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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. ISMAEL SANDOVAL, Defendant and Appellant.	B269089 (Los Angeles County Super. Ct. No. BA405444)

APPEAL from a judgment of the Superior Court of Los Angeles County. Melissa N. Widdifield, Judge. Affirmed in part and reversed in part and remanded with direction.

R.E. Scott, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Blythe J. Leszkay and Abtin Amir, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted appellant Ismael Sandoval of possession of methamphetamine for sale (Health & Saf. Code, § 11378) and conspiracy to possess methamphetamine for sale (Pen. Code, § 182, subd. (a)(1)). The trial court sentenced appellant to two concurrent low-terms of 16 months.

Appellant raises three issues on appeal: (1) the preliminary hearing court erred when it denied his motion to dismiss for violation of federal and state speedy trial rights; (2) the trial court erred when it allowed the prosecutor to cross-examine him regarding his immigration status; and (3) the trial court erred when it sentenced him to concurrent custody terms for both counts rather than stay one of the terms pursuant to Penal Code section 654. We reject the first two arguments. However, we agree with appellant on the third argument, and remand to the trial court for resentencing. In all other aspects, the judgment is affirmed.

STATMENT OF FACTS

A. Facts of the Charged Offenses

1. The Prosecution Case

a. The December 27, Search

At about noon on December 27, 2011, federal agents of the Department of Homeland Security, along with local officers from the Downey Police Department, executed a search warrant at 7075 Lexington Avenue, West Hollywood, CA, apartment 304.

When the officers knocked, appellant answered the door holding a rolled-up dollar bill. A second man, Torey Widener, was also at the apartment when the agents and officers entered.

Agents determined that Widener did not live at the apartment after a consensual search of his cell phone. Widener told the agents that he was at that location only to "get high" and have sex with appellant. The agents detained Widener briefly, and then allowed him to leave.

Upon entry into the one-bedroom apartment, Special Agent Nicole Freeman observed a plate on the coffee table. On the plate, Freeman observed a single line of a white crystalline substance that tested presumptively positive for methamphetamine. A rolled up dollar bill was nearby, which would have been used to ingest the methamphetamine.

Freeman searched the bedroom. In the drawer of an entertainment center in the bedroom, she found a quantity of what appeared to be methamphetamine and $2,400 in cash. In a linen closet in the hallway that led to the bathroom, Freeman found a box with an additional quantity of what appeared to be methamphetamine wrapped in clear plastic baggies, along with empty plastic baggies and a scale.

In the bedroom dresser, agents recovered a set of car keys that belonged to a 2009 black Mercedes sedan parked in the apartment building's underground garage. A DMV registration

check showed the car's registered owner to be Enrique Sanchez. Using the keys, agents searched the car and found a photocopy of appellant's driver's license. Photographs from appellant's cell phone showed appellant leaning on the Mercedes holding what appeared to be the keys to the car recovered from the apartment.

Freeman recovered multiple pieces of mail at the apartment. One was addressed to appellant at the Lexington address. Two additional letters were addressed to Manuel Sandoval at the Lexington address, and another was addressed to Manuel Sandoval at an address on North Madison Street in Los Angeles. Two more letters were addressed to Enrique Sanchez at the Lexington address. A single letter was addressed to appellant's brother, Jesus Sandoval, at an address on South Azusa Avenue in West Covina.

The total weight of the crystalline substance resembling methamphetamine seized at the Lexington apartment was 308.9 grams. The Los Angeles County Sheriff's Department tested a portion of that quantity, and determined it to be a substance containing methamphetamine.

Special Agent Marco Dkane is a qualified expert in the area of possession of controlled substances for sale. Agent Dkane opined that the methamphetamine possessed at the Lexington apartment was possessed for the purpose of sale based on two primary factors: (1) the total quantity in excess of 300 grams,

which would be approximately 3,000 to 6,000 individual doses, and (2) the large separate quantity found in the bedroom adjacent to numerous clean empty baggies and a scale, which indicated that the larger quantity was being broken down into smaller, saleable quantities. Agent Dkane also opined that it was common for methamphetamine dealers themselves to become methamphetamine users and addicts, because of its highly addictive nature.

b. Cell Phone Evidence

David Lipnitzsky, a compliance security analyst with AT&T, provided ongoing GPS coordinates for appellant's cell phone for the time period prior to the December search at the Lexington apartment. Pursuant to a court order, between December 21, 2011 and December 27, 2011, every 15 minutes Lipnitzsky emailed ongoing GPS coordinates for appellant's cell phone to Special Agent Christopher Bracken. Based upon these GPS coordinates, Agent Bracken opined that appellant was regularly travelling with the phone, but spending the nights, and parts of several days, at the Lexington apartment.

After law enforcement seized appellant's phone during the Lexington search, Agent Dkane extracted embedded GPS coordinates for the photos contained on the phone. The phone contained approximately 600 photos, about 80 percent of which were of appellant. Approximately 18 photos were taken at the

Lexington apartment between February 14, 2010 and November 11, 2011.

c. Wiretap Evidence

Both prior to and after the December 27, 2011 warrant at the Lexington apartment, Agents Dkane and Bracken conducted a drug-related wiretap investigation of a subject telephone belonging to Enrique Lara. On December 12, 2011, the wiretap intercepted a call between Jesus Sandoval and Lara, during which Sandoval used coded language to tell Lara he had shipped two pounds of high quality methamphetamine from Mexico to the United States. Sandoval told Lara that if he wanted the methamphetamine, Lara could make arrangements with Sandoval's brother in the United States. Lara agreed to the purchase, and suggested that Sandoval give his brother Lara's number so he could contact Lara.

On December 17, 2011, a call was made from appellant's cell phone to Lara. Carlos Soto, a Spanish language interpreter who monitored many of the calls intercepted during the wiretap, identified the caller as appellant, based upon his familiarity with appellant's voice both through intercepted calls and a voice exemplar. During the December 17 call, appellant, using coded language, told Lara he could pick up a pound of methamphetamine at the Lexington apartment for $9,000. Lara

told him it was too expensive, but to call him back if the price dropped.

The amount of methamphetamine found at the Lexington apartment totaled approximately 3/4 of a pound. At the time of the warrant execution, 1/4 pound of methamphetamine sold for approximately $2,400. The conversation between appellant and Lara showed that appellant was unable to sell the methamphetamine at $9,000 per pound to Lara because the price was too high. Based upon the 3/4 of a pound remaining at the Lexington apartment, the $2,400 in cash, and the baggies and scale available to break the methamphetamine down into smaller quantities, Agent Dkane opined that appellant had likely completed a sale for a 1/4 pound at $2,400.

2. The Defense Case

Francisco Lim, the manager of the Lexington apartment building, identified lease documents for apartment 304. Based upon the lease documents, Lim identified Enrique Sanchez as the first lessee of the apartment. Later Manuel Sandoval leased the apartment. Sanchez and Manuel Sandoval lived in the apartment together as roommates. Appellant never formally leased the apartment.

On cross-examination, Lim identified appellant as the person he knew as Manuel Sandoval.

Jaime Alvarado, the building's maintenance man, occasionally saw appellant at the complex. Appellant did not live there, but he would come and go.

Thomas Sanchez, an audio-video forensic analyst, analyzed the recording of the December 17, 2011 call from appellant's phone to Enrique Lara. Sanchez compared a voice exemplar from appellant to the call itself. Based upon his forensic computer analysis, Sanchez could not "empirically confirm" that the voice previously identified as appellant's by the intercept interpreter, was in fact appellant's voice.

Appellant testified in his defense. At the time of the search, appellant did not live at the Lexington apartment but instead at 1132 Shadydale Avenue in La Puente. Appellant identified five letters from the Department of Homeland Security sent to him at the Shadydale address. Appellant had previously lived at the Lexington apartment, but had moved out in March 2010 when he got married. He failed, however to change his address with the DMV.

At the time of the search, the apartment belonged to appellant's brother, Manuel Sandoval. His second brother, Jesus, also used the apartment. Appellant also used the apartment, approximately every other week while his wife was visiting her mother in Mexico, to take drugs and have sex with men. His wife did not know about these affairs.

On the day of the search, appellant was at the apartment to "get high" and have sex with Tory Widener, who he had met the night before. Widener brought the methamphetamine found on the plate on the coffee table. Appellant denied that the text message on his phone that he sent to Widener, which stated that appellant already had the "T," referred to "Tina" which is street slang for methamphetamine. Appellant was unaware of the methamphetamine, cash, and paraphernalia in the apartment at the time of the search. He denied the voice on the intercepted call from his phone to Enrique Lara was his.

Appellant admitted the phone seized at the Lexington apartment was his, but denied that the various text messages on the phone addressed to "Manny" or "Manuel" were intended for him. He also admitted that he drove the Mercedes in the apartment garage, but stated it belonged to his ex-boyfriend, Enrique Sanchez. Appellant admitted that he was staying at the Lexington apartment for the eight days prior to the search, but denied sleeping in the bedroom where officers and agents recovered methamphetamine, cash, and paraphernalia.

Despite being gay, appellant married his wife because he "wanted to change [his] way of being." But after about 11 months, sexual intercourse with her became difficult and he stayed with her not because he wanted to, but because he had to. After 11 months, he wanted to be with a man.

One year after his marriage, appellant applied for a change in immigration status as the spouse of a U.S. citizen, which was documented in one of the Homeland Security letters identified as a defense exhibit. Approximately three to four months prior to his testimony, appellant filed for divorce from his wife. Prior to his marriage, appellant had entered the country legally on a tourist visa, but was illegally in the country just prior to his marriage.

B. Facts Relevant to the Speedy Trial Motion

Not all of the facts asserted below are specifically established by the Clerk's Transcript, but based upon the argument on the motion to dismiss, none of the facts below appear to be in dispute.

After the December 27, 2011 search, agents arrested appellant. Because of the ongoing nature of both the wiretap and the overall investigation, no charges were filed and appellant was released on his own recognizance pursuant to Penal Code section 849, subdivision (b).

The wiretap terminated on January 6, 2012. On December 5, 2012, Deputy District Attorney John Niedermann reviewed the evidence obtained through the wiretap, the search, and other investigation by the officers and agents involved, and filed felony complaint No. BA405444 charging appellant with possession of methamphetamine for sale and conspiracy to possess

methamphetamine for sale. The same day, Agent Bracken signed a declaration of probable cause and a warrant was issued for appellant's arrest. On December 4, 2014, officers arrested defendant on the outstanding warrant when they also arrested him for additional drug offenses after another search warrant resulted in the seizure of methamphetamine, methadone, cocaine base, marijuana, and sales paraphernalia at his then residence. On the date of the hearing on the speedy trial motion to dismiss, appellant was still in custody, pending a source of bail hearing pursuant to Penal Code section 1275.1.

Prior to the preliminary hearing, which took place in February and March of 2015, appellant filed a motion to dismiss the charges that resulted from the December 27, 2011 search for violation of both federal and state speedy trial rights. After lengthy argument from both sides, the preliminary hearing court denied the motion without prejudice to it being renewed later in the trial court if the defendant was held to answer. On March 4, 2015, after conclusion of the preliminary hearing, the magistrate held defendant to answer on the charges arising from the December 27 search. Appellant waived time for arraignment on the information to March 25, 2015.

Without objection from the People, the magistrate lifted the Penal Code section 1275.1 hold regarding bail on March 12, 2015. Appellant thereafter posted bond, and appeared at his March 25,

2015 arraignment on the information out of custody. Defendant's trial commenced December 2, 2015. The jury returned its guilty verdicts on December 15, 2015.

All continuances of appellant's trial date after arraignment were done at appellant's request or with his agreement and with the appropriate waivers of time.

DISCUSSION

A. The Preliminary Hearing Court Properly Denied Appellant's Motion to Dismiss for Violation of Federal and State Speedy Trial Rights

Appellant's motion in the court below argued that the charges based upon the December 27, 2011 search should be dismissed because they violated both his federal and state speedy trial rights.[1] Specifically, appellant contended, and now contends, that the nearly one-year delay between his initial arrest and release on December 27, 2011, and the filing of the felony complaint against him on December 5, 2012, as well as the

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[1] Appellant's motion to dismiss filed in the lower court is not part of the record on appeal. This Court denied appellant's motion to augment the record to include an unconformed copy of the motion since there was no proof that the document was actually filed in the court below. For purposes of the appeal, however, this Court has reconstructed the substance of appellant's argument below from the People's Opposition to the Motion, appellant's Reply, the oral argument before the preliminary hearing judge, and the arguments made in his opening brief on appeal.

nearly two-year delay between the filing of the complaint and his arrest pursuant to the accompanying warrant on December 4, 2014, violate both his federal and state speedy trial rights.

As will be clear in the discussion that follows, federal and state speedy trial rights are distinct, with different triggering events and different requirements. Unfortunately, as is common with this type of challenge, both appellant and respondent, in their briefs, muddle these two distinct rights and their requirements. This Court, therefore, will set forth the distinct elements of each, and analyze appellant's contentions separately under each right.

1. The Federal Speedy Trial Right

The Sixth Amendment to the United States Constitution guarantees that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]" Based upon the clear language of the Sixth Amendment, the federal right to a speedy trial "is activated only when a criminal prosecution has begun and extends only to those persons who have been 'accused' in the course of that prosecution." (*United States v. Marion* (1971) 404 U.S. 307, 313.) One becomes an accused only upon "formal indictment or information or else the actual restraints imposed by arrest and holding to answer [on] a criminal charge[.]" (*Id.* at p. 320.)

In *People v. Martinez* (2000) 22 Cal.4th 750, the California Supreme Court discussed *Marion*, and further refined what constitutes a triggering event for attachment of the Sixth Amendment's right to a speedy trial. In *Martinez*, an officer arrested defendant for driving under the influence (DUI) on September 6, 1991. After arrest, she was promptly released on her own recognizance without having to post bail. (*Id.* at pp. 756, 761.) On September 16, the District Attorney filed a felony complaint charging defendant with DUI and alleging four prior convictions for DUI. An arraignment notice for September 30 was sent to defendant's last known address, but she failed to appear for arraignment. On January 13, 1992, a magistrate issued a warrant for her arrest. (*Id.* at p. 756.)

Nearly three years later, on November 28, 1995, officers arrested defendant for another DUI offense, and discovered the outstanding arrest warrant for the earlier felony DUI. Defendant was apparently held to answer on the felony charge, since the District Attorney filed an information charging her with the September 1991 felony DUI and prior DUI convictions on December 21, 1995. (*Martinez, supra,* 22 Cal.4th at p. 756.) Defendant moved to dismiss the information for violation of her federal right to a speedy trial. The trial court denied the motion without prejudice to her renewing it at trial. (*Id.* at pp. 756-757.)

A jury convicted defendant of the September 1991 felony DUI and she renewed her motion to dismiss. (*Martinez, supra,* 22 Cal. 4th at p. 757.) After an evidentiary hearing, the trial court denied the motion, finding that defendant's Sixth Amendment right did not attach until the filing of the information in December 1995. Since there was no lengthy delay between that date and her trial, her Sixth Amendment right to a speedy trial had not been violated. (*Id.* at p. 757.) The California Supreme Court's interpretation of *Marion, supra,* at the time of defendant's motion held that, absent the formal filing of an indictment or information, the federal right to a speedy trial attached only upon the actual restraints imposed by arrest *and* holding to answer on a criminal charge. (*People v. Hannon* (1977) 19 Cal.3d 588, 605-606 (*Hannon*).)

On appeal, the *Martinez* court affirmed the trial court's ruling, but also revisited its own interpretation of *Marion* as set forth in *Hannon, supra*, in light of United States Supreme Court precedent decided after *Hannon.* Significantly, for purposes of the immediate case, the *Martinez* court, before it began its analysis, observed "defendant does not contend that her Sixth Amendment right attached upon her initial warrantless DUI arrest in September 1991, apparently because she was promptly released without bail and without any sort of probable cause

determination by a magistrate." (*Martinez, supra,* 22 Cal.4th at p. 761.)

The *Martinez* court then reviewed the post-*Marion* case of *Dillingham v. United States* (1975) 423 U.S. 64, noting in that case, the United States Supreme Court held that the Sixth Amendment right to a speedy trial attached when the defendant was arrested and *released on bond,* even the though the indictment was not returned until 22 months later. (*Martinez, supra,* 22 Cal.4th at p. 762.) Based primarily upon *Dillingham, Martinez* held that *Hannon* construed the *Marion* phrase "holding to answer" too narrowly. (*Martinez,* at p. 762.) *Martinez* reiterated, based upon *Marion,* that the Sixth Amendment right to a speedy trial attaches upon indictment or information, but added that it also attaches upon arrest, ***unless*** the defendant is released without restraint or charges are dismissed. (*Martinez,* at p. 762.) The *Martinez* court, though critical of *Hannon*'s reasoning, also reiterated one of *Hannon*'s formal holdings: the filing of a felony complaint and the issuance of an arrest warrant, without actual execution of the warrant and continued restraint of some kind, do not trigger the Sixth Amendment right to a speedy trial in a felony case. (*Martinez,* at p. 763.)

From *Martinez*, then, we ascertain a number of principles regarding when the Sixth Amendment right to a speedy trial attaches in a felony case, and when it does not: (1) it attaches

upon the filing of an indictment or information in the court having jurisdiction over the trial; (2) it attaches upon arrest, with or without the filing of a formal charging document, so long as there is continued detention of defendant or he is subject to restraint associated with arrest, such as release only upon posting of a bond; (3) it does not attach upon arrest where there is no formal charging document and the defendant is released without restraint; and (4) it does not attach upon the filing of a felony complaint and the mere issuance of an arrest warrant, without execution of the warrant and continued restraint.

Based upon this summary of federal speedy trial principles, disposition of appellant's federal challenge is simply resolved. Contrary to appellant's assertion, his Sixth Amendment right to a speedy trial did not attach upon his December 27, 2011 arrest since he was promptly released on his own recognizance without being charged in any way. Contrary to his assertion, it did not attach upon the filing of the felony complaint and mere issuance of the accompanying arrest warrant on December 5, 2012. In this case, appellant's federal speedy trial right, at its earliest, attached on December 4, 2014, when he was finally arrested on the outstanding warrant, and held in custody pending a Penal

Code section 1275.1 hearing regarding the source of bail. (*Martinez, supra,* 22 Cal.4th at p. 762.)[2]

After his arrest on December 4, 2014 and the attachment of appellant's Sixth Amendment speedy trial right, the chronology shows no undue delay and thus no violation of that right. Appellant's preliminary hearing took three days: February 24, 25, and March 4. Appellant has not directed us to any part of the record which demonstrates that the preliminary hearing was delayed or continued over his objection. In fact, after being held to answer, appellant affirmatively waived his right to a speedy arraignment on the information, and asked that his arraignment be put over from March 18 to March 25, 2015.

Trial commenced approximately one year after his arrest, on December 2, 2015. As mentioned earlier, all trial continuances past the original 60-day period were either at his request or with his acquiescence and with appropriate time waivers. Under these circumstances, and given the complexity of the evidence related to the charges, we do not find the one-year

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[2] We say "at its earliest," only because *Martinez* ultimately held that the defendant's speedy trial right attached upon the filing of the information after her preliminary hearing. (*Id.* at p. 765.) The *Martinez* Court ruled thusly despite the fact that the defendant presumably had to post bail before being released after her arrest on the original felony warrant. For purpose of this appeal, however, we will treat appellant's arrest on the original felony warrant and subsequent incarceration pending a source of bail hearing as the triggering event.

delay between arrest and trial to be one that is "uncommonly long," and thus presumptively prejudicial so as to require a balancing of the length of the delay, reasons the prosecution could assert to justify the delay, the defendant's assertion or lack thereof of his right to a speedy trial, and actual prejudice to the defendant. (See, gen., *Barker v. Wingo* (1972) 407 U.S. 514, 530-533; *Doggett v. United States* (1992) 505 U.S. 647, 651-654; *Martinez, supra,* 22 Cal.4th at p. 766.)

We therefore affirm the preliminary hearing court's denial of appellant's motion to dismiss for violation of his Sixth Amendment right to a speedy trial.

2. The State Speedy Trial Right

The California Constitution, at article I, section 15, also recognizes a right to a speedy trial. Unlike its federal counterpart, however, the California right attaches upon the filing of a felony criminal complaint. (*Jones v. Superior Court* (1970) 3 Cal.3d 734, 740, overruled on other grounds in *Hannon, supra,* 19 Cal.3d at p. 606; accord *Hannon,* p. 607; *Martinez, supra,* 22 Cal.4th at p. 766; *People v. Butler* (1995) 36 Cal.App.4th 455, 466.) When a defendant claims a state speedy trial violation based upon delay between the filing of a felony complaint and his arrest upon that complaint, prejudice is not presumed. Rather, the defendant must affirmatively establish actual prejudice. If he does so, the prosecution must then, and

only then, sufficiently justify the delay to avoid dismissal. (*Martinez,* at pp. 766-767; *Butler,* at p. 466.)

Bare, conclusory statements are insufficient to establish actual prejudice. (*Serna v. Superior Court* (1985) 40 Cal.3d 239, 250; *Blake v. Superior Court* (1980) 108 Cal.App.3d 244, 250-252; *People v. Sahagun* (1979) 89 Cal.App.3d 1, 23-24.) A showing of actual prejudice must be supported by specific facts. (*Crockett v. Superior Court* (1975) 14 Cal.3d 433, 442.)

Based upon this Court's reconstruction of appellant's motion before the preliminary hearing court, see footnote 1 *ante*, appellant failed, and continues to fail, to make the requisite showing of actual prejudice. His argument below, as well as his argument to this Court, appears to be twofold: (1) his brother, Jesus Sandoval, fled the United States to Mexico, and could not be found; and (2) an individual named "Octavio" could not be found. It appears that Jesus Sandoval would either admit the drugs were his or testify that the drugs belonged to appellant's other brother, Manuel, rather than appellant. Insofar as "Octavio" is concerned, the record below apparently did not indicate in any way what "Octavio's" testimony would be.

Significantly, appellant apparently made no record below and none before this Court, setting forth what he had done to locate Jesus Sandoval or "Octavio." Additionally, appellant did not take advantage of the preliminary hearing court's denial of

the motion without prejudice, to further litigate, either immediately prior to trial or, as was done by the defendant in *Martinez, supra,* immediately after the jury's verdicts, the efforts made to locate Jesus or Octavio. Bare assertions of an inability to locate a witness, especially a close family member such as a brother, without any affirmative evidence of specific efforts actually taken to locate the witness, are insufficient to establish actual prejudice. It goes without saying, that a similar failure with respect to "Octavio," coupled with no offer of proof as to what his relevant testimony would be, is likewise insufficient.

The preliminary hearing court had an ample basis upon which to conclude that appellant made no showing of actual prejudice. Its decision to deny appellant's motion to dismiss for violation of his state speedy trial right is therefore affirmed.

B. Cross-Examination of Appellant about his Immigration Status Does Not Compel Reversal

1. The Trial Court did not Err

On direct examination, appellant introduced five letters from the United States Department of Homeland Security, addressed to him at the La Puente address, ostensibly for the purpose of establishing that location to be his permanent residence, rather than the Lexington apartment. One letter was an application for employment authorization, and another was an employment notice. One of the letters indicated that his

application for permanent residency as the spouse of a United States citizen had been approved.

Appellant, presumably, could have chosen other correspondence addressed to him at the La Puente address to establish residency. Having chosen Homeland Security correspondence that showed him to have been approved as a permanent resident, he cannot now complain that the prosecutor explored his immigration status further on cross-examination. We find no abuse of discretion. (See Evid. Code, § 352.)

More importantly, given the circumstances of this case, the history of appellant's immigration status directly related to his credibility as a witness. (See *People v. Wheeler* (1992) 4 Cal.4th 284, 295-296 [evidence of witness misconduct involving moral turpitude is relevant to credibility whether or not it has resulted in a conviction].)

In this case, appellant admitted that he married his wife, apparently a United States citizen, despite the fact that he was gay. Thereafter he continued to have, unbeknownst to his wife, multiple ongoing sexual relations with other men. Sometime after the marriage, the government approved his application for permanent residency. After his arrest and sometime during his prosecution, appellant filed for divorce. At trial, he tried to explain this chronology by telling the jury he wanted "to change"

his sexual orientation and that he loved his wife's daughters, but could not overcome his desire for men.

The jury however, was not required to accept this explanation. Instead, it could draw the reasonable inference that despite his sexual orientation, appellant married his wife for the sole purpose of obtaining legal residency, and then chose to divorce her after he achieved that purpose. Such conduct is essentially fraudulent, and is directly relevant to appellant's credibility as a witness. (See *People v. Wheeler, supra,* 4 Cal.4th at p. 295.) The cases cited by appellant are therefore distinguishable. (Cf. *In re Garcia* (2014) 58 Cal.4th 440, 461 [status as an illegal immigrant, without more, does not show moral turpitude]; accord *Velasquez v. Centrome, Inc.* (2015) 233 Cal.App.4th 1191, 1213.) We find no abuse of discretion. (See Evid. Code, § 352.)

2. Any Error was Harmless

In any event, even if the trial court erred by allowing such cross-examination, any error was harmless. Given the evidence recovered during the December 27, 2011 search, the wiretap and GPS evidence, and the patent unreasonableness of large parts of appellant's testimony where he attempted to "explain away" the overwhelming evidence against him, we find that it is not reasonably probable that appellant would have achieved a more

favorable result at trial had the evidence been excluded. (See *People v. Watson* (1956) 46 Cal.2d 818, 836.)

C. Appellant Cannot Be Punished Twice for Conspiracy and a Substantive Crime Indivisible from the Object of the Conspiracy

The trial court imposed concurrent terms for appellant's convictions for possession of methamphetamine for sale (Count 1) and conspiracy to possess methamphetamine for sale (Count 2). He contends that one of the terms should have been stayed pursuant to Penal Code section 654, rather than imposed concurrently. We agree.

Penal Code section 654 prohibits multiple punishment for separate offenses arising from a single occurrence where all offenses are incident to one objective. (*People v. Lewis* (2008) 43 Cal.4th 415, 519, overruled on other grounds in *People v. Black* (2014) 58 Cal.4th 912, 919.) Thus, typically, one cannot be punished both for conspiracy to commit a crime and the substantive offense that constitutes the object of the conspiracy. (See, e.g., *People v. Briones* (2008) 167 Cal.App.4th 524, 529; *People v. Ramirez* (1987) 189 Cal.App.3d 603, 615-616.)

Penal Code section 654 also prohibits multiple punishment for multiple acts, where those acts create a course of conduct that amounts to a single indivisible transaction. (*People v. Hairston* (2009) 174 Cal.App.4th 231, 240.) Whether a course of conduct is

divisible, and thus subject to multiple punishment, depends upon the intent and objective of the defendant. (*Ibid.*) If all of the offenses are incident to one objective, the court may punish the defendant for any one of the offenses, but not more than one. (*Ibid.*) If, however, a defendant has multiple or simultaneous objectives, independent of and not merely incidental to each other, he may be punished separately. (*People v. Cleveland* (2001) 87 Cal.App.4th 263, 267-268.) The determination of whether there was one, or more than one, objective is factual, and will not be reversed if substantial evidence supports the trial court's finding. (*Hairston,* at p. 240.)

The People contend that the objective of the charged conspiracy was to sell one pound of methamphetamine to Enrique Lara, but that there were other, "separate" objectives that justified multiple punishment: (1) appellant's personal use of methamphetamine, (2) appellant's sharing of methamphetamine with Widener, and, presumably, other lovers at the Lexington apartment, and (3) the earlier sale of 1/4 pound of methamphetamine about which Agent Dkane opined during his testimony. Based upon a review of the evidence at trial, in conjunction with the charges as defined in the information, we disagree. First of all, a reasonable interpretation of the evidence establishes both a conspiracy to sell methamphetamine and a conspiracy to possess methamphetamine for the purpose of sale,

between appellant and his brother, Jesus. This dual objective, alone, would not support separate punishments since, under the circumstances of this case, neither Jesus nor appellant could sell the methamphetamine without first possessing it for that purpose. In other words, although technically separate objectives, they are factually part of a single, indivisible, course of conduct.

To the extent the People argue that there was a conspiracy to possess methamphetamine for appellant's personal use or to deliver to Widener or others to facilitate sexual relations, it is not supported by the evidence. It is not reasonable to conclude that Jesus, the manufacturer of the methamphetamine as established in the wiretap, agreed that appellant could use the product himself for free or that he could use it, again for free, to entice lovers.

The information and the evidence, construed reasonably, show a conspiracy to sell methamphetamine and, necessarily, a conspiracy to possess methamphetamine for that purpose, objectives which are indivisible. Appellant, therefore, may be punished for substantive crime of possession for sale, or the crime of conspiracy to possess for sale, but not for both.

DISPOSITION

The case is remanded to the trial court for resentencing consistent with this opinion. In all other respects, the judgment is affirmed.

SORTINO, J.*

WE CONCUR:

BIGELOW, P. J.

FLIER, J.

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