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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. MARK ANTHONY BURBOA, Defendant and Appellant.	2d Crim. No. B275784 (Super. Ct. No. 2013035740) (Ventura County)

Mark Anthony Burboa appeals his conviction by jury for possession of a controlled substance in a jail facility. (Pen. Code, § 4573.6.)[1] In a bifurcated proceeding, the trial court found that appellant had suffered a prior strike (§§ 667, subds. (c)(1) & (e)(1), 1170.12, subds. (a)(1) & (c)(1)) and had served three prior prison terms (§ 667.5, subd. (b)). Appellant was sentenced to seven years state prison. On appeal, appellant contends that the

[1] All statutory references are to the Penal Code unless otherwise stated.

trial court erred in receiving evidence that he entered a plea in an unrelated case and was sentenced and remanded to jail the day he committed the charged offense. We affirm.

Facts and Procedural History

On November 19, 2013, appellant was sentenced in an unrelated case and remanded to the Ventura County Jail. As a new inmate, appellant was booked and subject to a strip search. Ventura County Sheriff Deputy Stephen Cloninger instructed appellant to bend forward, spread his buttocks, and cough. Deputy Cloninger saw a white wad in appellant's rectum area and asked what it was. Appellant said "it's nothing" and was instructed to remove the wad and drop it on the floor. An object, the size of a quarter wrapped in toilet paper, fell to the floor. Inside the toilet paper was .19 grams of methamphetamine wrapped in plastic.

Evidence of Prior Plea and Sentence to Show Motive

Appellant contends that the trial court erred in admitting evidence that he entered a plea in an unrelated case and was sentenced the day he tried to smuggle contraband into jail. Before trial, the prosecution brought a motion to take judicial notice that appellant entered a plea in two unrelated cases and was sentenced on November 19, 2013. The prosecution argued that the evidence was relevant to show that appellant knew he would probably be remanded to jail and had a motive to smuggle drugs into the facility. Overruling appellant's relevancy and Evidence Code section 352 objections, the trial court found that the evidence was relevant to show motive but granted a defense request to limit the evidence to only one case.

Before the prosecution called its first witness, the jury was instructed: "In Ventura County Court Case no.

2013029533, on October 21st, 2013, the defendant, Mark Anthony Burboa, pled guilty in an unrelated case to this matter. Sentencing in that unrelated case took place on November 19, 2013. After the defendant was sentenced, he was taken into custody by the Ventura County Sheriff's Department to begin serving his jail sentence."

Appellant contends the evidence is too speculative to infer that he knew that he would be remanded to jail that day. He claims there is no nexus between the prior conviction and the current offense to show motive. The prosecution argued that appellant knew there was a chance he would be remanded in the other case and "wanted to make sure that he had something in jail. . . . Having contraband in jail is a valuable asset." Relevant evidence is defined as evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) The trial court has "wide discretion" in deciding the relevance of evidence. (*People v. Kelly* (1992) 1 Cal.4th 495, 523.) Appellant makes no showing that the trial court's ruling was arbitrary, capricious, or patently absurd. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.)

Appellant argues that the prior conviction evidence is inadmissible character evidence under Evidence Code section 1101, subdivision (a). Appellant forfeited the issue by not objecting on that ground at trial. (*People v. Partida* (2005) 37 Cal.4th 428, 433-434.) On the merits, the evidence was properly admitted to show motive or the absence of mistake or accident. (Evid. Code, § 1101, subd. (b); *People v. Ewoldt* (1994) 7 Cal.4th 380, 409.) Evidence that appellant was sentenced in an unrelated case and remanded to jail that day was admissible to explain why appellant concealed drugs on his person. It showed

motive and contradicted the defense theory that Deputy Cloninger conducted "a sloppy investigation" and accidentally discovered drugs on the jail floor. (E.g., *People v. Hendrix* (2013) 214 Cal.App.4th 216, 242 [prior bad acts relevant to show intent and the absence of mistake or accident].)

Appellant asserts that the probative value of the prior conviction evidence was substantially outweighed by the probability that its admission would create a substantial danger of undue prejudice. (Evid. Code, § 352.) The danger of prejudice was minimal because the jury knew that appellant was being booked when the drugs were found. In the words of the trial court, "the jury is going to hear that he's a new inmate because he's going through the booking process and the strip search process. So they're going to hear that he just recently got in the jail. So I don't think there's any prejudice by telling the jury that he just got sentenced on that day and was remanded." There was no abuse of discretion. (*People v. Fuiava* (2012) 53 Cal.4th 622, 667-668.) Because the jury was not told what offense appellant pled to or what the sentence was, there was no basis for the jury to infer that appellant had a propensity to behave a certain way. (See, e.g., *People v. Callahan* (1999) 74 Cal.App.4th 356, 376.)

Appellant argues that the lack of a limiting instruction (e.g., CALCRIM No. 375) compounded the prejudicial effect of the evidence. The trial court, however, had no sua sponte duty to give a limiting instruction. (*People v. Farnam* (2002) 28 Cal.4th 107, 163.) "When evidence is admissible as to one party or for one purpose and is inadmissible as to another party for another purpose the court *upon request* shall restrict the evidence to its proper scope and instruct the jury accordingly." (Evid. Code, § 355, italics added; *People v. Collie* (1981) 30 Cal.3d

43, 63-64 [no duty to give a limiting instruction where evidence of prior bad acts is received pursuant to Evidence Code section 1101, subdivision (b); *People v. Padilla* (1995) 11 Cal.4th 891, 950-951, overruled on other grounds in *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1.)

The alleged error in admitting the prior conviction evidence and not giving a limiting instruction was harmless. (*People v. Partida*, *supra*, 37 Cal.4th at p. 439 [applying *People v. Watson* (1956) 46 Cal.2d 818, 836 harmless error analysis].) Deputy Cloninger saw the object in appellant's rectum and instructed appellant to pull it out and drop it, which is what appellant did. It took no leap in logic for the jury to find that appellant possessed contraband in a jail facility. But for the admission of the prior conviction and sentencing evidence, it is not reasonably probably that appellant would have obtained a more favorable result. Appellant makes no showing that his due process rights were violated or that he was denied a fair trial. (*People v. Demetrulias* (2006) 39 Cal.4th 1, 19; *Partida*, *supra*, 37 Cal.4th at p. 439.)

Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Gilbert A. Romero, Judge

Superior Court County of Ventura

Linda L. Currey, under appointment by the Court of Appeal, for Defendant and Appellant.

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