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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. OSCAR MEDINA, Defendant and Appellant.	B261041 (Los Angeles County Super. Ct. No. BA385130)

APPEAL from a judgment of the Superior Court of Los Angeles County. Jose I. Sandoval, Judge. Reversed and remanded in part and affirmed in part.

Jin H. Kim, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie A. Miyoshi and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Oscar Medina (defendant) was convicted by a jury of 13 narcotics-related offenses which arose from events on June 9, August 3 and October 23, 2009. Defendant admitted that he had suffered a prior serious or violent felony conviction within the meaning of the Three Strikes law. The trial court sentenced him to a total term of 43 years four months in prison.[1] Defendant appeals, raising claims of insufficiency of the evidence, instructional error, abuse of discretion in the admission of expert testimony and sentencing error. He also requests we review the sealed transcripts of the hearings on his *Pitchess*[2] motion.

We reverse for insufficiency of the evidence the true findings on the weight enhancements to counts 1, 2 and 17 and the dollar amount allegation to the count 3 receipt of drug proceeds conviction and remand this matter for resentencing consistent with this opinion. The judgment is affirmed in all other respects.

BACKGROUND AND SUMMARY OF OFFENSES

1. Investigation

In June 2009, a multi-jurisdictional team of law enforcement personnel began investigating defendant and his brother Raul Medina (Raul) for

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[1] The trial court imposed the upper term of five years for the count 1 conviction for conspiracy to transport cocaine, doubled to 10 years pursuant to the Three Strikes law, plus a 20-year term for the 40-kilogram weight enhancement pursuant to Health and Safety Code section 11370.4, subdivision (a)(5). The court also imposed one-third the midterm for counts 3, 4, 6, 9, 11, 13 and 15. Specifically, the court imposed two years for count 3, 16 months for count 4, 32 months for count 6, two years for count 9, two years for count 11, 16 months for count 13 and two years for count 15, for a total of 13 years four months in prison. The court stayed sentence on counts 2, 5, 7, 14 and 17 pursuant to Penal Code section 654.

[2] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

narcotics trafficking. The team was headed by Los Angeles County Sheriff's Department Detective Anthony Van Beek and another case agent. The team included personnel from the West Covina Police Department, the South Gate Police Department, the California Highway Patrol and other jurisdictions. A significant part of the investigation involved wiretaps of target telephones. The team also used direct surveillance of the suspects.

2. June 9 Events (Counts 14 and 15)

On June 8, law enforcement officials intercepted a conversation between defendant and an unidentified man in which they discussed, in code, the man sending drug proceeds to defendant by the next day.

On June 9, law enforcement officers observed a Ford Lobo truck arrive at a house on Carinthia Street in Whittier, drive into the garage and then drive out about 20 minutes later. Other law enforcement officials followed and then stopped the Ford Lobo truck. They discovered over $400,000 in small bills inside a wall of the truck.

Defendant was convicted of conspiracy to possess more than $100,000 in drug proceeds (Health & Saf, Code,[3] § 11370.6, subd. (a), Pen. Code, § 182, subd. (a)(1)) and possession of more than $100,000 in drug proceeds (§ 11370.6, subd. (a)).

3. August 3 Events (Counts 1-4, 17)

On August 3, law enforcement officials intercepted a series of telephone calls between defendant and Raul. The conversation, although coded, indicated Raul was returning from Arizona to California with 16 kilograms of narcotics.

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[3] Further undesignated statutory references are to the Health and Safety Code.

Soon after the last call, sheriff's deputies saw Raul drive up to a house on Clara Street in Cudahy which deputies had under surveillance. Raul drove his Nissan Frontier into the garage. About 15 to 20 minutes later, defendant arrived in a silver Honda Accord. About 45 minutes after that, defendant and Raul drove off in the Honda.

Sheriff's deputies searched the house. Under the closet floor of a girl's bedroom, they discovered more than 40 "kilo-style" bundles of cocaine. The total weight of the recovered cocaine exceeded 40 kilograms.[4] They discovered a money counter in another closet.

California Highway Patrol (CHP) officers stopped the Honda and searched it. They discovered a bundle of cellophane-wrapped cash and a Ziploc bag containing a small amount of cocaine behind some air vents in the dashboard. A subsequent search of defendant uncovered a seven-page "pay owe" document in his wallet.

Defendant was convicted of conspiracy to transport cocaine (§ 11352, subd. (a), Pen. Code, § 182, subd. (a)(1)), transportation of cocaine (§ 11352, subd. (a)), and possession of cocaine for sale (§ 11351). The jury found true the allegations that the quantity of drugs involved in these three offenses exceeded 40 kilograms in weight within the meaning of section 11370.4, subdivision (a)(5). Defendant was also convicted of receipt of $25,000 or more in drug proceeds (§ 11370.9, subd. (a)) and false compartment activity (§ 11366.8 subd. (a)).

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[4] At trial, law enforcement officers differed slightly in their testimony as to the weight of cocaine discovered on August 3, although all the numbers were greater than 40 kilograms. Defendant does not dispute on appeal that the total weight of the cocaine recovered on August 3 exceeded 40 kilograms. To avoid needless confusion, we refer to the amount as "40-plus" unless we are quoting an officer's testimony.

4. October 23 Events (Counts 5-9, 11 and 13)

On October 21, law enforcement officials intercepted two calls between defendant and Raul. In the second call, the two men were discussing, in code, a drug transaction set to take place in two days.

On October 23, law enforcement officials intercepted a call between defendant and Raul. The call, conducted using coded language, showed Raul was transporting narcotics and that defendant told Raul to contact him when he reached a certain point.

CHP officers stopped Raul's vehicle on Interstate 10, searched it and found 22 packages of cocaine with a total weight of over 22 kilograms hidden behind a panel in the truck.

About an hour later, sheriff's deputies executed a search warrant at a house on South Paramount Avenue in Downey. There, they found defendant and some cash in a rear bedroom, a loaded handgun in another bedroom and more cash and "pay owe" notebooks in the kitchen. They searched the garage, including a Nissan Altima and a Toyota truck parked inside it. There, they found large bundles of cash behind the dashboard of the Nissan. They also found a bag containing a small amount of methamphetamine and a small amount of a substance containing cocaine base in the vehicle. Officers found several kilograms of cocaine in the Toyota.

Defendant was convicted of conspiracy to transport cocaine (§ 11352, subd. (a), Pen. Code, § 182, subd. (a)(1)), transportation of cocaine (§ 11352, subd. (a)), and possession of cocaine for sale (§ 11351) in connection with the cocaine found in Raul's truck. The jury found true the allegations that the amount of drugs in those three offenses exceeded 20 kilograms in weight within the meaning of section 11370.4, subdivision (a)(4). Defendant was also convicted of receipt of drug proceeds involving $25,000 or more

(§ 11370.9, subd. (a)), possession of a firearm by a felon (Pen. Code, § 12021.1) and possession for sale of cocaine in an amount exceeding four kilograms (§§ 11351, 11370.4, subd. (a)(2)) in connection with the drugs and cash found in the search of the Downey house.

DISCUSSION

I. Sufficiency of the Evidence Claims

Defendant claims there is insufficient evidence to support (1) his convictions for conspiracy to possess drug proceeds and possession of drug proceeds on June 9 (counts 14 and 15); (2) the true finding on the weight enhancement allegations related to the narcotics found in the August 3 search of the Cudahy house (counts 1, 2 and 17); and (3) the dollar amount allegation concerning the drug proceeds found in defendant's Honda on August 3 (count 3).

In reviewing all of defendant's insufficiency claims, "'we do not determine the facts ourselves. Rather, we "examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] The same standard of review applies to cases in which the prosecution relies primarily on circumstantial evidence and to special circumstance allegations. [Citation.] "[I]f the circumstances reasonably justify the jury's findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding." [Citation.] We do not reweigh evidence or reevaluate a

witness's credibility. [Citation.]'" (*People v. Nelson* (2011) 51 Cal.4th 198, 210.)

As we explain in more detail below, there is no evidence to support the true findings for the weight allegations to transportation and conspiracy to transport convictions in counts 1 and 17. There is also no evidence to support the dollar amount allegation to the receipt of drug proceeds conviction in count 3. There is substantial evidence to support all the other challenged allegations and convictions.

A. Counts 14 and 15—June 9

In counts 14 and 15, defendant was convicted of conspiracy to possess drug proceeds over $100,000 and possession of drug proceeds over $100,000, respectively, based on Rios Flores's visit to a Whittier house associated with defendant. Based on the circumstance that he never physically possessed the cash found in Rios Flores's truck, defendant contends there is no evidence that he constructively possessed the cash, aided and abetted Rios Flores's possession of that cash or conspired to possess the cash, and so there is insufficient evidence to convict him of conspiracy to possess drug proceeds or of possession of drug proceeds over $100,000 on June 9, 2009. There is substantial evidence to support these convictions.

1. Applicable law

"A conviction for conspiracy requires proof of four elements: (1) an agreement between two or more people, (2) who have the specific intent to agree or conspire to commit an offense, (3) the specific intent to commit that offense, and (4) an overt act committed by one or more of the parties to the agreement for the purpose of carrying out the object of the conspiracy. [Citations.]" (*People v. Vu* (2006) 143 Cal.App.4th 1009, 1024.)

Section 11370.6, subdivision (a), prohibits a person from possessing more than $100,000 which has been obtained as the result of the unlawful sale of any controlled substance, if the person has knowledge that the money has been so obtained.

Possession may be actual or constructive. "Constructive possession does not require direct physical control over an item 'but does require that a person knowingly exercise control or right to control a thing, either directly or through another person or persons.' [Citations.]" (*People v. Howard* (1995) 33 Cal.App.4th 1407, 1419.)

2. Evidence

In a June 8, 2009 telephone call, an unidentified man told defendant that he needed to give him "some stubs." Prosecution expert Detective Van Beek explained that "stubs" was a code word for narcotics proceeds. The men agreed to speak the next day and to meet on either June 8 or June 9, but no firm date or time was agreed to during the monitored phone call.

The next day, June 9, law enforcement officers were conducting surveillance of a residence in Whittier that was associated with defendant; their main target was defendant. While the officers were waiting, a man later identified as Rios Flores drove up to the residence in a Ford Lobo truck with Mexican license plates. The garage door opened within seconds of the truck's arrival, Rios Flores drove straight inside, and the garage door closed behind him. Twenty minutes later, the garage door opened and Rios Flores drove away in the truck. The law enforcement officers briefly followed Rios Flores. When they returned to the house 10 minutes later, they noticed a silver Honda Accord parked in front of the house which had not been there before. Soon after the officers' return, the driver of the Honda, later identified as defendant, drove the Honda away.

Other law enforcement officers stopped Rios Flores's truck. They discovered a hidden compartment with 30 duct-taped packages inside. The packages contained over $400,000 in small bills.

3. Analysis—Conspiracy

The phone call, considered in conjunction with the timing of Rios Flores's visit to a residence associated with defendant driving a truck in which currency was concealed, supports an inference that defendant entered into an agreement with the unidentified man to receive the cash found hidden in Flores's truck.

Additional conclusions also could appropriately be drawn by the jury from these events. Rios Flores appeared at the residence the day after the phone call. A reasonable jury could infer from this timing that the cash hidden in his truck was the drug proceeds mentioned in the June 8 phone call, and that Rios Flores had brought the drug proceeds to a house associated with defendant just as defendant and the unidentified man had arranged the previous day. That defendant was not waiting at the house for Rios Flores to arrive is not determinative. Rios Flores was in the garage for 20 minutes, and then left. Defendant arrived about 10 minutes later. A reasonable jury could infer that Rios Flores waited for defendant but left with the drug proceeds when defendant did not appear. That defendant arrived only about 10 minutes after Rios Flores left, and himself waited a while, then left, suggests only that defendant was late for the meeting.

4. Analysis—Possession

The offense of possession of drug proceeds, as opposed to conspiracy to possess drug proceeds, requires the defendant to have actual physical control over the money *or* to exercise dominion and control over the money. (See *People v. Howard, supra,* 33 Cal.App.4th at p. 1419.)

As we discuss above, it is reasonable to infer that Rios Flores brought the drug proceeds to the residence to turn them over to defendant, and that defendant was expecting him but was late for the meeting. By arranging to have the proceeds brought to him, defendant exercised dominion and control over those proceeds.

Defendant takes a different view of the evidence, pointing out that he was not present when Rios Flores arrived, which might also support an inference that he did not know about the cash concealed in the truck and/or did not expect the visit. As we discuss above, however, defendant's arrival at the house shortly after Rios Flores left supports the inference that defendant was merely late for the meeting. "'"[I]f the circumstances reasonably justify the jury's findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding." [Citation.]'" (*People v. Nelson, supra,* 51 Cal.4th at p. 210.) That is the case here.

B. August 3—Weight Allegations (Counts 1 and 17)

Defendant acknowledges there is sufficient evidence to support his convictions for conspiracy to transport cocaine and for transportation of cocaine, based on Raul's movement of cocaine from Arizona to the house in Cudahy on August 3. He contends there is no evidence to show that Raul transported 40-plus kilograms of cocaine on that date, and so there is

insufficient evidence to support the true finding on the enhancement for transportation of more than 40 kilograms of cocaine. We agree.

1. Evidence

In the intercepted phone calls between defendant and Raul on August 3, Raul stated in code that he had 16 kilograms of narcotics for which he had paid $320,000. There was expert testimony showing that the average price for a kilogram of cocaine was about $20,000. There were no references in the calls to other amounts of drugs or money. Thus, there is no evidence from which a jury could find that Raul was transporting more than 16 kilograms.

The mere fact that there were over 40 kilograms of cocaine in the Cudahy house does not support an inference that defendant caused it to be transported there, or conspired to transport it there. "Evidence of unlawful possession is not evidence of transportation." (*People v. Kilbourn* (1970) 7 Cal.App.3d 998, 1002-1003.) "The vice of the argument the [narcotics] found in [defendant's] possession must have been transported there in some manner, ergo, [defendant] transported them, is it substitutes speculation and conjecture for competent proof. Carried to its logical conclusion, the argument would permit conviction for transporting in any case where possession is proved. We do not believe this to be the purpose or intent of the statute forbidding transporting drugs." (*Id.* at p. 1003.)[5]

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[5] We note that the defendant in *Kilbourn* flew from Seattle to San Diego and checked into a motel. Later that day, San Diego police officers searched defendant's room and found a box containing LSD tablets inside defendant's suitcase. (7 Cal.App.3d at p. 1001.) The Court of Appeal found insufficient evidence to support defendant's conviction for transportation of a restricted drug, noting there was no evidence defendant "carried or conveyed them from any place, to any place at any time." (*Id.* at p. 1002.)

Respondent contends there is more than mere possession in this case. Respondent points to evidence showing that Raul worked for defendant and took orders from him. This is true, but there is no evidence that defendant gave Raul orders to bring the additional 25 kilograms of cocaine to the house, or even that Raul was the person who brought the 25 kilograms to the house.

Respondent argues that since all 40-plus kilograms in the house were in one location, they must have been brought into the house at the same time. Respondent maintains that since Raul brought some cocaine to the house on August 3, the jury could have inferred he brought all the cocaine. There is no basis for such an inference. The cocaine was packaged in kilogram bundles, and nothing required all 40-plus bundles to be moved at the same time or by the same person.

Respondent also points to defendant's statement to Raul that "I want you to pick up the bicycle" as additional evidence to support an inference that Raul had more than the 16 kilos he mentioned. Detective Van Beek opined that "bicycle" was code for a vehicle. This statement is extremely vague as to time, and there is no evidence that Raul carried out this task before his arrival at the Cudahy house. Even assuming that Raul picked up the other vehicle by swapping out the vehicle he was driving from Arizona for the vehicle he was driving when he arrived at the Cudahy house, there is no basis to find that the vehicle swap would also have involved picking up additional narcotics.

Defendant also stated in the same call that "[we] still need to pick up one from the alley to take over there." This might be a reference to another vehicle, since the statement followed the one about the bicycle. If not, the statement is so vague as to be meaningless. There is no way to determine what (or who) the two men needed to pick up, when they intended to do so, or

where the alley was. The testimony does not support an inference that Raul went to an alley and picked up 25 more kilos of cocaine before reaching the Cudahy house at 2:30 p.m.

Finally, respondent points to Detective Van Beek's testimony in response to a lengthy hypothetical matching the facts of this case. Van Beek testified that a man who behaved as defendant had behaved was involved in a conspiracy to transport cocaine exceeding 40 kilograms. Van Beek explained that his opinion was "based on the single seizure alone where 42 kilograms of cocaine was seized at the Cudahy address."

As we have explained, evidence of possession of narcotics is not evidence of transportation. (*People v. Kilbourn, supra,* 7 Cal.App.3d at pp. 1002-1003.) Detective Van Beek did not offer any additional testimony to support his conclusion that defendant conspired to transport all 42 kilograms on or about the date in question. He did not, for example, testify that it was the practice of narcotics traffickers that no new narcotics were brought to stash houses until all the older narcotics had been removed and so all 42 kilograms must have been brought by Raul. Thus, Detective Van Beek's testimony is not substantial evidence that defendant conspired to transport or aided and abetted the transportation of more than 40 kilograms of cocaine on August 3.

C. August 3--Possession for Sale Weight--Count 2

Defendant contends there is insufficient evidence to support the true finding on the 40-kilogram weight enhancement to his possession for sale conviction. He contends the evidence at most shows he shared possession of the 16 kilograms of cocaine Raul brought to the Cudahy house, not the additional 25 or so kilograms found with it inside the house. We agree.

As we discuss in section I.B above, there is no evidence that Raul brought more than 16 kilograms of cocaine to the Whittier house on August 3. Deputy Rudy Contreras opined that any location where a large quantity of cocaine was stored would be a stash house, and "anybody that would be privileged to go to a stash house has to be involved, has to be a conspirator in the transportation and distribution of narcotics." As Deputy Contreras acknowledged, women and children were allowed into stash houses but were kept ignorant of the presence of narcotics. The deputy's opinion was based on the premise that the individuals were "exposed" to the large amount of narcotics.[6] There is no evidence that defendant was exposed to the additional cocaine in the upstairs bedroom, and so no evidence to show that he had to be involved in the distribution of that cocaine

When law enforcement officers searched the house and vehicle an hour or two after Raul's return, they found a hidden compartment in the truck, but it was empty. The only significant amount of cocaine was the 40-plus kilograms found hidden in the upstairs "girl's" bedroom. These facts support a reasonable inference that the cocaine transported by Raul was unloaded from the truck and moved upstairs. However, no evidence supports a reasonable inference that defendant was involved in the movement and so must have seen the additional cocaine already being stored upstairs. On this date, Raul was at the house for 15 or 20 minutes before defendant arrived,

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[6] Deputy Contreras rendered his opinion in response to the following question from the prosecutor: "Based on the fact that there were 40-kilogram[]-size[d] packages of material and that there were two individuals that you believe were exposed to that material, does the amount of, like 40 kilograms, does that add to your – the fact that there was that much contraband, does that add to your or change your opinion about both people being involved in the hypothetical?"

and so had ample time to unload the cocaine himself prior to defendant's arrival .

Nothing in the phone calls between defendant and Raul shows that defendant intended to help Raul unload the cocaine and carry it upstairs. Near the end of the last phone call, Raul offered to call his "lady" so she could take the children downstairs "and we could go in the boy's room." Detective Van Beek explained that drug traffickers typically keep their wife/girlfriend and children away from the narcotics. Defendant replied, "Nothing with that right now fool. I only want—[How] Far are you."

To the extent that respondent contends that Raul worked for defendant and so the 40-plus kilograms possessed by Raul must have been under defendant's control, we do not agree. There is no evidence that Raul worked only for defendant. There is some evidence that Raul did not intend to reveal the presence of the additional 25 kilograms of cocaine in the house to defendant. Raul proposed meeting with defendant in "the boy's room." However, all the cocaine was found in a hidden compartment in a bedroom which appeared to belong to "a small little girl." This description of the room was based on the furniture and other items in the room, and the clothes in the closet. Thus, there is no evidence to support an inference that defendant was "exposed" to or aware of the additional 25 kilograms of cocaine, let alone exercised any control over them.

D. August 3—Receipt of Drug Proceeds—Count 3

Defendant contends there is insufficient evidence to show that the cash recovered from a hidden compartment in the Honda he was driving on August 3 totaled more than $25,000 and so his conviction for possession of drug proceeds in violation of sections 11370.9, subdivisions (a) and (f) must be reversed. We agree.

Respondent acknowledges that there was no testimony about how much money was in the bundle of cash recovered from the Honda. Respondent contends, however, the jury could infer that the amount was over $25,000 by looking at the photographs of the cash. The photograph shows a cellophane-wrapped bundle of money. There is no information about the denominations of the bills in the bundle, and so no way for anyone to estimate the value of the bundle.

Respondent also contends the jury could infer that defendant possessed $25,000 in cash within 30 days of August 3[7] based on his possession on August 3 of pay and owe sheets with transactions totaling significantly more than $25,000 and his possession on June 9 of more than $400,000 in cash.

Defendant was not tried on the theory that he possessed $25,000 in cash over a 30-day period surrounding August 3. As respondent notes, the prosecutor argued in closing that on August 3, defendant and Raul "maintained $25,879 in U.S. currency within a hidden compartment in the silver Honda." Even if we were to consider respondent's claim that a 30-day period should be considered, such consideration would not provide substantial evidence to support the conviction. Although there is ample evidence that defendant was involved in large scale drug trafficking, and at times was in possession of large amounts of cash, those circumstances do not support an inference that he received any particular amount of money at any given time. The pay and owe sheets recovered on August 3 are of no assistance either. They required explanatory testimony by Deputy Contreras, and the sample transactions he identified involved amounts that

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[7] Subdivision (f) of section 11370.9 provides: "This section shall apply only to a transaction, or series of related transactions within a 30-day period, involving over twenty-five thousand dollars ($25,000) or to proceeds of a value exceeding twenty-five thousand dollars ($25,000)."

were owed to defendant, that is, unpaid debts, rather than cash in hand on any particular day.

II. Expert Testimony Claims

Defendant contends the trial court erred in admitting certain opinion testimony from prosecution expert witnesses Deputy Contreras and Detective Van Beek which related to the weight allegations in counts 1, 2 and 17 and the convictions in counts 14 and 15, and that these errors were prejudicial. He claims that their testimony amounted to an improper opinion that defendant was guilty. He also contends some of the testimony lacked a factual foundation or was not based on specialized knowledge. Defendant further contends that if his counsel's objections were not sufficient to preserve his claims, he received ineffective assistance of counsel.

We agree that some of the expert testimony lacked a factual foundation and was not based on specialized knowledge. We find this testimony harmless under any standard of review. We find the remainder of the challenged testimony proper.

A. Applicable Law

A lay witness may provide opinion testimony if such opinion is "[r]ationally based on the perception of the witness; and . . . [h]elpful to a clear understanding of his testimony." (Evid. Code, § 800.) An expert witness may give an opinion if it is "[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact." (Evid. Code, § 801, subd. (a).)

"Testimony in the form of an opinion that is otherwise admissible is not objectionable because it embraces the ultimate issue to be decided by the trier of fact." (Evid. Code, § 805.)

"[T]he admissibility of expert opinion is a question of degree. The jury need not be wholly ignorant of the subject matter of the opinion in order to justify its admission; if that were the test, little expert opinion testimony would ever be heard. Instead, the statute declares that even if the jury has some knowledge of the matter, expert opinion may be admitted whenever it would 'assist' the jury. It will be excluded only when it would add nothing at all to the jury's common fund of information, i.e., when 'the subject of inquiry is one of such common knowledge that men of ordinary education could reach a conclusion as intelligently as the witness.'" (*People v. McDonald* (1984) 37 Cal.3d 351, 367.)

Expert testimony explaining the workings of subcultures is generally admissible. (See, e.g., *People v. Lindberg* (2008) 45 Cal.4th 1, 42-44 [expert testimony about beliefs, tenets, symbols and writings of white supremacists]; *People v. Gonzalez* (2006) 38 Cal.4th 932, 944 [expert testimony about gang membership, culture, habits, and activities].)

We review a trial court's decision to admit expert testimony under an abuse of discretion standard. (*People v. Lindberg, supra*, 45 Cal.4th at p. 45.)

A claim that a witness was permitted to give impermissible opinion testimony on the question of guilt is simply a claim of erroneous admission of evidence and is subject to the state law standard of review for state law error. (*People v. Coffman and Marlowe* (2004) 34 Cal.4th 1, 76; *People v. Watson* (1956) 46 Cal.2d 818, 836.) Defendant contends the opinion testimony in this case rendered his trial fundamentally unfair and so is subject to the standard for constitutional error set forth in *Chapman v. California* (1967) 386 U.S. 18, 24. Defendant's contention is incompatible with the reasoning of *Coffman and Marlowe.*

B. Contreras—Counts 1, 2 and 17

Defendant contends two pieces of testimony by Deputy Contreras were improper. Both involved the August 3 incident.

1. Garage Activity

The prosecutor asked the deputy if he had an opinion of what happened during the 45 minutes defendant and Raul were in the house together before they drove off in the Honda. Contreras replied: "Just based on the information I had that this particular pickup truck was going to arrive there and it had merchandise, narcotics merchandise, in the vehicle and then it was backed into the garage, Mr. Oscar Medina showed up and he went in the garage. And my opinion—my expert opinion would be that he helped his brother Raul unload the merchandise from the [hidden compartments] of the pickup truck and walk it upstairs and placed it in the—in the floor compartment of the bedroom."

Defendant contends that Contreras was not drawing on any specialized knowledge about drug trafficking culture to form this opinion. We agree.

Contreras did not, for example, testify that drug traffickers never moved their drugs alone, and so Raul would have waited for defendant before moving the drugs. He simply based his opinion on the telephone calls and the timing of defendant's movements, the same evidence that was available to the jury. We did not consider the testimony in assessing the sufficiency of the evidence supporting the weight allegations. Further, we have reversed those allegations for insufficient evidence. Accordingly, defendant is not entitled to any further relief.

Defendant also contends that Contreras's testimony amounted to an improper opinion on guilt, and that Contreras "testified that defendant aided and abetted the transportation of cocaine and the possession for sale of

cocaine and was involved in a conspiracy to transport cocaine." Defendant overstates the testimony. However, even assuming the testimony were improper, it was related to the weight enhancements, which we have reversed. No further relief is available to defendant.

2. Trafficking

Defendant contends that Deputy Contreras's reply to a hypothetical based on a portion of the events on August 3 amounted to improper testimony that defendant was guilty of narcotics trafficking. The prosecutor asked: "If two people met at a location a few minutes apart, like a team, and they both put their respective vehicles into a common garage that had direct access to the residence and then a short time later, say 45 minutes, both of the people left in the same car and that car was stopped and found to contain a hidden compartment with bundled cash, a small amount of narcotics, and then during a search of the residence that's attached to the common garage where the two people first met, you found northern [*sic*] 40 kilograms of narcotics in separate kilo-size[d] packages, do you have an opinion as to whether those people were involved in trafficking narcotics?"

Deputy Contreras stated that it was his opinion that "both individuals would be involved in narcotics trafficking, just based on the fact the amount of narcotics found in the residence, narcotics found in that void or trap." He continued, "Yes, I form the opinion that both individuals were involved in the sales and/or transportation of narcotics."

The prosecutor then asked the deputy how the amount of more than 40 kilos "shows that both people in this hypothetical were involved in the trafficking activities?" The deputy gave the somewhat nonresponsive answer that "I believe that Mr. Oscar Medina was there to help his brother Raul retrieve the contraband from the pickup truck, take it upstairs. Mr. Medina

obviously observed the narcotics in the location and that's what I based my opinion on."

The prosecutor attempted to clarify the deputy's answer, asking, "Based on the fact that there were 40-kilograms-size[d] packages of material and that there were two individuals that you believe were exposed to that material, does the amount of, like the 40 kilograms, does that add to your—the fact that there was that much contraband, does that add to your or change your opinion about both people being involved in the hypothetical?"

The deputy replied, "Yes, Sir. I believe they would both be involved because normally somebody that's holding that amount of narcotics, that location would be considered quote unquote 'a stash location' where the large amount is then moved or pieced out to different sources and anybody that would be privileged to go to a stash house has to be involved, has to be a conspirator in the transportation and distribution of narcotics."

Defendant contends this testimony, too, was an improper opinion on guilt. As we explain in section II.C above, this opinion lacks a factual foundation. We have reversed the weight allegations to which it pertains and so defendant is not entitled to any further relief.

C. Detective Van Beek (Counts 1 and 14 and Weight Allegations)

Defendant contends that Detective Van Beek's testimony was improper because it amounted to an opinion that defendant was guilty because it made reference to the specifics of this case. Van Beek's first opinion was permissible. His second opinion was not.

1. Count 14 Hypothetical

The prosecutor formulated a lengthy and complicated hypothetical scenario regarding the conspiracy counts and weight allegations:

The prosecutor: "All right, detective, I would like to pose you the following hypothetical question. I would like you to assume this first part takes place at a location that has three separate garage doors to a common garage. Assume a man was at that location that a truck with Mexican plates carrying more than $400,000 in bundled narcotics proceeds in a hidden compartment had left that location no more than 11 minutes earlier. Assume that the man's silver Honda car had a modified hidden compartment in the dash where the air bag should be. Assume that the man moved his car into the same garage that the truck left from. Assume that about 10 minutes later the man left in the car with the hidden compartment to a gas station and got gas. And assume that the man then got on the freeway and drove at a high rate of speed weaving in and out of traffic, made a fake transition to a freeway off-ramp, and at the last minute changed lanes back to the original freeway and while this was going on the man was constantly checking his review [*sic*] mirror.

"I would like you to also assume that two months later the man, same man, meets his brother in the garage at a different location where there is 42 kilograms of cocaine stored in a hidden area under the floor, and the man is driving the same silver Honda car with the hidden compartment he drove when he was at the first location, and there is cash and cocaine in the hidden compartment in the Honda.

"I would like you to further assume that about two months after that the man's brother is caught with 22 kilos of cocaine in two hidden compartments on the way back from Arizona, and the man himself, a

convicted felon, is also caught with five kilograms of cocaine, 433 grams of methamphetamine and a loaded gun.

"I also would like you to assume that during and around the time and date of these three events the man is intercepted on DEA wiretaps using trafficker lingo in coded language to discuss narcotics trafficking and the transactions."

The prosecutor then asked "whether the man—this man is involved in a conspiracy to possess narcotics proceeds exceeding a hundred thousand dollars [in count 14]." Van Beek replied that "he is part of the conspiracy." Van Beek continued: "That would be based on the evidence that was seized in this case, your hypothetical scenario that you just gave, narcotics being seized in the amount of over a hundred thousand dollars in which 403—approximately $403,000 was seized just in one seizure alone. . . . The fact that multiple kilograms of cocaine were seized during this investigation, not just cocaine but methamphetamine."

The lead up to the hypothetical question is overly long and detailed in light of the actual question. Considered in this context, Van Beek's is opining that facts showing a man's extensive involvement in the narcotics trafficking world, together with his behavior on the day the cash is found, connect him to the narcotics proceeds even though they were not found in his possession. This is permissible expert testimony. (See *People v. Harvey* (1991) Cal.App.3d 1206, 1216-1217, 1226, 1228 [expert properly permitted to testify that various activities by defendants were either consistent with or indicative of narcotics trafficking]; see also *People v. Harris* (2000) 83 Cal.App.4th 371, 374-375 [in possession for sale case, expert testimony that patients in state hospital generally pay in advance for contraband drugs using postage stamps

was admissible to help jury understand reason defendant had more than 800 postage stamps].)

The hypothetical certainly assumes that the facts showing the man's behavior are true, but this is the norm for hypotheticals. The hypothetical question may go beyond the permissible with its references to the specific color and make of the man's car, which is not relevant, and to the men returning from a specific location, which is also not relevant. These details were minor, however, and were not repeated in Van Beek's opinion. Accordingly, there is no reasonable probability or possibility that the jury would have reached a more favorable outcome if the details had been stricken. (*People v. Coffman and Marlowe, supra,* 34 Cal.4th 1, 76; *People v. Watson, supra,* 46 Cal.2d 818, 836.) Assuming, for the sake of argument, that the federal constitutional standard of review applies here, there would be no reasonable possibility of a more favorable outcome. (*Chapman v. California, supra,* 386 U.S. 18, 24.

2. Count 1 Hypothetical

The prosecutor then asked a follow-up question based on the hypothetical: "Do you have an opinion as to whether the man in the hypothetical is involved in a conspiracy to transport cocaine exceeding 40 kilograms by weight [count 1]?" Van Beek replied, "Yes." The prosecutor asked, "And what's that based on?" Van Beek responded, "It's based on the single seizure alone where 42 kilograms of cocaine was seized at the Cudahy address."

This opinion is improper in several respects. There was no mention at all of any movement of the 42 kilograms of cocaine in the hypothetical question, and so no basis for the opinion. The hypothetical refers only to the storage and seizure of that cocaine, not to the stated purpose for asking the

hypothetical: whether the conspiracy to transport involved 40 or more kilograms of cocaine. Further, as we discuss in section I.B, there is no evidence that more than 16 kilograms of cocaine were transported on August 3. Van Beek's opinion does not draw on any specialized knowledge to fill that evidentiary gap. It does not, for example, place the man's behavior in context or relate it to drug culture norms about drug handling. The opinion cannot assist the jury in any way.

As we have discussed in section I.B, *ante*, it is not reasonable to infer that Raul was transporting 42 kilograms of cocaine on August 3, or that there was conspiracy to transport that amount on that date. Detective Van Beek's improper testimony relates to the weight allegations. We have reversed the true finding on that allegation, and no further relief is available.

III. Instructional Error Claims

Defendant makes three claims of error related to the instructions given or omitted in this case. He contends (1) the trial court erred in failing to properly instruct the jury on section 11370.9, subdivision (a); (2) the trial court erred failing to instruct the jury sua sponte that it could find that there was one overall conspiracy rather than multiple separate conspiracies or, in the alternative, his trial counsel was ineffective in failing to request such an instruction; and (3) the trial court erred in failing to give a unanimity instruction for the false compartment activity charge in count 4. We see no prejudicial error in the trial court's section 11370.9 instruction, and find the trial court had no duty to instruct the jury to find the number of conspiracies or to instruct on unanimity for the false compartment charge.

A. Instruction on Section 11370.9

Defendant contends that the trial court erred in failing to instruct the jury on key elements of the offense of receipt of drug proceeds, and that the

error requires reversal of his convictions for that offense in counts 3 and 11. Respondent agrees that the trial court failed to instruct the jury on one element, but contends the error is harmless.

1. Offense

Section 11370.9, subdivision (a) provides: "It is unlawful for any person knowingly to receive or acquire proceeds, or engage in a transaction involving proceeds, known to be derived from any violation of [the California Uniform Controlled Substances Act] with the intent to conceal or disguise or aid in concealing or disguising the nature, location, ownership, control, or source of the proceeds or to avoid a transaction reporting requirement under state or federal law."

2. Instruction

To instruct the jury on the section 11370.9 receipt of drug proceeds charge, the court modified CALCRIM No. 2430, which instructs the jury on the offense of possession of drug proceeds over $100,000 in violation of section 11370.6. The court simply changed the dollar amount involved.

The modified instruction read in pertinent part: "To prove that the defendant is guilty of this crime, the People must prove that: [¶] 1. The defendant possessed more than $25,000[;] [¶] 2. The cash was obtained from the transportation of cocaine, a controlled substance; [¶] AND [¶] 3. The defendant knew that the cash was obtained as a result of the transportation of a controlled substance."

3. Analysis

Defendant contends the trial court failed to instruct the jury on three of the five requirements for a conviction under section 11370.9. Although we do

not agree with defendant's count,[8] we agree that the instruction did not clearly tell the jury that defendant (1) had to know the cash was drug proceeds at the time he received or acquired it and (2) had to have the intent to conceal or disguise or aid in concealing or disguising those proceeds.

As our Supreme Court recently made clear, instructional error which involves the omission of one or more elements of an offense is subject to review under the harmless error standard of *Chapman v. California, supra,* 386 U.S. 18, in accordance with *Neder v. United States* (1999) 526 U.S. 1. (*People v. Merritt*, *supra*, 2 Cal.5th 819 at pp. 824, 831.)[9] In *Neder*, "the court concluded that the error could be found harmless if the reviewing court determines beyond a reasonable doubt that it did not contribute to the verdict. [Citation.] Or, slightly differently, the court described the harmless error inquiry as this: 'Is it clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error?' [Citation.]" (*Merritt,* at p. 827.)

"'[W]here a reviewing court concludes beyond a reasonable doubt that the omitted element was uncontested and supported by overwhelming evidence, such that the jury verdict would have been the same absent the

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[8] As our Supreme Court has recognized, the elements of an offense can be "described or subdivided" in "different ways." (*People v. Merritt* (2017) 2 Cal.5th 819, 828.)

[9] Defendant contends the instructional error is structural because the court omitted three of the five "elements" of a section 11370.9 violation. In his opening brief, he based this contention on *People v. Cummings* (1993) 4 Cal.4th 1233. In his reply brief, defendant acknowledges that during the pendency of this appeal, the California Supreme Court held in *Merritt* that *Cummings* has no continuing validity. (*People v. Merritt, supra,* 2 Cal.5th at p. 831.) To preserve his federal constitutional claim, defendant contends *Merritt* is wrongly decided.

error, the erroneous instruction is properly found to be harmless.' [Citation.]" (*People v. Merritt, supra,* 2 Cal.5th at p. 832.) In addition, an examination of "what the jury, properly instructed, necessarily found" may also support the conclusion the error did not contribute to the verdict, particularly when the only contested issue is identity and the jury finds the defendant is the perpetrator. (*Ibid.*)

Defendant did not claim at trial that he was unaware the cash at issue was the proceeds of drug transactions. He simply claimed that it was not his cash. The jury was instructed that possession was an element of the offense, and so necessarily found that defendant did possess the cash. The evidence was overwhelming that defendant knew the cash was drug proceeds.

For the August 3 (count 3) conviction, the cash was found in a hidden compartment along with a Ziploc bag containing cocaine. Defendant had pay owe sheets in his wallet. For the October 23 (count 11) conviction, defendant had been involved in at least one large scale narcotics transaction previously and was in the midst of another such transaction. The cash was concealed in a closet in a house where defendant appeared to be staying and inside the dashboard of a Nissan Altima parked in the garage. About five kilograms of cocaine were found hidden in a pickup truck which was also parked in the garage. A notebook containing pay and owe sheets was found in a kitchen drawer along with more cash. No rational jury could have failed to find that defendant knew the cash was drug proceeds, and must have had such knowledge at the time he acquired the cash.

Defendant did not dispute that the cash was found in concealed locations, and the evidence was overwhelming on this issue. No rational jury could find that the concealment of the cash was unintentional. The cash was concealed while being stored (in the closet) and in connection with its

movement (in the Nissan Altima and in the Honda). This is overwhelming evidence that defendant intended to conceal the cash from the moment he acquired it. No properly instructed rational jury could have found otherwise.

We conclude beyond a reasonable doubt that the jury verdict would have been the same if the jury had been instructed on the knowledge and the intent requirements of section 11370.9. Thus, the error was harmless under *Chapman v. California supra* 386. U.S. 18.

B. Number of Conspiracies

Defendant was charged with and convicted of a total of three counts of conspiracy. He contends the trial court erred in failing to instruct the jury sua sponte that it must decide whether there were multiple conspiracies or one overall conspiracy. He further contends that if the trial court did not have a sua sponte duty to instruct on this issue, his trial counsel was ineffective in failing to request such an instruction.

1. Applicable Law

"It is well-settled that the essence of the crime of conspiracy is the agreement, and thus it is the number of the agreements (not the number of the victims or number of statutes violated) that determine the number of the conspiracies." (*People v. Meneses* (2008) 165 Cal.App.4th 1648, 1669.) As defendant acknowledges, the Courts of Appeal are divided on whether a trial court has a sua sponte duty to instruct the jury to determine how many conspiracies were committed. (*Id.* at pp. 1668-1669, 1671 [listing cases and finding duty to instruct]; see *People v. Jasso* (2006) 142 Cal.App.4th 1213, 1220 [duty to instruct]; *People v. Vargas* (2001) 91 Cal.App.4th 506, 554 [duty to instruct]; *People v. Liu* 1996) 46 Cal.App.4th 1119, 1133 [no duty]; *People v. McLead* (1990) 225 Cal.App.3d 906, 921 [no duty].)

We need not decide this issue. Whether as a result of a sua sponte duty or in response to a request from counsel, "[a] trial court is required to instruct the jury to determine whether a single or multiple conspiracies exist only when there is evidence to support alternative findings. [Citations.]" (*People v. Vargas, supra*, 91 Cal.App.4th at p. 554.) Here, there is no evidence to support a finding that defendant engaged in only a single conspiracy, and so no duty to instruct.

"'[T]he test of whether a single conspiracy has been formed is whether the acts "were tied together as stages in the formation of a large all-inclusive combination, all directed to achieving a single unlawful end or result."' [Citation.] 'Relevant factors to consider in determining this issue include whether the crimes involved the same motives, were to occur in the same time and place and by the same means,' and targeted a single or multiple victims. [Citation.]" (*People v. Meneses, supra,* 165 Cal.App.4th at p. 1672.)

2. Evidence

Here, there was no evidence that defendant's acts in June were tied together with his August and October acts, or that all were directed toward a single unlawful end or result. Defendant's conspiracy to possess drug proceeds on June 9 in Downey involved Rios Flores and an unidentified man. There is nothing to connect this isolated incident with defendant's August and October offenses, which occurred in different locations and were not shown to have involved Rios Flore or the unidentified man.

Defendant's August and October conspiracies have a superficial similarity, as both involve defendant's brother Raul transporting a large quantity of cocaine back from Arizona. This superficial similarity is not sufficient, however, to support a finding that there was only one agreement,

particularly since Raul's statements showed that the offenses involved two separate agreements.

Raul explained that after the August 3 arrest and seizure of a large quantity of cocaine, things changed. That seizure took place "[w]hen we almost were going to pay the guy, dude. And you know, he just started getting crazy, started sending shit over here like a mother fucker, and had me going . . . I was only supposed to go once a week, and I started going three (3) times a week, again, fool. . . . And then, they took a Honda that I had just bought for my old lady. . . they just took it, fool. They didn't even say nothing." The evidence showed that, on August 3, Raul and defendant were partners in an agreement to make money by distributing a (relatively) limited amount of cocaine. That agreement ended with the seizure of the accumulated cocaine and cash on August 3. Thereafter, they agreed to take on increased work and risk for the apparent purpose of repaying the value of the lost drugs and/or drug proceeds. These facts show separate conspiracies, not a single all-inclusive one. (See *People v. Meneses, supra*, 165 Cal.App.4th at p. 1672 [multiple conspiracy counts involving thefts of police reports were not part of one larger all-inclusive conspiracy even though defendant and Esquivel were alleged as conspirators in all conspiracy counts; counts occurred at different times and involved additional conspirators and Esquivel testified she would stop providing reports to defendant, then resume, then stop].)

3. Ineffective Assistance of Counsel

As we have explained, there is no evidence of a single all-inclusive conspiracy. Thus, trial counsel was not ineffective in failing to seek an instruction on the number of conspiracies. (*People v. Ochoa* (1998) 19 Cal.4th 353, 434 ["Counsel cannot have been ineffective for failing to seek an

instruction for which there was no supporting evidence: the court should properly have denied such a request."].)

C. Unanimity—False Compartment

False compartment activity in violation of section 11366.8, subdivision (a) occurs when a person "possesses, uses, or controls a false compartment with the intent to store, conceal, smuggle, or transport a controlled substance within the false compartment."

Defendant was charged with and convicted of one count of false compartment activity on August 3. He contends the prosecutor presented evidence of false compartments in three different vehicles and the trial court erred in failing to instruct the jury sua sponte that it was required to agree unanimously on which false compartment was the basis of their guilty verdict.

"In a criminal case, a jury verdict must be unanimous." (*People v. Russo* (2001) 25 Cal.4th 1124, 1132.) "Additionally, the jury must agree unanimously the defendant is guilty of a *specific* crime. [Citation.] Therefore, cases have long held that when the evidence suggests more than one discrete crime, either the prosecution must elect among the crimes or the court must require the jury to agree on the same criminal act. [Citations.]" (*Ibid*.)

Here, the prosecutor elected the false compartment in the Honda Civic in his closing argument. In discussing the events of August 3, the prosecutor stated, "They do the traffic stop of Oscar a few blocks away, they searched his vehicle, they find the hidden compartment where the air bag is supposed to have been removed, the vents have been tampered with, there's the pry marks and in the hidden compartment they find a very small amount of cocaine . . . and then they find the cash, you can see the cash in the exhibit."

After discussing the pay and owe sheets found in defendant's wallet during the traffic stop, the prosecutor stated, "And these events relate to the following counts: they relate to count 1 . . . ; they relate to count 2 . . . ; they relate to count 3, more than $25,000 in narcotics cash; they relate to count 4, which is Health and Safety Code section 11366.8, using a false compartment with the intent to transport narcotics; and they relate to count 17 . . . ." Because it is clear the prosecutor was seeking a conviction only as to the Honda, the trial court did not err in failing to instruct the jury on unanimity.

Defendant points out that in describing the events of August 3, the prosecutor also pointed out that the Nissan Frontier had hidden compartments. The prosecutor mentioned those hidden compartments much earlier in the account of events, and did so only briefly and in passing. Nothing in the prosecutor's summary of the August 3 events suggests that defendant should be found guilty of false compartment activity based on the compartment in the Nissan Frontier driven by Raul.

Defendant also points out that the prosecutor later used false compartment activity to explain the natural and probable consequences doctrine, stating that "in this case where you have a conspiracy to transport cocaine, you're also on the hook for anything that's a natural and probable consequence like possession of the cocaine, use of the hidden compartment to smuggle it in." He contends this argument must be referring to the Nissan Frontier. However, the prosecutor's remarks at this point in his closing were part of a larger explanation of the law of conspiracy. During this discussion, the prosecutor also referred to "driving someone around with a hidden compartment in your car," an apparent reference to defendant driving Raul in the Honda on August 3. At no point in discussing the facts of the case or the count 4 false compartment charge did the prosecutor suggest that

defendant should be found liable for false compartment liability under a natural and probable consequence theory.

IV. Sentencing

Defendant claims the trial court erroneously believed it lacked discretion to sentence count 3 concurrently. He also claims that the trial court erred in failing to stay count 4 pursuant to Penal Code section 654. We agree that the trial court was unaware of its discretion concerning count 2 and instruct the trial court to exercise that discretion on remand.

A. Count 3—Receipt of Drug Proceeds

Defendant contends that the matter must be remanded for resentencing because the trial court erroneously believed that it lacked discretion to impose sentence on the count 3 conviction for receipt of drug proceeds concurrently to the sentence on the count 1 conviction for conspiracy to transport drugs, both arising out of the events of August 3.

The trial court stated, "the court imposes one-third the midterm doubled to two years. The court notes that given [defendant's] prior record he's not eligible for me to impose that concurrently."

Respondent acknowledges that the trial court had discretion to impose the count 3 sentence concurrently, but contends the court's remarks should be understood as stating merely that it would be "inappropriate" to impose a concurrent sentence.

We believe the trial court meant what it said, that is, that a concurrent sentence was impermissible. The court was incorrect. (*People v. Hall* (1998) 67 Cal.App.4th 128, 167.) This matter must be remanded to permit the trial court to exercise its discretion.

B. Count 4—False Compartment Activity

Defendant contends the trial court erred in failing to stay the sentence on his count 4 conviction for false compartment activity pursuant to section 654. As we discuss in section III.C above, the prosecutor elected the hidden compartment in the Honda as the basis for that conviction. Defendant was also convicted of receipt of drug proceeds based on the cash found in the Honda's compartment. Defendant contends he had only one objective in committing both offenses and so the trial court erred in imposing consecutive sentences for the two convictions.[10]

Section 654 bars multiple punishments for convictions arising out of an indivisible course of conduct committed pursuant to a single criminal intent or objective. (*People v. Hester* (2000) 22 Cal.4th 290, 294.) Section 654 does not bar multiple punishment for multiple objectives in an indivisible course of conduct. (*People v. Garcia* (2008) 167 Cal.App.4th 1550, 1564.)

"'Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. . . .' [Citation.]" (*People v. Britt* (2004) 32 Cal.4th 944, 951-952.) "[I]f all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once. [Citation.]" (*People v. Harrison* (1989) 48 Cal.3d 321, 335.)

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10 We note that in his opening brief, defendant contended the prosecutor elected the hidden compartment in the Nissan Frontier, which was used on August 3 to transport cocaine from Arizona. Defendant was convicted for that transportation in counts 1and 17. He contends his only objective in possessing the false compartment was to transport the cocaine. Respondent replied, correctly, that the prosecutor elected the compartment in the Honda for the count 4 conviction. In his reply brief, defendant then made the argument we consider here concerning the Honda.

A violation of section 11366.8, subdivision (a) requires "the intent to store, conceal, smuggle, or transport a controlled substance." Thus, defendant necessarily possessed the hidden compartment with the objective of using it to conceal or transport drugs in addition to the objective of using it to conceal drug proceeds. Since defendant harbored multiple objectives in possessing the hidden compartment, the trial court did not err in imposing a consecutive sentence for that conviction.

V. *Pitchess* Motion

Defendant requests that we independently review the sealed transcript of the in camera hearing on his *Pitchess* motion for discovery of peace officer personnel records. Respondent does not object to this request.

The trial court granted defendant's motion for discovery of any instances of false reporting, fabrication of probable cause, theft of property or other information sought in the motion concerning Los Angeles Sheriff's Department Bonnie Bryant.[11] On February 14 and 15, 2013, the court conducted an in camera review of the records produced by the Sheriff's Department. Following the February 14 hearing, the court ordered certain documents to be produced to defendant. On March 6, 2013, the trial court ordered the disclosure of additional documents concerning Deputy Bryant.

When requested to do so by a defendant, we independently review the transcript of the trial court's in camera *Pitchess* hearing to determine whether the trial court disclosed all relevant complaints. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229.) We have done so, and find the transcript of the in camera hearings constitutes an adequate record of the trial court's review of any documents provided to it. We have also reviewed the trial

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[11] The motion also sought complaints of false arrest, dishonesty, fabrication of charges, evidence tampering, perjury and any other incidents which reflect on the deputy's character for untruthfulness or dishonesty.

court's March 6, 2013 order. The record reveals no abuse of discretion in the trial court's rulings. (See *People v. Hughes* (2002) 27 Cal.4th 287, 330 [court's ruling is reviewed for abuse of discretion].)

DISPOSITION

The true findings for the weight enhancements to counts 1, 2 and 17 and the dollar amount allegation to the count 3 receipt of drug proceeds conviction are reversed. This matter is remanded to the trial court for resentencing. The judgment is affirmed in all other respects

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

GOODMAN, J.*

We concur:

CHAVEZ, Acting P.J.

HOFFSTADT, J.

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* Retired judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.