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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.

LUIS ALEJANDRO PERDOMO
CALLEJAS,

Defendant and Appellant.

B270423

(Los Angeles County
Super. Ct. No. VA138149)

APPEAL from a judgment of the Superior Court of Los Angeles County. Paul Anthony Sahagun, Judge. Affirmed.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Abtin Amir, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant Luis Alejandro Perdomo Callejas was charged by information with one count of transporting or offering to sell methamphetamine (Health & Saf. Code, § 11379, subd. (a); count 1), and one count of possessing methamphetamine for sale (§ 11378; count 2). He was convicted by jury of both counts, and was sentenced to three years probation on the condition that he serve 90 days in jail. On appeal, defendant contends that the trial court erred when it refused to take judicial notice of his co-arrestee's no contest plea to charges arising from the arrest. We affirm.

BACKGROUND

On January 7, 2015, Los Angeles Sheriff's Deputy Matthew Gomez searched the website, Craigslist, to find people selling methamphetamine, which was commonly referred to as "Tina" by those transacting sales on the site. Deputy Gomez found an ad for "Tina" and contacted the poster through Google text messaging and email, posing as a female named Amber Watkins. Gomez asked the poster for a "teener" of Tina, which is one-sixteenth of an ounce of methamphetamine. He received a response from Roberto Ramos, indicating that he was "selling a teener for 70." Deputy Gomez and Ramos made arrangements to meet the following day at a hotel in La Mirada.

On January 8, at approximately noon, Deputy Gomez and his partner, Deputy David Rosales, arrived at the hotel in an unmarked patrol vehicle, wearing full uniforms. They parked in a lot north of the hotel, and waited for Ramos. As they were waiting, Deputy Gomez and Ramos corresponded by text, with Ramos updating Gomez about his estimated time of arrival, and saying he was driving a gray Honda. When Deputy Gomez saw a gray Honda pulling over next to the hotel, he received a text message from Ramos stating, "I'm here." However, the Honda

almost immediately started to drive away, so the deputies followed it. After the Honda failed to make a complete stop at an intersection, and failed to use a turn signal, the deputies initiated a traffic stop, and called for backup.

Defendant was driving the Honda, and Ramos was the passenger. As Deputy Gomez approached the car, he noticed a strong odor of marijuana emitting from the vehicle. Deputies Gomez and Rosales detained defendant and Ramos in separate cars. When asked why he was in the area, defendant reported that they had just visited Knott's Berry Farm.

Deputies searched the Honda, and noticed that the driver's door panel was loose. After prying it open, Deputy Gomez found a small canister containing a plastic bag of methamphetamine. A similar canister, also containing methamphetamine, was found in the passenger door panel. A total of nearly 2.6 grams of methamphetamine was recovered from the Honda, which is more than the 1.78125 grams contained in a "teener." Deputies also found marijuana in the car's cup holder and center console.

Deputy Gomez read defendant his *Miranda* rights, and defendant agreed to speak with him. Deputy Gomez asked defendant "who the methamphetamine and marijuana belonged to." Defendant said "it was both of ours" but clarified that the marijuana belonged only to him. Defendant was in possession of a medical marijuana card. Deputy Gomez asked defendant why he was selling methamphetamine, and defendant responded that "they were just trying to make a little money." Defendant did not deny owning the methamphetamine.

Defendant testified that he and Ramos were boyfriends, and that defendant supported them both by working as a barista and waiter. The two lived together with defendant's mother. The gray Honda was registered to both of them, and they shared the

car.

Defendant testified that on January 8, he was supposed to drive Ramos to school. Ramos asked defendant to drive him to his aunt's house in Buena Park so that Ramos could get money for his school books. Defendant did not know where they were going, so he followed Ramos's directions. After exiting the freeway, defendant was concerned they were lost, because the area did not look like Ramos's aunt would live there, so defendant pulled over. Ramos continued to give defendant directions, but defendant decided to drive to a restaurant and get something to eat while they "figure[d] it out." When a patrol car appeared behind the Honda, Ramos started "acting weird," and said that "he had some stuff in the car he shouldn't have." The deputies pulled the Honda over.

Defendant was placed in the back of a patrol car, and saw the deputies searching the Honda. At some point, he saw two plastic capsules placed on the roof of the car. Defendant knew there was marijuana in the car; he had just gotten his medical marijuana card.

After searching the Honda, Deputy Gomez asked defendant if the "stuff" was his. The deputy did not explain what "stuff" he was referring to. Defendant thought he was asking about the marijuana, and said, "yeah, it's mine." Defendant had no idea methamphetamine was involved. He first learned about the methamphetamine when he was being booked.

Defendant and Ramos were still dating. Ramos apologized to defendant for getting him in this situation.

Defendant's mother testified that defendant had lived with her since his birth. She knew he smoked marijuana but had never seen him use or sell methamphetamine. She did not find out that defendant had been charged with possessing

methamphetamine for sale until one week before trial. She had never seen methamphetamine and did not know how it was used.

DISCUSSION

Defendant contends the trial court erred when it declined to take judicial notice of Ramos's no contest plea to charges arising from their arrest, reasoning that the plea is a court record, and is not hearsay. Defendant contends he was prejudiced by the error because his defense was that he did not know the drugs were in the car, and that they belonged to Ramos. We find no error.

1. Relevant Proceedings

During trial, defense counsel asked the court to take judicial notice of Ramos's no contest plea in a separate proceeding, to charges arising from his arrest. Counsel noted that the request for judicial notice "might be moot . . . if I bring Mr. Ramos in. I just, I don't have him this morning" The People objected without stating a basis for the objection.

Defense counsel argued that judicial notice was proper because the plea was a court record. The court stated its view that the plea was hearsay. The court expressed concern that defendant wished to "introduce that for the purpose of showing that [Ramos] accepted responsibility for the drugs and a plea of no contest is not an exception to the culpability. [¶] It is an indication he is not contesting the charge. . . . [¶] But you wish to introduce that for the purpose of not subjecting him to cross-examination. . . . [¶] And that I think is not permissible. If he wished to come in and explain himself and tell the jury the drugs were his . . . he certainly can do so and certainly the defendant has the right to call him. [¶] But to introduce this hearsay statement which would . . . prevent the People from cross-examining [him] I think is not fair." The court sustained the

objection.

Later in the proceedings, defense counsel informed the court that he was still considering calling Ramos as a witness, and asked the court if it “is definitely still not allowing me to judicially notice that no contest plea?” The court invited counsel to provide some additional authority, but indicated that it believed its earlier ruling was correct. Counsel asked for and was granted additional time to decide whether to call Ramos, but ultimately decided not to.

2. Analysis

“‘[A] court may . . . take judicial notice of any court record in the United States. [Citation.] This includes any orders, findings of facts and conclusions of law, and judgments within court records. [Citations.] However, while courts are free to take judicial notice of the *existence* of each document in a court file, including the truth of results reached, they may not take judicial notice of the truth of hearsay statements in decisions and court files.’” (*In re Vicks* (2013) 56 Cal.4th 274, 314; see also Evid. Code, § 452, subd. (d).) Notwithstanding a court’s discretion to take judicial notice of court records, only relevant evidence is admissible. (Evid. Code, §§ 210, 350.) A trial court’s evidentiary rulings are reviewed for abuse of discretion. (*People v. Clark* (2016) 63 Cal.4th 522, 597; see also *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 549.)

Here, the trial court found that Ramos’s plea was hearsay and irrelevant because defendant sought to “introduce [it] for the purpose of showing that [Ramos] accepted responsibility for the drugs and a plea of no contest is not an exception to the culpability. [¶] It is an indication he is not contesting the charge. . . .”

Clearly, the plea was irrelevant. Evidence that Ramos

entered a no contest plea in another proceeding, without more, could not prove that defendant did not participate in the crime. Although a no contest plea has the same legal effect in a criminal court as a plea of guilty, it is not the *same* as a guilty plea. A defendant may plead no contest when he does not admit guilt, yet does not wish to go to trial. (Pen. Code, § 1016, subd. (3).) Thus, Ramos’s plea of no contest was irrelevant to prove either that Ramos admitted guilt of possessing and transporting the methamphetamine for sale, or that defendant was not guilty. It was also inadmissible for the hearsay purpose to prove the truth of the matter asserted, that Ramos was guilty of possessing the methamphetamine for sale, and therefore defendant should be exonerated. (*People v. Cummings* (1993) 4 Cal.4th 1233, 1295, disapproved on another ground in *People v. Merritt* (Mar. 20, 2017, S231644) __ Cal.5th __ [2017 Cal.Lexis 1792, p. *21] [conviction of another defendant in a separate trial as an accessory to murder was both irrelevant and inadmissible hearsay in the murder trial of the direct perpetrator].)

Evidence of third party culpability “ ‘must link the third person either directly or circumstantially to the actual perpetration of the crime. In assessing an offer of proof relating to such evidence, the court must decide whether the evidence could raise a reasonable doubt as to defendant’s guilt. . . .’ ” (*People v. Basuta* (2001) 94 Cal.App.4th 370, 386-387.) Here, the evidence of defendant’s guilt was overwhelming, and it was no less compelling because Ramos pled no contest to the same crimes.

Counsel made the strategic choice to seek introduction of the fact of Ramos's plea, rather than call Ramos to testify the methamphetamine belonged only to him, and defendant did not know it was in the car, thereby exposing Ramos to potentially damaging cross-examination that could weaken the defense. It is not reasonably probable that judicial notice of Ramos's no contest plea would have affected the outcome of these proceedings. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

DISPOSITION

The judgment is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.