidence, Judge Charles D. Sheldon denied appellant's subsequent motions, concluding that Judge Meyer's determinations were correct.

3. *Analysis*

We agree with Judge Meyer's and Judge Sheldon's rulings. As Soltero's and Acevedo's factual accounts of the pertinent events are not in dispute, the sole question before us is whether Acevedo's search contravened the Fourth Amendment. We find dispositive guidance on this issue from *U.S. v. Sullivan* (D.Me. 1982) 544 F.Supp. 701 (*Sullivan*) and *People v. Gurtenstein* (1977) 69 Cal.App.3d 441 (*Gurtenstein*).

In *Sullivan*, the defendant presented a package purportedly containing watches to a private airfreight service at an airport. (*Sullivan, supra,* 544 F.Supp. at pp. 703-704.) After the defendant left the package, the service's employees became suspicious that it might contain a bomb for several reasons, including that the defendant had marked it, "Do not open until Christmas," but had shipped it in mid-November using an expensive expedited process. (*Ibid*.) As the service

lacked an x-ray scanner, the employees took the package to the airport's police center, where they explained their concerns to the officer on duty. (*Id*. at pp. 704-705.) When the officer passed the package through a scanner, he found nothing metallic within it, but could not rule out the presence of explosives. (*Id*. at p. 705.) Because the airport lacked bomb storage or transportation facilities, the officer opened the package and discovered that it contained cocaine. (*Ibid*.)

The district court concluded that the officer's conduct in examining the package was proper under the Fourth Amendment. (*Sullivan*, *supra*, 544 F.Supp. at pp. 703-704.) The court stated: "The warrant requirement may be dispensed with where resort to a warrant might endanger the police or the public. [Citations.] A reasonable belief that explosives may be present is sufficient to justify an immediate warrantless search, although other persons are effectively denied access to the suspected explosives. [Citations.]" (*Id*. at p. 716.) Regarding the officer's use of an x-ray scanner without a warrant, the court determined that the examination of the package was proper, as there was adequate suspicion that the package might have contained a bomb or a similarly dangerous object. (*Id*. at pp. 717-718.) Furthermore, the court determined that the officer acted reasonably in opening the package after the x-ray failed to rule out the presence of a bomb, as the potential danger to persons within the airport from a bomb, coupled with the absence of facilities for storing or transporting bombs, presented an exigency that required "the immediate inspection of the package." (*Id*. at 718.)

Here, as in *Sullivan*, the suspicions of a private shipper's employees brought the package to the attention of the police, including Acevedo. Although there is no evidence regarding what the employees told Acevedo, they had already opened the package before Acevedo arrived. Acevedo thus saw for himself the unusual dome-like object, as well as the liquid beneath the plastic wrapping that had alarmed the

employees. Because there were sufficient grounds to suspect the object might contain explosive materials, Acevedo acted reasonably in x-raying the object without a warrant.

Furthermore, under *Sullivan*, Acevedo acted reasonably in probing the object's contents with a knife. Although his x-ray of the object did not show a fused bomb, it also did not establish that the object's contents were safe or nonexplosive, or that the object could be safely moved or left in place while a search warrant was secured. The potential danger from the object therefore presented an exigency that permitted Acevedo to determine the object's contents by an immediate inspection.

Our conclusion regarding Acevedo's conduct in probing the object receives additional support from *Gurtenstein*. There, the defendant presented a package for immediate shipping on a private airline. (*Gurtenstein*, *supra*, 69 Cal.App.3d at pp. 444-445.) Pursuant to a screening program, the airline's employee placed the package in an x-ray scanner, which revealed that the package contained something shaped like a suitcase. (*Ibid*.) As the defendant had appeared nervous in shipping the package and had not stated that it contained a suitcase, the employee notified a member of the local bomb squad. (*Id*. at p. 445.) Because the bomb squad member knew that some bombs do not show up in x-rays, he opened the package and discovered that it contained illegal drugs. (*Id*. at pp. 445-446.) The appellate court concluded that the defendant's behavior rendered the bomb squad member's search reasonable, even though the x-ray did not affirmatively disclose the presence of a bomb. (*Id*. at pp. 449-450.)

We reach the same conclusion here. Although the evidence at the preliminary hearing did not disclose the extent to which the Staples employees communicated their suspicions to Acevedo, the object's unusual features were

obvious to him. Because the x-ray scanner did not affirmatively establish that the object contained no explosive or unsafe materials, Acevedo acted reasonably in attempting to determine its contents by probing it with a knife blade.[1]

Appellant's reliance on *People v. Smith* (1988) 135 A.D.2d 190 [525 N.Y.S.2d 244] (*Smith*), *U.S. v. Atkinson* (S.D.N.Y. 1987) 653 F.Supp. 668 (*Atkinson*), *U.S. v. Bonitz* (10th Cir. 1987) 826 F.2d 954 (*Bonitz*), *U.S. v. Martin* (D.C. Cir. 1977) 562 F.2d 673 (*Martin*), and *Lippman v. City of Miami* (S.D. Fla. 2010) 724 F.Supp.2d 1240 (*Lippman*) is misplaced. In *Smith*, the defendant placed a package for shipping with a private carrier located at an airport. (*Smith, supra,* 525 N.Y.S.2d at pp. 244-245.) The defendant told the carrier's employee that it contained surgical instruments. (*Ibid*.) Because private carriers had received a terrorist alert warning them to be wary of packages presented by unfamiliar individuals, the carrier's employee passed the package through an x-ray scanner and found that it contained no metal. (*Ibid.*) She presented the package to an airport police officer, who x-rayed it and discerned only two nonmetallic cylindrical objects. (*Ibid*.) The officer suspected that the package contained plastic explosives, opened it, and found two bags of cocaine. (*Ibid*.) The court held that the appearance of two cylindrical objects within the package was insufficient to justify the search. (*Id*. at pp. 245-246.) In contrast, prior to Acevedo's examination, appellant's package had already been opened, disclosing the unusual liquid-laden object within it that potentially constituted an explosive

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1 Appellant suggests that Acevedo's conduct in probing the object shows that his search was unreasonable, arguing that no reasonable officer who suspected that the object was dangerous would have cut into the package with a knife. We reject this contention. As explained above, it was reasonable for Acevedo to investigate the object further after the x-ray scanner failed to rule out that that object contained a bomb or explosive
(Fn. continued on next page.)

device. As an x-ray did not rule out that the object held explosive or dangerous materials, Acevedo acted reasonably in probing its interior.

The remaining cases are also distinguishable. In *Atkinson, Bonitz,* and *Martin*, the courts concluded that no exigent circumstances justified warrantless searches of residential locations that potentially held explosive devices, as the officers who conducted the search lacked a reasonable basis to suspect the devices posed an immediate danger. (*Atkinson*, *supra*, 653 F.Supp. at pp. 675-677 [search of storage locker in apartment building based on tip that defendant might have built bomb]; *Bonitz*, *supra*, 826 F.2d at pp. 956-958 [search of defendant's residential workroom after police served arrest warrant upon defendant at his residence, arrested defendant, and noticed within workroom closed gun container, can of black powder, and dead hand grenade used as paperweight].) Similarly, in *Martin*, the appellate court held that no exigent circumstances justified a warrantless search of a suitcase in a Greyhound station, even though an examination of the suitcase's exterior established that it might contain a firearm, as the suitcase was locked and unclaimed. (*Martin*, *supra*, 562 F.2d at p. 679.) As explained above, exigent circumstances were present here, as Acevedo confronted an unusual object containing an unknown liquid.

In *Lippman*, police officers conducted a warrantless search of an individual's truck while providing security in connection with a political demonstration. (*Lippman*, *supra*, 724 F.Supp.2d at pp. 1243-1244.) The court concluded that a bomb detection dog's modest interest in the truck, coupled with the defendant's known record as a political protestor with a criminal history, did not justify the search. (*Id*. at pp. 1254-1255.) Here, the unusual object was visible to Acevedo

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materials. Under the circumstances, making a cut in the package's wrapping appears to have been less instrusive and safer than removing the wrapping entirely.

under circumstances that prompted a reasonable suspicion that it could be an explosive device. In sum, appellant's motions regarding the search's legality were properly denied.

B. *Sufficiency of the Evidence*

Appellant contends his conviction fails for want of evidence that he knew the package contained marijuana. We disagree.

"An essential element of the offense of transportation is "'[k]nowledge by the defendant of both the presence of the drug and its narcotic character . . . .'" (*People v. Rogers* (1971) 5 Cal.3d 129, 133, quoting *Rideout v. Superior Court* (1967) 67 Cal.2d 471, 474.)[2] However, to establish this element of the offense, the prosecution was not obliged to show appellant knew the package contained marijuana, as opposed to some other illegal drug with a narcotic character. As explained in *People v. Romero* (1997) 55 Cal.App.4th 147, 156-157, a defendant who *mistakenly* believes that he is transporting one type of illegal drug may be convicted of transporting a different type of illegal drug; the offense of transportation requires a showing that the defendant knew of a drug's presence and narcotic character, but not its precise identity. The requisite knowledge may be established by circumstantial evidence. (*People v. Meza* (1995) 38 Cal.App.4th 1741, 1746.)

Our inquiry into appellant's contention follows established principles. "In determining whether the evidence is sufficient to support a conviction . . . , 'the

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[2] Generally, "the elements of the offense of transportation of marijuana are (1) a person transported, that is, concealed, conveyed or carried marijuana, and (2) the person knew of its presence and illegal character." (*People v. Busch* (2010) 187 Cal.App.4th 150, 156.)

relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citations.] Under this standard, 'an appellate court in a criminal case . . . does not ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.' [Citation.] Rather, the reviewing court 'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value --such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation]." (*People v. Vy* (2004) 122 Cal.App.4th 1209, 1224, italics omitted.)

Here, there is ample evidence that appellant knew the package contained an illegal drug with a narcotic character. In placing the package for shipment, appellant gave a false name and address. After being told he was under arrest for possession with the intent to transport or sell drugs, appellant asked the police officer, "If this is my first time, what happens?" This statement, coupled with appellant's use of a false name and address in shipping the package, is sufficient to establish that he knew the package contained an illegal drug with a narcotic character.[3] (See *People v. Amiotte* (1963) 215 Cal.App.2d 176, 180 [defendant's "guilty knowledge" of narcotic character of drug found in room he shared with

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3 In view of this evidence, the case before us differs from *U.S. v. Wexler* (3d Cir. 1988) 838 F.2d 88, *U.S. v. Jenkins* (6th Cir. 2003) 345 F.3d 928 and *U.S. v. Torres* (2d. Cir. 2010) 604 F.3d 58, upon which appellant relies. In each case, the appellate court concluded that the evidence at trial showed that the defendant was aware that a package contained some sort of contraband, but not that the defendant was aware of the contraband's narcotic character. (*U.S. v. Wexler, supra,* 838 F.2d at p. 91; *U.S. v. Jenkins, supra,* 345 F.3d at p. 942; *U.S. v. Torres, supra,* 604 F.3d at p. 69.) That is not the case here.

another person was shown by his conduct upon arrest, including use of false name and references to future drug delivery].)

In addition, other items of evidence showed that appellant was acting as a drug shipper, and thus knew the package contained marijuana. The Staples employees testified that appellant returned to the Staples store and asked them to confirm to his "boss" that he had arranged for the package to be shipped. Furthermore, upon appellant's arrest, police officers found a New York driver's license in his name, an airline ticket to Los Angeles from New York, bank receipts showing fund transfers, three cell phones, business cards from local private shippers, and papers listing fictional "from" addresses in the Los Angeles area. Officer Jones opined that these items showed that appellant had followed the procedures by which drug shippers from New York transport marijuana to the East Coast; in addition, he opined that drug shippers ordinarily want to see the marijuana before it is sealed into packages, even if they do not package the marijuana themselves. This evidence supports the reasonable inference that because appellant had acted as a drug shipper, he determined that the package contained marijuana before he shipped it to New York. In sum, there is sufficient evidence that appellant possessed the knowledge required for the offense of transporting marijuana.

C. *Expert Testimony*

Appellant contends that Officer Jones's expert testimony was improperly admitted because (1) the testimony constituted "profile" evidence and (2) he opined regarding appellant's knowledge and intent. For the reasons explained below, we discern no error.

1. *"Profile" Evidence*

Appellant contends that Jones's testimony was inadmissible "drug courier profile" evidence. We disagree. Generally, "[a] profile is a collection of conduct and characteristics commonly displayed by those who commit a certain crime. One court has described profile evidence as 'a listing of characteristics that in the opinion of law enforcement officers are typical of a person engaged in a specific illegal activity.'" (*People v. Robbie* (2001) 92 Cal.App.4th 1075, 1084 (*Robbie*), quoting *U.S. v. McDonald* (10th Cir. 1991) 933 F.2d 1519, 1521.) Perhaps the most frequently cited example of profile evidence "is the drug courier profile, which the United States Supreme Court has defined as 'a somewhat informal compilation of characteristics believed to be typical of persons unlawfully carrying narcotics.'" (*Ibid.*, quoting *Reid v. Georgia* (1980) 448 U.S. 438, 440.)

As our Supreme Court has explained, the characterization of testimony as "'profile evidence'" does not automatically establish its inadmissibility or identify "a separate ground for excluding evidence." (*People v. Smith* (2005) 35 Cal.4th 334, 357.) So-called "'profile evidence'" is inadmissible "only if it is either irrelevant, lacks a foundation, or is more prejudicial than probative." (*Ibid*.) Ordinarily, "[p]rofile evidence is objectionable when it is insufficiently probative because the conduct or matter that fits the profile is as consistent with innocence as guilt." (*Id*. at p. 358.)

Improper use of profile evidence must be distinguished from admissible expert testimony regarding established ways in which crimes are committed. (*People v. Prince* (2007) 40 Cal.4th 1179, 1223-1226.) In this regard, our Supreme Court has stated that "an expert may testify concerning criminal modus operandi and may offer the opinion that evidence seized by the authorities is of a sort typically used in committing the type of crime charged." (*Id*. at p. 1223.)

Instructive examples of admissible modus operandi evidence are found in *People v. Clay* (1964) 227 Cal.App.2d 87 (*Clay*) and *People v. Jenkins* (1975) 13 Cal.3d 749, 755 (*Jenkins*).

In *Clay*, the two defendants were charged with burglary and grand theft. (*Clay*, *supra*, 227 Cal.App.2d at p. 89.) At trial, the percipient witnesses testified that they saw the defendants enter a store and move in separate directions. (*Id*. at p. 90.) When one of the defendants brought an item to the cash register, the other stood near the register. (*Ibid*.) As the cashier rang up the purchase, the defendant who was making the purchase asked the cashier to get other items, causing the cashier to look away from the register. (*Ibid*.) As the cashier reached for the items, the other defendant made some movements near the register. (*Ibid.*) The defendants then left the store, apparently through different exits. (*Ibid*.) The storeowner later discovered that money was missing from the register. (*Ibid*.) In addition to the percipient witnesses, a police officer testified as an expert on "'till tapping.'" (*Clay*, *supra*, 227 Cal.App.2d at p. 92.) The officer opined that in view of the "'usual procedure of till tappers,'" the evidence comported with an instance of till tapping in which one participant distracted the cashier while the other took money from the register. (*Id*. at p. 99.)

After the defendants were convicted, the defendant who had diverted the cashier's attention contended on appeal that the expert's testimony was improperly admitted. (*Clay*, *supra*, 227 Cal.App.2d at p. 92.) In rejecting this contention, the appellate court held that the expert had provided modus operandi testimony that properly assisted the jury to determine the intent of the defendant who had distracted the cashier. (*Id*. at p. 98.) The court stated: "It was the testimony of the inspector . . . which threw a spotlight on the episode as a whole and thus enabled the jury to see the possibility of a relationship between the acts of the two men.

This gave meaning to the evidence and permitted the jury to appreciate that defendant's activities while in themselves seemingly harmless, . . . might well have been part of a cleverly planned and precisely executed scheme." (*Id.* at p. 95.)

In *Jenkins*, the defendants were charged with the burglary of a commercial building. (*Jenkins, supra*, 13 Cal.3d at p. 749.) At trial, the percipient witness, a police officer, testified that when he checked the building, he discovered the defendants nearby. (*Id*. at pp. 751-752.) When they told the officer their car was disabled, he found a wrecking bar and other tools in their trunk. (*Id*. at p. 752.) The officer later discovered that someone had tried to cut off the lock on the building's door. In addition to this testimony, the officer opined as an expert that the tools that he had found "were of the type commonly used to commit burglaries." (*Id*. at p. 755.) Our Supreme Court concluded that this testimony was properly admitted. (*Ibid*.)

In view of this authority, Officer Jones's expert testimony was admissible to explain the modus operandi of drug shippers and to assist the jury in determining whether appellant had acted as a drug shipper engaged in the transportation of marijuana. Although the prosecutor sometimes framed his questions to Jones in terms of a "drug courier profile," the record discloses no misuse of a profile to establish appellant's guilt. After describing the procedure by which drug shippers arrange the transportation of marijuana, Jones opined that the items found upon appellant's arrest were consistent with this procedure. This testimony was properly admitted.

People v. Martinez (1992) 10 Cal.App.4th 1001 (*Martinez*) and *Robbie, supra*, 92 Cal.App.4th 1075, upon which appellant relies, are factually distinguishable. In *Martinez*, the defendant was arrested while driving a stolen vehicle on a California highway. (*Martinez, supra*, 10 Cal.App.4th at p. 1003.)

The defendant had a suspended driver's license, and he produced an irregular registration card and a forged certificate of title for the vehicle. (*Ibid*.) He told investigating officers that he had been heading to Guatemala, and that he did not know the car was stolen when he bought it. (*Ibid*.) He was charged with receiving stolen goods and other offenses. (*Id.* at p. 1002.) At his trial, two experts on auto theft rings testified that many stolen vehicles of the same type were driven from California to Guatemala along the highway upon which the defendant had been arrested. (*Id*. at p. 1004.) In addition, they testified regarding the statistical rates at which arrested drivers in prior cases had produced similarly falsified vehicle documents and claimed that they did not know that they were driving stolen vehicles. (*Id*. at pp. 1004-1006.)

The appellate court concluded that the experts had offered only improper and prejudicial "profile" testimony, as it relied exclusively on the defendant's similarities to other persons charged with unrelated crimes. (*Martinez*, *supra*, 10 Cal.App.4th at pp. 1007-1008.) The court stated: "Presumably the purpose of the evidence was to show that defendant was lying when he claimed he bought the car on a street corner and did not know it was stolen. The prosecution tried to prove this by showing that other drivers found driving similar vehicles under similar circumstances made the same claim. Here the prosecution implicitly asked the jury to use defendant's disavowal of knowledge to bolster the theory that the other drivers were lying when they denied knowledge and then using that conclusion in turn to reach the conclusion that defendant knew the vehicle was stolen. This sort of bootstrap reasoning is impermissible." (*Ibid*.)

Here, unlike *Martinez*, Officer Jones did not simply testify that appellant's documents and statements upon arrest resembled those of other arrested drug shippers. As explained above, our Supreme Court has affirmed that "an expert

may testify concerning criminal modus operandi and may offer the opinion that evidence seized by the authorities is of a sort typically used in committing the type of crime charged." (*People v. Prince*, *supra*, 40 Cal.4th at p. 1223.) That is the nature of the testimony that Jones offered: based on his experience, he described the procedures by which drug shippers arrange for the transportation of marijuana to the East Coast, and testified that the appellant's documents and conduct were of the sort that facilitated or enabled the commission of the crime. Jones's testimony was thus not improper "profile" testimony, as it was not inadmissible as irrelevant or lacking foundation; nor was it more prejudicial than probative. (*People v. Smith*, *supra*, 35 Cal.4th at p. 358.)

In *Robbie*, the defendant was charged with kidnapping for sexual purposes and other sex offenses. (*Robbie*, *supra*, 92 Cal.App.4th at pp. 1077-1078.) At trial, the defendant maintained that his sexual encounter with the victim was consensual. (*Id*. at pp. 1079-1080.) In an effort to overcome this defense, the prosecution offered testimony from an expert on sexual offenders, who opined that "the most prevalent type of behavior" among sex offenders was to (1) initially apply a "minimal amount of force" to the victim, (2) relent after the victim complained, (3) negotiate some form of sexual activity, and then (4) treat the victim respectfully. (*Id*. at pp. 1082-1083.) The expert further opined that due to a "'cognitive distortion,'" sex offenders viewed this conduct as evoking consensual sexual encounters. (*Ibid*.) However, the expert acknowledged that the pattern of behavior she described "was *equally* consistent with consensual activity." (*Id*. at p. 1083, italics added.) The appellate court concluded that the expert's opinions constituted improper "profile" testimony. (*Id*. at pp. 1083-1087.) Here, Jones's modus operandi testimony was properly admitted, as the match between

appellant's conduct and the modus operandi was not "as consistent with innocence as guilt." (*People v. Smith*, *supra*, 35 Cal.4th at p. 358.)

2. *Appellant's State of Mind*

Pointing to *People v. Killebrew* (2002) 103 Cal.App.4th 644 (*Killebrew*) and *In re Frank S.* (2006) 141 Cal.App.4th 1192 (*Frank S.*), appellant also contends that Officer Jones improperly opined on appellant's knowledge and intent in placing the package for shipping. As explained below, appellant has failed to establish reversible error.

The limits on expert opinion regarding a defendant's state of mind were examined in *Killebrew*, *Frank S.*, and *People v. Gonzalez* (2006) 38 Cal.4th 932 (*Gonzalez*). In *Killebrew*, police officers searched three cars close to the site of a gang shooting, and discovered a gun in one car and a second gun near the other two cars. (*Killebrew*, *supra*, 103 Cal.App.4th at pp. 647-648.) All the cars had been occupied by members of a particular gang. (*Ibid*.) The defendant, a member of the gang, was found standing near one of the cars, and was charged with conspiracy to possess a firearm. (*Id*. at pp. 647-648, 650.) At trial, a gang expert testified that the defendant, as a gang member, was aware of the guns and had the specific intent to possess them. (*Id*. at p. 658.) The appellate court concluded that this was improper expert opinion on ultimate facts, and thus did not constitute substantial evidence regarding the defendant's knowledge and intent regarding the guns. (*Ibid*.)

Later, in *Frank S.*, a juvenile was charged with carrying a concealed knife for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)). (*Frank S.*, *supra*, 141 Cal.App.4th at p. 1195). At a hearing on the charge, an expert testified that the juvenile had possessed the knife to protect himself and fellow

gang members. (*Id*. at pp. 1195-1196.) Relying on *Killebrew*, the appellate court concluded that the expert's testimony did not constitute substantial evidence that the juvenile had carried to the knife in order to benefit a gang. (*Id*. at pp. 1195-1199.)

In *Gonzalez*, our Supreme Court repudiated any suggestion in *Killebrew* that gang experts may not offer opinions in response to hypothetical questions framed in terms of facts established by the prosecution. In *Gonzalez*, the defendant, a gang member, entered territory claimed by a rival gang and shot two men working on a driveway. (*Gonzalez*, *supra*, 38 Cal.4th at p. 938.) Several individuals told the police the defendant was the shooter, but disclaimed their statements at trial. (*Id*. at pp. 939-940.) During the trial, the prosecutor asked the gang expert hypothetical questions regarding whether gang members would intimidate witnesses under the circumstances established by the evidence. (*Id*. at pp. 944-945.) The expert opined that they would do so. (*Ibid*.) Relying on *Killibrew*, the defendant argued that the expert's opinions were inadmissible. (*Gonzalez*, *supra*, 38 Cal.4th at p. 946.) Our Supreme Court rejected this contention, stating: "[The gang expert] merely answered hypothetical questions based on other evidence the prosecution presented, which is a proper way of presenting expert testimony." (*Ibid*.) In a footnote, the court elaborated: "Obviously, there is a difference between testifying about specific persons and about hypothetical persons. It would be incorrect to read *Killebrew* as barring the questioning of expert witnesses through the use of hypothetical questions regarding hypothetical persons." (*Ibid*., fn. 3.)[4]

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4 In *People v. Vang* (2011) 52 Cal.4th 1038, 1047-1048 & fn. 3, our Supreme Court recently reaffirmed the "limited significance" of *Killebrew*, and disapproved "any interpretation of [*Killebrew*] as barring, or even limiting, the use of hypothetical questions." The court further explained that to the extent *Killebrew* was correct in prohibiting expert testimony regarding specific individuals, the reason for this rule was
(Fn. continued on next page.)

Here, Officer Jones initially testified only in general terms regarding a drug shipper's knowledge of the contents of sealed packages, but upon further inquiry offered an opinion regarding appellant's specific state of mind. During the prosecution's direct examination, Jones testified that shippers "would want to see the marijuana" before it was shipped, and "routinely" would not "accept a sealed package." Later, defense counsel elicited from Jones that it was unusual for a drug shipper to return to a private carrier and check on a missing package. On re-direct examination, the prosecutor inquired regarding the consequences for shippers when a package went astray. Jones replied that drug trafficking organizations "have an accepted level of loss and don't try [to] bring undue attention following the loss of the narcotics." He added that an organization's unwillingness to accept a loss was "one reason" for a shipper's follow up. At this point, the prosecutor asked, "[I]n order to [follow up], the shipper would have to know what is inside the box in order to be that concerned . . . ?" Jones replied, "Yes, that is reasonable." During subsequent re-cross examination, defense counsel elicited from Jones that his opinion in "this particular case" was that appellant must have known the package contained marijuana because he asked the Staples employees to discuss the missing package with his "boss." Defense counsel asked the questions that elicited this opinion and raised no objections to it. During the prosecutor's redirect examination, Jones stated: "It is my opinion that the defendant in this case[s] was shipping marijuana . . . to New York and was aware of that at the time of the shipment."

On this record, we discern no reversible error. In view of *Gonzalez*, the trial court properly admitted Jones's initial testimony that drug shippers routinely see

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that such testimony does not assist the jury, which is ordinarily as competent as any expert in drawing conclusions regarding specific individuals. (*Ibid*.)

marijuana before it is shipped, as there is a close affinity between generalized testimony regarding drug shippers and testimony regarding hypothetical drug shippers. Jones's testimony regarding the ordinary or typical conduct of drug shippers in specified sets of circumstances was essentially equivalent to testimony regarding the conduct of a hypothetical drug shipper in those circumstances. Because testifying about generally described persons, like testifying about hypothetical persons, is different from testifying about specific persons, Jones's initial testimony was admissible. (See *Gonzalez, supra*, 38 Cal.4th at p. 946, fn. 3.)

We further conclude that appellant forfeited his contention, insofar as it concerns Jones's later testimony regarding appellant's specific state of mind in shipping the package. As our Supreme Court has explained "'[Q]uestions relating to the admissibility of evidence will not be reviewed on appeal in the absence of a specific and timely objection in the trial court on the ground sought to be urged on appeal [citations].' [Citations.]" (*People v. Belmontes* (1988) 45 Cal.3d 744, 766, disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) Furthermore, the objection before the trial court must be "on the exact ground being raised on appeal. [Citations.]" (*People v. Bury* (1996) 41 Cal.App.4th 1194, 1201.) Although both the prosecutor and defense counsel asked Jones numerous questions regarding the knowledge of shippers who check on missing packages, Jones framed his answers in general terms until defense counsel's re-cross examination, when Jones stated that his opinion specifically concerned appellant. As no timely objection was raised to this opinion, appellant has forfeited his contention of error.

Moreover, even if there were no forfeiture, we would conclude that any error in admitting a portion of Jones's opinion was harmless. Generally, the improper admission of evidence is reviewed for prejudice under *People v. Watson* (1956) 46

Cal.2d 818, 836 (*Watson*). (*People v. O'Shell* (2009) 172 Cal.App.4th 1296, 1310, fn. 11.) Under *Watson*, an error is reversible only if "it is reasonably probable that a result more favorable to the [defendant] would have been reached in the absence of the error." (*Watson*, *supra*, 46 Cal.2d at p. 836.) Here, there is no reasonable likelihood of a more favorable outcome for appellant if Jones had not offered the specific opinion regarding appellant, as there was considerable evidence establishing that appellant attempted to ship a package he knew contained drugs (see pt. C., *ante*). In sum, appellant has shown no reversible error in connection with Jones's testimony.

D. *Motions In Limine*

Appellant contends the trial court's decision to defer rulings on three of his motions in limine resulted in reversible error. Prior to trial, appellant sought to exclude several items of evidence. The trial court issued tentative rulings on all but three of the challenged items, namely, certain statements appellant made to the police upon his arrest, a driver's license, and evidence of his Jamaican heritage. Appellant maintains the trial court's decision to defer its rulings with respect to these items was prejudicial to him. As explained below, we reject this contention.

1. *Governing Principles*

"Under appropriate circumstances, a motion *in limine* can serve the function of a 'motion to exclude' under Evidence Code section 353 by allowing the trial court to rule on a specific objection to particular evidence." (*People v. Morris* (1991) 53 Cal.3d 152, 188, overruled on another ground in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.) An in limine motion meets the requirements of this statute only when: "(1) a specific legal ground for exclusion is advanced and subsequently raised on appeal; (2) the motion is directed to a

particular, identifiable body of evidence; and (3) the motion is made at a time before or during trial when the trial judge can determine the evidentiary question in its appropriate context." (*Id*. at p. 190). Generally, a ruling on a motion in limine is not binding on the trial court, which is free to reconsider its ruling at the time the challenged evidence is offered. (*People v. Karis* (1988) 46 Cal.3d 612, 634, fn. 16.) Furthermore, when the trial court defers its decision on a motion in limine, failure to press for a ruling when the evidence is offered generally works a forfeiture of the challenge to the evidence on appeal. (*People v. Morris, supra,* 53 Cal.3d at p. 188.)

2. *Appellant's Statements Upon Arrest*

Appellant contends that the trial court's decision to defer its ruling on his remarks to the police erroneously permitted the prosecutor to cite a remark in his opening statement that was excluded at trial. He argues that the trial court's failure to rule allowed the prosecutor to mention an inadmissible remark regarding an outstanding warrant. We discern no error.

During the pre-trial conference on the motions in limine, defense counsel stated that the prosecutor intended to show that appellant, upon his arrest, said, "If this is my first, what happens?" In addition, defense counsel stated that the prosecutor intended to show that when a police officer asked, "What do you mean?," appellant answered, "I've only been arrested for domestic violence." Defense counsel argued that the first remark was irrelevant and that the second remark was an improper reference to unrelated misconduct. The trial court took the motion under submission.

During his opening statement, the prosecutor referred to appellant's first remark. In addition, the prosecutor stated that when the arresting police officer

told appellant that "he ha[d] a warrant," appellant replied, "I never did that." When defense counsel objected and requested a sidebar conference, the trial court made no ruling on the objection and denied the request.

Later, during a mid-trial bench conference, defense counsel again asked the court to rule on the admissibility of appellant's remark regarding an arrest for domestic violence. The prosecutor replied that he had not mentioned the remark in his opening statement and did not intend to admit it. Defense counsel then stated that he would seek a mistrial based on the prosecutor's reference to a warrant in the opening statement. In response, the prosecutor maintained that appellant's remark regarding the warrant was admissible to establish an admission, arguing that when appellant was told that he was under arrest for the sale or transportation of drugs and was also informed that he faced an outstanding warrant, appellant denied only the misconduct underlying the warrant. The trial court ruled that the remark regarding the warrant was inadmissible.

We see no error regarding the prosecutor's reference to the warrant in his opening statement. Generally, the prosecutor may properly refer to evidence in an opening statement unless it "was so patently inadmissible as to charge the prosecutor with knowledge that it could never be admitted." (*People v. Davenport* (1995) 11 Cal.4th 1171, 1212-1213, disapproved on another ground in *People v. Griffin* (2004) 33 Cal.4th 536, 555, fn. 5.) Appellant raised *no* specific objection to the admission of his remark regarding the warrant prior to the prosecutor's opening statement. Furthermore, as the record discloses, the prosecutor offered a credible basis for the remark's admission when appellant expressly objected to it. Accordingly, the trial court's decision to defer its ruling on the admissibility of appellant's remarks did not result in error.

However, even if the prosecutor's reference to appellant's remark were improper, we would not find it prejudicial. Prosecutorial misconduct is examined for prejudice under *Watson*, *supra*, 46 Cal.2d at p. 836, unless it requires assessment under the beyond-a-reasonable-doubt test for federal constitutional error found in *Chapman v. California* (1967) 386 U.S. 18, 24. (*People v. Herring* (1993) 20 Cal.App.4th 1066, 1077.) The jury was properly instructed that "[s]tatements made by the attorneys during the trial are not evidence" (CALJIC No. 1.02) and that it "must decide all questions of fact . . . from the evidence received in this trial" (CALJIC No. 1.03). We presume the jury followed these instructions. (*People v. Boyette* (2002) 29 Cal.4th 381, 436.) In view of the compelling evidence supporting appellant's conviction, the prosecutor's brief reference to a warrant that was never established or discussed at trial could not have affected the trial's outcome, even when assessed in light of the stringent *Chapman* test.

3. *Driver's License*

Appellant contends the trial court's decision to defer its ruling regarding a driver's license erroneously permitted the prosecutor to mischaracterize the license in his opening statement. As explained below, he has failed to establish reversible error.

During the conference on the motions in limine, defense counsel challenged the admission of a driver's license that was found when appellant was arrested. According to defense counsel, the police reports described it as displaying appellant's photo and the name "Cedric Frater." Defense counsel argued that the license should be excluded because the prosecutor had not given him a copy of the license. The trial court ruled that the license was admissible and directed the prosecutor to provide a copy of the license.

During the prosecutor's opening statement, he said that the police, upon arresting appellant, "f[ound] another identification with a different name with his picture on it." In the course of the trial, defense counsel repeatedly argued that the license should be excluded because the prosecutor never gave him a copy of the license. The court ruled that the license would not be admitted until the prosecutor provided a copy of the license. After the prosecutor did so, the license was admitted, but Officer Jones testified that the photo on the license did not appear to depict appellant.

In our view, the record does not show that the prosecutor's characterization of the license during his opening statement was improper, as it does not disclose that the license was "patently inadmissible." (*People v. Davenport, supra*, 11 Cal.4th at p. 1212.)[5] However, even if there were error, the characterization must be regarded as harmless. As explained above (see pt. D.2., *ante*), the jury was properly instructed that the statements of attorneys were not evidence. In view of the instructions and the evidence admitted at trial, including Jones's testimony and the license itself, the prosecutor's characterization of the license in his opening statement could not have influenced the trial's outcome.

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5 Because appellant does not suggest that the prosecutor's purported failure to provide timely discovery regarding the license constitutes reversible error, he has forfeited any such contention.

4. *Appellant's Jamaican Heritage*

Appellant contends the trial court's decision to defer its ruling regarding evidence of his Jamaican heritage resulted in the improper admission of prejudicial evidence. As explained below, appellant has forfeited this objection.

At the pretrial conference on the motions in limine, defense counsel maintained that evidence of appellant's Jamaican heritage should be excluded. Defense counsel argued: "I think there is a belief, maybe a societal understanding of the Jamaican people that not only do they like Bob Marley, but they smoke a lot of marijuana. And I don't want that to be used to inflame this jury to think . . . [that] because he's Jamaican, he must be involved in transportation [of] marijuana . . . ."

In the course of defense counsel's cross-examination of Amanda Lee, the Staples store supervisor, counsel inquired regarding appellant's purported phone call to Lee after he had placed the package for shipping. When defense counsel requested the basis of her belief that the person with whom she spoke was the man who later appeared at the store, she answered: "The only thing was an accent [because] the manager who actually spoke to the customer told me he had an accent. But . . . I was just assuming." Later, the prosecutor asked what sort of accent the phone caller had. Lee answered: ". . . Maybe like a Jamaican accent." Defense raised no objection to this question and answer.

Shortly afterward, at a bench conference, defense counsel argued that the trial court's failure to rule on his motion in limine had permitted the jury to learn that appellant had a Jamaican accent. Although the trial court agreed with defense counsel that it was "good etiquette" for a party not to elicit evidence subject to a pending motion in limine, the court explained that its policy was to defer final rulings on such motions until the prosecutor offered the evidence. The court

further remarked that the testimony regarding appellant's Jamaican accent was "legitimate evidence," stating, "You should have objected." Later, when the prosecutor asked Officer Jones whether "one particular group" was involved in the transportation of marijuana from Los Angeles to New York, defense counsel objected on the ground of "racial profiling." At a bench conference, the trial court determined that the prosecutor intended to "talk about Jamaica," and sustained the objection.

We conclude that appellant has forfeited his contention, as no timely objection was asserted to the sole item of evidence regarding his Jamaican heritage that was admitted at trial, namely, the evidence that he had a Jamaican accent. As our Supreme Court has explained, when the trial court defers its ruling on a motion in limine, the failure to object or press for a ruling at the time the pertinent evidence is introduced works a forfeiture. (*People v. Morris, supra*, 53 Cal.3d at p. 195.) Furthermore, even if there were no forfeiture, the fact that the jury was told that appellant "maybe" had a Jamaican accent could not have influenced the trial's outcome, in view of the compelling evidence of his guilt. In sum, there was no reversible error.[6]

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6 In a related contention, appellant suggests that the prosecutor engaged in misconduct during his closing argument. The prosecutor argued that appellant may have smoked some of the marijuana that he shipped in order to test it, stating: "You are not going to fly all the way from New York to L.A. for high grade marijuana without testing it." As no objection was raised to this remark, appellant has forfeited his contention. Absent an objection and request for an admonition to the jury, we review a contention of prosecutorial misconduct "'only if an admonition would not have cured the harm caused by the misconduct.'" (*People v. Earp* (1999) 20 Cal.4th 826, 858.) Appellant does not argue that the exception applies here.

E. *Unauthorized Fines and Fees*

Appellant contends (1) that the trial court orally imposed improper fees and fines at the sentencing hearing, and (2) that the minute order from the sentencing hearing contains errors, including the imposition of fees and fines that the trial court did not order at the sentencing hearing. As explained below, the trial court imposed no improper fees or fines that were recorded in the minute order, but the minute order itself contains errors, including fees and fines not ordered by the trial court.

1. *Oral Rulings At the Sentencing Hearing*

We begin with appellant's contentions regarding the trial court's oral rulings. At the sentencing hearing, the trial court ordered the imposition of $1,000 restitution fund fine (Pen. Code, § 1202.4, subd. (b)) and a $30 court construction fee (Gov. Code, § 70373). The court also ordered the imposition of a $20 fee (apparently pursuant to Penal Code section 1465.8), a $30 "security" fee, and an additional $50 "security" fee. In ruling, the court remarked: "That's $1,000 plus those and the other miscellaneous little fines that the Legislature keeps throwing for the court to do. You have to pay those, but it's basically what I just said." Although appellant raised no objections to these rulings at the hearing, errors in the imposition of mandatory statutory fees and fines are reviewable on appeal in the absence of pertinent objections. (*People v. Smith* (2001) 24 Cal.4th 849, 852.)

Regarding the $20 and $30 fees, appellant contends that only the latter was properly imposed, as the then-effective version of Penal Code section 1465.8, subdivision (a)(1), authorized the imposition of a $30 security fee "on every conviction for a criminal offense." Respondent agrees, but notes that the minute order contains no reference to the $20 fee. We therefore conclude that the $30

security fee was properly imposed under former Penal Code section 1465.8, and that the orally imposed $20 fee has effectively been stricken.

Appellant also contends that the $50 "security" fee was unauthorized because lacks a statutory basis. We disagree. Health and Safety Code section 11372.5, subdivision (a), mandates the imposition of a $50 criminal laboratory analysis fee on every person convicted of the transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)).

2. *Sentencing Minute Order*

Appellant also contends that the minute order contains other errors, including fees and fines not orally imposed by the trial court. The minute order reflects the imposition of a $40 criminal fine (Pen. Code, §1465.7), a $25 administrative screening fee (Pen. Code, § 1463.07), a $35 installment and accounts receivable fee (Pen. Code, § 1205, subd. (d)), and an unspecified fee to cover the costs of probation (Pen. Code, § 1203.1b). The record reflects that the trial court did not expressly order these fees and fines (see *People v. High* (2004) 119 Cal.App.4th 1192, 1200 [trial court is obliged to impose fees and fines in express terms]), and that they are not mandatory in this case. Accordingly, their inclusion in the minute order was error.

The minute order also contains other errors. The parties agree that the minute order misidentifies the $1,000 restitution fund fine (Pen. Code, § 1202.4, subd. (b)) as a $200 fine; in addition, as respondent observes, the minute order contains no reference to the $50 criminal laboratory fee (Health & Saf. Code, § 11360, subd. (a)). Accordingly, the sentencing minute order must be amended to correct these errors. (See *People v. Goodwin* (1997) 59 Cal.App.4th 1084, 1094, fn. 8.)

DISPOSITION

The judgment is affirmed, and the trial court is directed to correct the sentencing minute order as discussed above (see pt. E., *ante*) to reflect the imposition of a $1,000 restitution fund fine (Pen. Code, § 1202.4, subd. (b)), a $30 court construction fee (Gov. Code, § 70373), a $30 security fee (Pen. Code § 1465.8, subd. (a)(1)), and a $50 criminal laboratory fee (Health & Saf. Code, § 11360, subd. (a)), and to eliminate the references to a $40 criminal fine (Pen. Code, §1465.7), a $25 administrative screening fee (Pen. Code, § 1463.07), a $35 installment and accounts receivable fee (Pen. Code, § 1205, subd. (d)), and an unspecified fee to cover the costs of probation (Pen. Code, § 1203.1b).

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.