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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. KASHAAD BROWN, Defendant and Appellant.	2d Crim. No. B260000 (Super. Ct. No. BA423123) (Los Angeles County)

Kashaad Brown was convicted by jury of various crimes, including drug possession offenses, firearm offenses, and child endangerment. (Health & Saf. Code, §§ 11378, 11351, 11351.5, 11370.1, subd. (a); Pen. Code, §§ 29800, subd. (a)(1), 273a, subd. (b).) The jury also found true the allegations that Brown had two prior narcotics convictions. (Health & Saf. Code, § 11370.2, subd. (a)). The trial court sentenced him to ten years eight months state prison.

Brown appeals, contending the trial court erred by (1) denying his motions to traverse and quash a search warrant; (2) denying his motion to continue trial; (3) shackling his "star witness" in front of the jury; and (4) improperly instructing the jury on the burden of proof. We affirm.

Prosecution Evidence

After investigating Brown for drug sales, Detective Alfonso Lozano obtained a search warrant for Brown's apartment. During the investigation, Detective Lozano learned that Brown had a remote control to the driveway gate of the apartment complex and a key to the unit. Brown lived in the unit with his girlfriend, Jannette Chaidez, and their child.

Detective Lozano and another officer saw Brown get into a white Toyota parked at the apartment and drive to a gas station about four miles away. The officers detained Brown, and Brown admitted he had seven grams of methamphetamine in a burgundy van. The van was parked at the apartment.

Shortly after Brown was detained, police officers saw Chaidez leave the apartment in the burgundy van. The officers stopped the van and detained Chaidez. They found a quarter of an ounce of methamphetamine in the van.

Police officers recovered a key to the apartment and a mailbox key from Brown. The officers used Brown's key to enter the apartment. They found documents with Brown's name written on them (a DMV receipt, a cashier's check for $300, and a print out of Brown's rap sheet). They also found approximately $20,000 cash in plastic wrapping in the kitchen and $1,400 in the bedroom. They found a loaded handgun and a letter addressed to Brown inside a black bag next to the baby's crib. In the kitchen cabinet, the officers found a shoebox containing two digital scales,

methamphetamine, heroin, cocaine base, powder cocaine, PCP, and four different types of prescription pills. Given the quantity and variety of drugs, the packaging materials, the presence of scales and large amounts of currency, and the lack of paraphernalia, the detective opined that these narcotics were possessed for sale.

Defense Evidence

Chaidez testified that she had known Brown for seven years, and they had two children together. She owned the white Toyota and the burgundy van, and Brown had access to her cars. The apartment was her residence. The narcotics and the firearms found at the apartment did not belong to her, but she was "holding" them for a man named Joe. She sold some of the drugs. Chaidez admitted she had already pleaded no contest to possessing the narcotics found in her apartment.[1]

Chaidez said that Brown did not live at the apartment, but he visited "all the time" to see the baby. Brown did not sleep in the apartment; he slept in his car. Brown had slept in the car the night before the arrest. Brown had bags of clothing in the living room and some paperwork because he "didn't have nowhere to go." She tried to hide from Brown that the gun and narcotics were in the house. The set of keys the officers recovered from Brown was a spare set.

Gary Cooper, a private investigator, visited the apartment complex and observed there were no names listed on

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[1] Chaidez pleaded no contest to three counts of possessing drugs with a firearm and one count of misdemeanor child endangerment. She was sentenced to four years six months state prison.

any directories. The managers provided a mailbox key for the apartment, which he compared with the key the police recovered from Brown. He testified that they were not similar. He believed the key the police recovered resembled a U.S. post office box key.

Brown testified he had never seen the $20,000 or the shoebox. He did not know a gun was at the apartment. He claimed that his drug use was "totally separate" from Chaidez. He denied selling PCP or methamphetamine. He admitted he had two prior drug convictions for possessing cocaine and ecstasy for sale.

Brown slept at the apartment about four times a week in the two months before his arrest. He slept in the garage when Chaidez was at the apartment and in the bedroom when she was not at the apartment. He had all his mail and his belongings in the apartment. Chaidez sometimes gave him the keys to the cars and the apartment.

Rebuttal Evidence

Detective Lozano testified that he spoke with Chaidez after her arrest. Chaidez denied knowing anything about the gun or the drugs. Brown did not allow her to go into the kitchen, so she stayed away from that area. Chaidez claimed the methamphetamine in the burgundy van belonged to the van's previous owners.

Alejandra Gutierrez managed the apartment complex. She lived in the unit directly below Chaidez and Brown. She testified that Brown had been living with Chaidez for a year before his arrest and that Brown lived there the entire time. She often saw Brown and Chaidez together with their baby, and often heard them walking around and chatting upstairs. Gutierrez never saw Brown sleeping in the cars in the garage at night.

Search Warrant and Affidavit

Brown contends that the trial court erred by denying his motions to traverse and quash the warrant. After independent review of the record, including sealed materials, we disagree.

Police officers obtained the search warrant for the apartment based upon information provided by a confidential informant. A partly sealed affidavit describing the police contact with the informant supports the warrant. The trial court reviewed the warrant and affidavit and conducted an in camera hearing outside Brown's presence. (*People v. Hobbs* (1994) 7 Cal.4th 948, 971 (*Hobbs*).) The search warrant affiant, Detective Lozano, testified at the hearing.

In denying the motions to traverse and quash the search warrant, the court said it did "not find anything that should be turned over to the defendant." The court explained it asked Detective Lozano numerous questions relating to the reliability of the confidential informant and whether the informant could provide exonerating information. The court found there was "nothing that the confidential informant could offer," and there were no material misstatements or omissions.

A trial court may seal all or part of a search warrant affidavit if necessary to protect confidential information. (*Hobbs*, *supra*, 7 Cal.4th at p. 971.) Where a defendant moves to traverse or quash the search warrant, the court is required to conduct an in camera hearing. (*Id.* at p. 972.) The court must then determine whether there are sufficient grounds for maintaining the information confidential and the extent of the sealing necessary to preserve confidentiality. (*Ibid.*)

If the trial court determines that all or part of the search warrant affidavit was properly sealed, it must decide whether there is a reasonable probability the affidavit includes a false statement made knowingly and intentionally or with reckless disregard of the truth, and whether the false statement is necessary to the finding of probable cause. (*Hobbs*, *supra*, 7 Cal.4th at p. 974.) If not, the court must so inform the defendant and deny the motion. (*Ibid*.)

If the defendant moves to quash the search warrant, the trial court must determine whether, under the totality of the circumstances, there was a fair probability that evidence of a crime would be found in the place searched pursuant to the warrant (i.e., probable cause). (*Hobbs*, *supra*, 7 Cal.4th at p. 975.) If the court determines there was probable cause, it should so inform the defendant and deny the motion. (*Ibid*.)

We independently review the record and sealed materials. (*Hobbs*, *supra*, 7 Cal.4th at p. 976.) We review the court's sealing order and ruling on the motion to quash or traverse the warrant for abuse of discretion. (*Ibid*.; *People v. Martinez* (2005) 132 Cal.App.4th 233, 241-242.)

Based on our review of the search warrant affidavit, sufficient grounds exist to maintain the confidentiality of the information, and sealing is necessary for that purpose.

The trial court properly denied the motions to traverse and quash the search warrant. Based on our review of the record, there is no reasonable probability the sealed affidavit includes a false statement made knowingly and intentionally or with reckless disregard of the truth. (*Hobbs*, *supra*, 7 Cal.4th at p. 974.) The affidavit provides probable cause to support the search warrant for the apartment. (*Id*. at p. 975.)

We reject Brown's contention that the trial court precluded him from submitting written questions for the in camera hearing. A defendant should be afforded an opportunity to submit written questions for the trial court to ask witnesses called to testify at the in camera hearing. (*Hobbs*, *supra*, 7 Cal.4th at p. 973.) But Brown did not submit any written questions before the hearing, and the record does not reflect he was deprived of such an opportunity.

Motion to Continue the Jury Trial

Brown contends the trial court erred in denying his request to continue trial. He claims he needed more time to prepare his defense because he received additional discovery just days before trial, and his motions to quash and traverse the warrant were denied. The record does not support his contention that he received new discovery close to trial and he should have anticipated the ruling on his motions.

The trial court granted Brown's motion for self-representation on the date of arraignment. The court advised against self-representation, but Brown waived his right to counsel. Brown signed a waiver stating that he "will not and cannot expect to receive any special consideration or assistance from the Court." Brown did not waive time for trial, and the court indicated the last date for trial was June 27, 2014.[2] (Pen. Code, § 1382, subd. (a)(2).)

On May 7, Brown received discovery from the prosecution. Brown subsequently filed several motions, including a motion to suppress and an informal discovery request. On June 17, the trial court heard and denied Brown's motion to suppress. At that hearing, Brown stated "I didn't get any discovery." The

[2] All future undesignated dates are in the year 2014.

prosecutor indicated there was no pending discovery, and the trial court ordered the prosecutor to speak to Brown to determine if it could provide any particular document.

On June 23, the trial court heard and denied the motions to quash and traverse the search warrant. At the hearing, the trial court asked whether the parties were ready for trial. Brown stated that he was not ready. The trial court deemed the parties ready for trial, and said, "I believe that all discovery has been completed."

On June 25, Brown moved to continue trial. The motion was denied. The jury trial began later that day.

The moving party must show that good cause exists for a continuance of trial. (Pen. Code, § 1050, subd. (e).) A showing of good cause requires the defendant to demonstrate he has prepared for trial with due diligence. (*People v. Jenkins* (2000) 22 Cal.4th 900, 1037.)

"The determination of whether a continuance should be granted rests within the sound discretion of the trial court, although that discretion may not be exercised so as to deprive the defendant or his attorney of a reasonable opportunity to prepare." (*People v. Sakarias* (2000) 22 Cal.4th 596, 646.) While a pro se defendant must be given a reasonable opportunity to prepare a defense (*People v. Maddox* (1967) 67 Cal.2d 647, 652), a "'defendant who chooses to represent himself assumes the responsibilities inherent in the role which he has undertaken,' and 'is not entitled to special privileges not given an attorney. . . .' [Citations.]" (*People v. Barnum* (2003) 29 Cal.4th 1210, 1221.)

Although the minute order at the June 17 hearing notes the prosecution will "provide defendant with additional discovery," the reporter's transcript shows there was no new

discovery. Conflicts between oral pronouncement of judgment and the minute order are presumed clerical, and generally are resolved in favor of the oral pronouncement. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Even if new discovery was disclosed, Brown did not establish good cause for a continuance. He did not explain how any newly provided discovery affected his ability to prepare for trial.

Denial of Brown's motions to traverse and quash the warrant did not deprive him of a reasonable opportunity to prepare for trial. Brown should have anticipated proceeding with trial regardless of the court's ruling. Brown was aware since the time of his arraignment that trial would commence by June 27. Because Brown did not show good cause for a continuance, the trial court did not abuse its discretion in denying the motion.

Physical Restraints on Chaidez

Brown contends the trial court erred when it allowed Chaidez to remain handcuffed during her testimony at trial, and this "prejudiced the jurors' impression of her as a truthful witness." The record does not show a manifest need to shackle her. But any error was harmless.

Chaidez was handcuffed when she was sworn in at trial and throughout her testimony. After he was convicted, Brown filed a motion for a new trial, claiming he was prejudiced as a result of the jury seeing Chaidez in handcuffs during her testimony. The trial court denied the motion. The court found that the handcuffs were appropriate because Chaidez was seated about six feet from the jury and had a clear path to the exit door. It found that the court's instruction that Chaidez was in custody and that the jury could not consider that fact in any way or consider her less credible eliminated any prejudice, and that any

error was harmless because Chaidez's testimony was not helpful to the defense. In so finding, the court observed that Brown "could not see her in handcuffs, but [he] could see her in handcuffs when she was sworn in." However, Brown did not object to the handcuffs at the time of Chaidez's direct examination.

We review the trial court's order denying a new trial for an abuse of discretion. (*People v. Mar* (2002) 28 Cal.4th 1201, 1217.)

A witness cannot be placed in shackles in the jury's presence, unless there is a showing of a manifest need for such restraints. (*People v. Duran* (1976) 16 Cal.3d 282, 290-293 (*Duran*).) The showing of manifest need must appear on the record, unless the witness exhibits violent behavior, threatens violence or escape, or engages in disruptive conduct in the presence of jurors. (*People v. Slaughter* (2002) 27 Cal.4th 1187, 1213; *Duran*, *supra*, at pp. 290-291.)

Any prejudicial effect of shackling a witness is less consequential than that of shackling a criminal defendant, since the former does not directly affect the presumption of innocence. (*Duran*, *supra*, 16 Cal.3d at p. 288, fn. 4; see *People v. Valenzuela* (1984) 151 Cal.App.3d 180, 194-195 (*Valenzuela*).)

The record does not support that Chaidez exhibited any threat of violence or conduct suggesting that she was at risk of escaping. Based on this record, there was no showing of "manifest need" to support Chaidez's shackling. The fault is, to some extent, attributable to Brown. Had he timely objected, the trial court may have made an adequate record.

In any event, any error was harmless. Errors in shackling a defense witness are reviewed under *People v. Watson*

(1956) 46 Cal.2d 818 (reasonable probability of a more favorable outcome). (*People v. Ceniceros* (1994) 26 Cal.App.4th 266, 280.) Here, Chaidez's conviction and her in-custody status was a fact that Brown wanted the jury to know. Brown asked Chaidez if she was "arrested and charged" with possession of the narcotics and gun. Chaidez responded, "I'm getting 4 years and a half. [¶] . . . [¶] I got convicted. I took a deal." Given that the jury knew of Chaidez's in-custody status, the presence of physical restraints would not have likely resulted in any prejudice. (*Valenzuela*, *supra*, 151 Cal.App.3d at p. 194 ["Assuming, arguendo, that knowledge a person is currently incarcerated in prison permits an inference of diminished credibility, that inference is drawn by the jury as soon as they learn the witness is an inmate; the presence of shackles is superfluous to that concern"].)

The trial court instructed the jury that they were not to consider the fact that she was an inmate in determining her credibility. We presume that the jury understood and followed the instructions. (*People v. Cline* (1998) 60 Cal.App.4th 1327, 1336.) Further, in light of the overwhelming evidence of his guilt, there is no reasonable probability for a more favorable outcome for Brown. (*People v. Watson*, *supra*, 46 Cal.2d 818.) The error was harmless and does not warrant a reversal.

Jury Instructions on Burden of Proof

Brown contends CALCRIM No. 220 fails to properly instruct the jury that it must find that the prosecution proved each element of the crimes and the enhancements beyond a reasonable doubt. A similar argument was rejected in *People v. Ramos* (2008) 163 Cal.App.4th 1082 (*Ramos*). Brown asserts *Ramos* was wrongly decided, but we agree with *Ramos*.

CALCRIM No. 220 states: "A defendant in a criminal case is presumed to be innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt. Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt."

In *Ramos*, the court held that CALCRIM No. 220 "adequately explains the applicable law." (*Ramos*, *supra*, 163 Cal.App.4th at p. 1088.) The court observed that the instruction "explicitly informed" jurors of the correct burden of proof. (*Ibid.*) In that case the trial judge enumerated each element of the charged crime and the special allegation and stated that the People were obligated to prove each of those elements in order for the defendant to be found guilty. (*Id.* at p. 1089.) Since the court assumed the jurors were capable of understanding and correlating all jury instructions, it held "the instructions, taken as a whole, adequately informed the jury that the prosecution was required to prove each element of the charged crime beyond a reasonable doubt." (*Ibid.*)

Here, the instruction properly informed the jury of the prosecution's burden to prove each element of the charged offenses and the prior conviction allegations beyond a reasonable doubt. As in *Ramos*, the trial court here instructed the jury using CALCRIM No. 220, and it specified each element of the charged offenses that the prosecution must prove.

Similarly, the instruction on prior convictions explicitly informed the jury of the correct burden of proof. The court used CALCRIM No. 221, which provides: "The People are required to prove the allegations beyond a reasonable doubt. [¶] . . . [¶] . . . Unless the evidence proves an allegation beyond a

reasonable doubt, you must find that the allegation has not been proved."

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Gail Ruderman Feuer, Judge

Superior Court County of Los Angeles

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