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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

NATHANIEL LEE LEWIS,

Defendant and Appellant.

B240174

(Los Angeles County  
Super. Ct. No. BA382139)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Barbara R. Johnson, Judge. Affirmed.

Lenore De Vita, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Nathaniel Lee Lewis appeals from the judgment entered following a jury trial which resulted in his conviction of the sale of cocaine base (Health & Saf. Code, § 11352, subd. (a)) and the trial court's findings that he had served three prison terms (Pen. Code, § 667.5, subd. (b)), suffered two prior convictions within the meaning of the Three Strikes law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and suffered a prior conviction for the sale or transportation of a controlled substance (Health & Saf. Code, § 11370.2, subd. (a)). The trial court sentenced Lewis to nine years in prison. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *1. Facts.*

##### *a. The prosecution's case.*

Bill Neff is a special agent for the Drug Enforcement Administration (DEA). His duties include "enforcing the Controlled Substance Act of the United States . . . which involves . . . the investigations of narcotics traffickers."

On October 26, 2010 Neff, another DEA agent and Los Angeles Police Department (LAPD) officers conducted a "buy-bust operation." During such an operation, "either an undercover officer or a confidential source goes out and purchases drugs from a narcotics trafficker and then, immediately thereafter, the narcotics trafficker is [taken into custody] . . . ." On this particular occasion, the DEA and LAPD were using a confidential source, Jesus Calbillo, to purchase the narcotics. Neff had worked with Calbillo on and off for nine years.

Neff was present when Calbillo telephoned Lewis. Calbillo had been given Lewis's number by LAPD Detective Luz Bednarchik and instructed to arrange for the purchase of \$100 worth of methamphetamine or powder cocaine. After he had arranged to make the purchase in a parking lot at the intersection of Cahuenga Boulevard and Yucca Street, Calbillo was searched, his vehicle was searched, and he was provided with an "audio/video recording device" and pre-recorded money.

Calbillo, the officers and agents arrived at the parking lot between 6:00 and 7:00 o'clock that evening. Calbillo had driven his own car. Another DEA agent, Lisa Leduc, and Detective Bednarchik were in an "unmarked Los Angeles City vehicle . . . designed to blend in for surveillance purposes" and Neff was driving an "arrest van." Calbillo was in contact with Leduc and Bednarchik and, between 6:30 and 7:00 p.m., he informed them that the operation had been moved to a Rite-Aid parking lot at the intersection of Western and Franklin. Leduc used a radio to inform the rest of the team of officers working on the operation and they, including Neff, drove to the Rite-Aid parking lot. After Neff parked his van, he saw Calbillo arrive in his vehicle. Calbillo parked his car against a cinder block wall, approximately 30 yards from Neff's van. There was nothing "interrupting [Neff's] line of sight . . . to Mr. Cal[b]illo's vehicle."

Approximately 15 minutes after Calbillo, the officers and agents had arrived, a blue and yellow taxi cab pulled into the lot. The cab was being driven by Lewis. No one else was in the car.

Calbillo, who was standing outside of his vehicle, approached the passenger side of the taxi cab and directed Lewis to park the vehicle next to his car. Lewis did so "by

backing into the parking spot with . . . the trunk of [his car] facing the wall.” Calbillo then “went up to the driver’s side window of the [taxi cab] and engaged in a hand-to-hand transaction with [Lewis].”<sup>1</sup> After he had completed the transaction, Calbillo gave a “visual arrest signal” and the “arrest team[, which included Neff,] came in and arrested [Lewis.]”

After Neff handcuffed and searched Lewis for weapons, he and an LAPD officer searched Lewis’s taxi. Neff saw the LAPD officer pick up from the front passenger floor board the pre-recorded funds which had been given to Calbillo to purchase the narcotics. Another LAPD detective did a more thorough search of Lewis and found in his pocket an additional \$90. From the ground next to Lewis, the detective recovered a cellular telephone. Neff then took from Calbillo the audio/visual device he had been given, took it back to his office and downloaded it onto two compact computer discs.

With regard to Calbillo, Neff could not think of an instance when he had “violated any policy” or not followed directions. However, while working for an officer other than Neff, there had been an instance during which Calbillo had not followed directions. The incident occurred in 2002 when a trafficker gave to Calbillo money “with the understanding that [Calbillo] was going to get . . . narcotics for [the trafficker].” The incident occurred during a time when no law enforcement personnel were watching him.

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<sup>1</sup> Although he had asked for methamphetamine or powdered cocaine, Calbillo actually purchased from Lewis a piece of crack cocaine. However, according to Neff, confidential sources know that if the “target” does not have exactly what he or she asked for, the confidential source has the “discretion to accept . . . cocaine base, or crack cocaine.”

Calbillo then failed to report the incident to the officer he had been working with at the time. Other than that one occasion, Neff was unaware of any improper conduct on the part of Calbillo. Since that time, Calbillo had participated in “between 100 and 150” operations with Neff.

Calbillo testified that he worked with the DEA and the LAPD as an informant who purchased drugs from traffickers. He had done that type of work for the past 15 years primarily because he got “paid for it.”<sup>2</sup>

On October 26, 2010, an LAPD officer gave Calbillo a telephone number and told him to call the number and “set up a drug buy.” Calbillo called the number, introduced himself and told the individual on the other end of the line that he wished to purchase crystal methamphetamine or powdered cocaine. The individual told Calbillo that all he was selling at that time was “crack.” Calbillo told the seller that that was “ ‘okay’ ” and that he wanted \$100 worth. Calbillo told the seller he would meet him at a parking lot at the corner of Cahuenga and Yucca in Hollywood and the seller agreed. After Calbillo was given “[a] microphone[,] a camera and \$100,” he drove his own car to the designated location. However, after he arrived there, Calbillo received a phone call from the seller indicating that he had changed his mind with regard to the location where the transaction was to take place. He indicated that Calbillo was to meet him at the Rite-Aid store parking lot at the corner of Franklin and Western. Calbillo told the caller he would be

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<sup>2</sup> Some confidential sources are paid for their services and some are not. On this particular occasion, after the “operation” or purchase of narcotics was complete, Calbillo was paid \$800.

there in approximately 15 minutes and all the participants in the “buy-bust” operation “moved . . . to Franklin and Western.”

Once he arrived at the parking lot at Franklin and Western, Calbillo called the seller and told him that he was there. The seller indicated he would be there in between 15 and 20 minutes and that he would be driving a taxi cab. When a taxi cab pulled into the parking lot, Calbillo was standing outside his car. The cab drove around the lot, then pulled up to Calbillo. Calbillo, who was on the passenger’s side of the taxi, looked inside the open window and saw Lewis. Although he had never seen Lewis before, Calbillo believed he was his contact, leaned inside the cab and asked Lewis to park his car. Lewis, who seemed “[v]ery nervous,” backed the taxi into a parking space next to the wall and he and Calbillo “exchanged words” about “the stuff.” Lewis then handed to Calbillo “crack” cocaine wrapped in a piece of plastic and Calbillo gave to Lewis the \$100 he had been given by the LAPD officer.<sup>3</sup> Calbillo inspected the “crack” cocaine, then gave a signal to the officers standing by indicating that a transaction had occurred and that Lewis could be arrested. After Lewis was taken into custody, Calbillo walked over to an agent who was waiting for him, got into the agent’s car and handed to him the cocaine he had just bought and the audio/visual equipment he had been wearing.<sup>4</sup>

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<sup>3</sup> Calbillo had previously testified that the cocaine was wrapped in paper. He stated that that was simply a “mistake.”

<sup>4</sup> A copy of the audio/video recording made by Calbillo while he was negotiating the narcotics transaction in the parking lot was played for the jury and admitted into evidence.

Calbillo admitted that he previously had been arrested, convicted of crimes such as petty theft and served time in prison. However, he had been working as an informant for some time and his criminal history did not affect his performance when he was working with the DEA or another law enforcement agency. He was paid \$800 for making this transaction and that was “[a]bout average.” Whether and how much he was paid did not depend upon whether the person with whom he had engaged in the transaction was ultimately convicted of a crime.

Detective Bednarchik had been working as a police officer for approximately 25 years and had been working “narcotics-related assignments for the past 16 years.” The officer had been working in Hollywood for approximately two years.

On October 26, 2010, Bednarchik was part of a joint task force which was working with the DEA. The officer met with Calbillo, gave him Lewis’s telephone number and told him to call Lewis and “attempt to . . . set up a buy for rock cocaine.” Bednarchik was present when Calbillo made the call and heard him “set up a drug buy” for “\$100 worth of rock cocaine” at the CVS parking lot at the corner of Yucca and Cahuenga. Bednarchik gave to Calbillo five, pre-recorded \$20 bills, then coordinated surveillance of the “buy” with DEA agents. In particular, Bednarchik worked with Agent Leduc.

Leduc provided Calbillo with audio and video equipment, which he placed “on his person.” Bednarchik and Leduc then rode in the same vehicle to the corner of Cahuenga and Yucca. After the agent and Bednarchik arrived at the parking lot, Calbillo informed them, via the audio equipment he had been provided, that the seller had “directed him to

the area of Franklin and Western to complete the transaction.” Leduc and Bednarchik drove to the Rite-Aid parking lot at the intersection and parked their car in an area from which they were able to view Calbillo and his vehicle. When the taxi cab arrived at the parking lot, Bednarchik observed only the driver inside. The driver, who Bednarchik later identified as Lewis, drove toward Calbillo. After the two men had a short conversation, Lewis backed the cab into a parking space. Calbillo approached the driver’s side of the taxi and handed to Lewis United States currency. Bednarchik then saw “the arrest team approach the taxi cab” while Calbillo quickly walked toward the area where Bednarchik and Leduc had parked.

Calbillo approached Bednarchik and Leduc and handed to Bednarchik “a clear plastic bindle that contained an off-white substance that resembled rock cocaine.” He told Bednarchik that he “had purchased [the] item from the individual in the taxi cab.” Lewis, the cab driver, had taken the wrapped cocaine from his mouth and handed it to Calbillo. Agent Leduc then removed from Calbillo the audio/video equipment he had been wearing and performed a pat-down search. When Leduc did not find anything on Calbillo, he got into his car and the three individuals waited until Lewis was transported to the police station. Then, with Leduc and Bednarchik following behind, Calbillo and the two law enforcement officers drove back to the station. Once they reached the station, Bednarchik booked the cocaine she had received from Calbillo, a cell phone and \$90 Leduc had found in Lewis’s pocket into evidence. In addition, a detective handed to Bednarchik the “buy money.” Bednarchik “verified the serial numbers [on the bills]” and “compared [them] to the Xerox copy [she] had made” of the five \$20 bills she had given



to Calbillo for the purchase of narcotics. The bills were the same \$20 bills the officer had “given [to] Mr. Cal[b]illo earlier that day.”

Andrea Jo Mazzola has worked for the LAPD Crime Lab Narcotics Analysis Unit for approximately 18 years. On October 28, 2010, Mazzola received a sealed narcotics evidence envelope with a request that the contents of the envelope be analyzed. After performing certain tests, Mazzola determined that the off-white rock like object in the envelope contained 1.59 net grams of a substance containing cocaine base.

b. *Defense evidence.*

Selenar Lewis is Lewis’s sister. When Selenar<sup>5</sup> came to the courthouse on May 23, 2011, she observed the male and female police officers who testified on that day speaking with the confidential informant. According to Selenar, the informant “seemed very . . . distracted, like he wasn’t sure what was going on. And when [she] was looking over at them, [she] saw the male officer and the female officer going over some paper that they had, with him.”

Arthur Noel is Lewis’s brother. In November 2010, Noel was charged with “[p]ossession and sales.” Noel was initially taken into custody by Officer Feldtz, Agent Neff and Detective Bednarchik. Noel had been driving to the grocery store to pick up his mother when he was stopped by the officers and removed from his car. When Noel asked the officers what the problem was, one of the male officers responded, “ ‘You

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<sup>5</sup> We refer to Selenar Lewis by her first name not out of any disrespect, but to avoid confusion.

know.’ ” Although no narcotics, United States currency or cell phones were found on Noel or in his vehicle, he was placed under arrest for “[p]ossession to sell.”<sup>6</sup>

After his mother bailed him out of jail, Noel had obtained complaint forms and, with Lewis’s assistance, filled them out. Noel then took the forms in which he had complained about the conduct of Officer Feltz and Detective Bednarchik, as well as Agent Neff, and gave them to the watch commander at the Hollywood Police Station.

Ricky White testified that he was present for proceedings being held in Lewis’s case on May 23, 2011. While waiting in the hallway, White saw a male police officer and a female police officer conversing with the confidential informant.

White admitted that he had been convicted of selling narcotics in 2007, involuntary manslaughter in 1992 and that he had also been found guilty of robbery.

## *2. Procedural history.*

### *a. The information.*

Following a preliminary hearing, on April 13, 2011 Lewis was charged by information with the “sale/transportation/offer to sell” a controlled substance, to wit, cocaine base (Health & Saf. Code, § 11352, subd. (a)) (count 1). In addition, it was alleged that he had served three prior prison terms (Pen. Code, § 667.5), suffered two prior convictions within the meaning of the Three Strikes law (Pen. Code, §§ 667,

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<sup>6</sup> Noel stated that he had served time in prison from 1987 to 1993. He was on neither parole nor probation at the time of his arrest. However, at the time of Lewis’s trial, Noel was serving a term in jail. He had been in custody for approximately five months. Noel testified that, because it was simply more expedient to do so, he had pled guilty to a crime he had not committed.

subds. (b)-(i), 1170.12, subds. (a)-(d)) and suffered a prior narcotics-related conviction (Health & Saf. Code, § 11370.2, subd. (a)).

After the trial court heard several motions filed by Lewis, including one to proceed in propria persona, an amended information was filed on October 6, 2011. That information contained all the crimes and allegations charged in the April 13 information. However, in addition, it was alleged that any term of incarceration imposed as a result of the information was to be served in state prison (Pen. Code, § 1170, subd. (h)), in that Lewis had previously suffered convictions for serious or violent felonies (Pen. Code, §§ 667.5, subd. (c), 1192.7).

b. *Arraignment.*

On April 13, 2011, Lewis, acting in propria persona, rejected the People's offer of the low term of three years in prison, doubled to six years pursuant to the Three Strikes law. After informing the trial court that the maximum sentence which could be imposed in Lewis's case was 31-years-to-life, the prosecutor indicated that if Lewis did not take the offer of six years at arraignment, the offer would go up to eight years. Lewis rejected the People's offer and counter offered with "[c]ounty jail with probation." The prosecutor rejected the offer.

After the prosecutor arraigned him, Lewis entered a plea of not guilty to the charge alleged in count 1 and denied the remaining allegations.

c. *The Pitchess motion*.<sup>7</sup>

On May 23, 2011, Deputy City Attorney Renee Braeunig presented, in an in-camera proceeding, evidence regarding the officers and agents involved in Lewis's arrest. Following those proceedings, the trial court stated: "I've read and considered it. My intention is to grant [the motion] for false statements as to the officers, five in all, over the D.A. and the city attorney's objection." After hearing additional argument from the city attorney and the district attorney, the trial court granted Lewis's *Pitchess* motion with regard to the officers' and agents' "false statements and planting [of] evidence and that kind of stuff. Not force or violence." The trial court indicated that there had been some "hits" and that the custodian of records from the LAPD would be bringing the discovery to the court.<sup>8</sup>

d. *The motion to suppress evidence pursuant to Penal Code section 1538.5.*

At proceedings held on May 23, 2011, Calbillo testified that, on October 26, 2010, he had been working as an informant for the DEA and the LAPD. On that day, Calbillo telephoned Lewis using a number he had been given by an LAPD officer. The call was tape recorded and there was an "agent" standing close to Calbillo during his entire conversation with Lewis. On the telephone, Calbillo introduced himself as "Pepe" or "Tony" and made arrangements to meet Lewis later that day in a parking lot. There,

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<sup>7</sup> *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

<sup>8</sup> According to the records reviewed by the trial court, Detective Bednarchik had received some complaints regarding the making of false statements and arresting individuals without cause. Officer Feldz had received a complaint regarding an arrest without cause. The trial court commented that these complaints were "all skid row stuff, but [it had] to grant it."

Lewis was to sell cocaine to Calbillo. Lewis asked Calbillo if he wanted “crystal” or “powder,” then told Calbillo that he would be driving a taxi cab.

After he had been searched by a DEA agent, Calbillo drove to the parking lot and waited for Lewis at the spot where they had arranged to meet. He had been “wired . . . for sound” and given money by the DEA agent so that he could purchase the narcotics. When Lewis pulled up in his taxi cab, he showed to Calbillo a piece of crack cocaine, wrapped it in a piece of newspaper, and handed it to him. Calbillo handed to Lewis the money he had been given to buy the cocaine. He then gave to DEA agents and police officers who were waiting nearby a prearranged signal indicating he had made a purchase. After buying the cocaine, Calbillo immediately walked over to a DEA agent and gave her the narcotics.<sup>9</sup>

Bill Neff testified that he is a special agent with the DEA. On October 26, 2010 he was sitting in an unmarked vehicle in the center of the parking lot of a Rite-Aid store. There, he observed Calbillo as he approached a taxi cab which had been driven into the lot by Lewis. Neff then saw Calbillo give a pre-arranged signal indicating he had purchased narcotics from Lewis. At that point, Neff and a number of other officers approached Lewis and placed him under arrest. A search of Lewis’s taxi cab revealed the “buy money” which had been provided to Calbillo to purchase the cocaine.

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<sup>9</sup> On cross-examination, Calbillo admitted having been arrested in the past for petty theft and drug offenses and that he had served time in federal and state prison. Calbillo also testified that he had received money from the DEA and LAPD for acting as an informant.

Lewis argued that, because he was a paid informant with a lengthy criminal record, Calbillo's testimony was "clearly . . . not credible." Accordingly, the trial court should grant Lewis's motion to suppress Calbillo's testimony, the cocaine and the "buy money." The trial court, however, denied the motion.

e. *The trial.*

Prior to trial, the court granted defense counsel's motion to "bifurcate the priors." The trial court then asked Lewis whether he was "rejecting the court's offer of [the] low term doubled[.]" Lewis, who was represented by counsel at that time, personally responded to the court's inquiry by asking if the trial court would "consider a joint suspended sentence." The trial court indicated that it would not, stating that, because Lewis was already on probation for a drug offense, a suspended sentence was no longer available to him. The court continued: "You have two strikes. So the court was going to strike one of them. Although the people were going to proceed on a second strike anyway. But low term is the best I can do." After conferring with counsel, Lewis rejected the trial court's offer. A panel of jurors was then brought into the courtroom for voir dire.

During Calbillo's testimony, Lewis indicated that he wished to proceed in propria persona. Lewis, who at that point in the proceedings was being represented by privately retained counsel, indicated he believed he could do a better job of defending himself than counsel was doing. Accordingly, he wished to exercise his rights pursuant to *Faretta*<sup>10</sup>

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<sup>10</sup> *Faretta v. California* (1975) 422 U.S. 806.

and represent himself for the remainder of the proceedings. After warning Lewis that it was “not a good idea,” the trial court nevertheless granted Lewis’s motion.

After all the evidence had been presented, Lewis made a motion to dismiss the matter pursuant to Penal Code section 1118.1. The trial court denied the motion and proceeded to instruct the jury.

At approximately 2:00 p.m. on October 18, 2011, after they had been given final instructions and heard closing arguments, the jury began deliberating. At that time Lewis waived his right to a jury trial on the prior convictions and prison terms and agreed to have them tried by the court.

At approximately 9:20 in the morning on October 19, 2011, the foreperson indicated that the jury had reached a verdict. The court clerk read the verdict form into the record. It indicated in relevant part: “We, the jury in the above-entitled action, find the defendant, Nathaniel Lewis, guilty of the crime of sale of a controlled substance, to wit, cocaine base, in violation of Health and Safety Code section 11352[, subdivision] (a), a felony, as charged in count 1 of the information.” The trial court polled the jury and each of the 12 jurors stated that he or she had reached that verdict. The trial court then thanked and excused the jurors and trailed the matter to the following day for further proceedings.

At proceedings held on November 18, 2011, the trial court indicated it intended to hold a “trial on [the] priors.” The court noted that Lewis was still acting in propria persona and, although he had reviewed the Penal Code section 969 package provided by the prosecutor, Lewis requested a continuance “to get . . . more prepared.” The trial court

denied the motion and the district attorney presented evidence of Lewis's fingerprints and certified records regarding each of the alleged prior convictions and prison terms.

Fingerprint identification expert, Natasha Lerner, testified that she had been analyzing fingerprints for approximately five years. She "analyze[s], compare[s] and evaluate[s] fingerprint impressions." That morning, Lerner had made impressions of Lewis's fingerprints on a "ten-print card." She had then compared Lewis's prints with those on the records of Lewis's prior convictions. Lerner concluded, with one exception, that the prints had been made by "one [and] the same person." With regard to the exhibits of a prior conviction labeled "People's 10," Lerner was "unable to reach a conclusion" because of the poor "quality of the reproduction." Lerner indicated that the fingerprints had "no value for comparison purposes due to [the] low resolution quality of the page."

Lewis objected to the admission of the Penal Code section 969b packets, arguing that he had been unable to cross-examine the individuals who had prepared them. He argued that their admission violated his right of confrontation. The prosecutor indicated that the "certificates of [the] custodians of records that attest[ed] to the nature and accuracy of prison and jail records, otherwise known as prison packets or [969b] packets, [were] not testimonial and, thus, [did] not trigger the right to confrontation under the Sixth Amendment . . . when offered to show that the defendant suffered prior serious [or violent] felony convictions, prior strikes, or [served] prior prison terms for the purposes of sentence enhancement . . . ." The trial court agreed with the prosecutor, overruled



Lewis's objection and admitted the records of Lewis's prior convictions and prison terms. In addition, over his objection, the trial court took "judicial notice of [Lewis's] file."

After further argument by both parties, the trial court concluded that "the Nathaniel Lewis that [it had] before [it was] the same Nathaniel Lewis that ha[d] suffered three prior [Penal Code section] 667.5[, subdivision] (b) convictions . . . , that he [was] the same person that[] suffered the prior strike violations, one for [Penal Code section] 192[, subdivision] (a) . . . and one for Penal Code section 136.1[, subdivision] (a)(2) . . . [a]nd that he [was] the same person [who] suffered a prior conviction under [section] 11370.2[, subdivision] (a) . . . for [purposes of] Health and Safety Code section 11379. [¶] The court [found] the prior convictions belong[ed] to the defendant and that they [were] true[,] [t]he court having accepted the People's testimony from their fingerprint expert and the certified document[s] from the Department of Corrections and the [Penal Code section] 969b packet[s]."

The trial court granted Lewis's motion to continue sentencing so that he would have sufficient time to file a motion for a new trial. Among the issues that Lewis wished to raise was that the jury had been tampered with.

On January 3, 2012, Lewis informed the trial court that he had just received a copy of his trial transcripts and, accordingly, had not finished preparing his motion for a new trial. In addition, he asked that the trial court "allow [his] private investigator to have the jurors'[s] information so that he could interview them to see how [the playing of a CD in the jury room which had not been admitted into evidence and which was played on a laptop computer provided by the prosecution had] . . . affected their determination . . .

and [whether] it . . . prejudiced the defendant in this trial.” The trial court agreed to “get the name[s] and telephone numbers of [the] jurors and [to] write them a letter.” The court emphasized, however, that none of the jurors could be required to speak with the defendant or his investigator. The court would simply contact them to see if any of them wished to be contacted. After Lewis then waived time for sentencing, the trial court trailed the matter to March 1, 2012.

At the prosecution’s request, a hearing was held on January 25, 2012. There, the trial court indicated that, after reviewing the information submitted by Lewis, it had concluded the jury had not been provided with a CD that had not been marked as evidence or with the prosecutor’s laptop computer. As the court had not, as of that date, sent out letters to the jurors to allow them to consider whether they wished to be contacted, the trial court decided to continue the matter for one week to allow the People to provide declarations in support of their argument that the jury was not provided with a CD not admitted into evidence and that, if they were provided with a laptop, it would have been a “clean laptop” with no information of any kind on it.

A hearing was held on February 6, 2012 at which the trial court indicated it would determine “whether or not there [was] good cause to write . . . letters to the jurors.” At those proceedings, Lewis called to testify his mother, Betty Jingles. Jingles stated that she was present in the courtroom for each day of Lewis’s 2011 trial, including October 17, the day the jurors began their deliberations. Jingles remembered that, on that day, the jury “buzzed” the courtroom. After the bailiff went into the jury room, he returned to the courtroom and made a telephone call. Shortly thereafter, the district

attorney came into the courtroom carrying a silver laptop and a CD. According to Jingles, the laptop “looked like the one that [the district attorney] had on the day he . . . let the jurors see the [audio/video of the alleged crime].” The prosecutor gave the laptop and two CD’s to the bailiff, who then took them into the jury room.

After hearing argument by the parties, the trial court continued the matter to the following day so that both parties could call additional witnesses. The following day, on February 7, 2012, Lewis called to testify his sister, Selenar. Selenar testified that she was present in court on the day the jury began their deliberations. That afternoon, the jury twice “buzzed” the courtroom and the bailiff went back to the jury room. When he returned to the courtroom, the bailiff spoke with the court clerk, who then made a telephone call. A short time later, the district attorney entered the courtroom carrying a laptop computer and two white envelopes. The bailiff then left the courtroom, carrying the items brought to him by the prosecutor. The “silver or gray” laptop computer looked “similar” to the one the district attorney had been using during trial.

Daniel Lane, a paralegal with the District Attorney’s Office, testified on behalf of the People. He works in the “[t]rial support unit” and one of his functions is to “lend out equipment[, such as laptops,] to be used in the courtroom for audio visual purposes.” The laptops are generally lent to jurors for use during their deliberations. When the computer is then returned to the trial support unit, Lane or another member of the unit places “anything that [is] on the hard drive or the desktop . . . into the recycle bin, and then [the laptop is] cleaned.” This function is performed “in the regular course of business.”

In order to obtain a laptop for such use, the district attorney is required to fill out an “Equipment Request Form.” Lane indicated that, on October 18, 2011, the district attorney trying Lewis’s case “checked out . . . laptop No. 11” and estimated that it would be needed for two days. After the jury in Lewis’s case had finished using the laptop, it was returned to Lane’s unit. He personally signed for the computer when it was returned and, if there was anything to be cleaned from it, Lane did so.

District Attorney Scott Marcus prosecuted Lewis’s case. During jury deliberations, Marcus received a request for a laptop computer. Marcus went to the Trial Support Division, filled out and signed the appropriate form, checked out a laptop, brought it to the courtroom and gave it to either the bailiff or the court clerk. Marcus did not recall bringing any CD’s with him. He brought only the laptop.

After finding the prosecution’s witnesses credible, the trial court indicated that there did not appear to be “good cause for the release of the personal juror identifying information.” The court stated that it appeared the jury heard only what was marked as evidence; there was no indication that they heard anything else. The trial court found that “the laptop provided to the jury was not tainted whatsoever.” Moreover, the jury did not know that the laptop had been provided by the district attorney. Accordingly, Lewis suffered no prejudice.

Finally, Lewis made a motion pursuant to Code of Civil Procedure section 170.1 that the trial court recuse itself from conducting any further proceedings in his case. The trial court indicated that it would respond to Lewis’s motion within 10 days.

On March 8, 2012, the trial court indicated that, at Lewis's request, the matter had been continued several times. Lewis had indicated that he wished to file a motion for a new trial, however he had not done so. In addition, Lewis had expressed a desire to file a Code of Civil Procedure section 170.1 statement to disqualify the trial judge. As he had not done so, the trial court denied that motion and indicated that the matter was before it for probation and sentencing.<sup>11</sup>

After indicating that the People were "proceed[ing] on the second strike[,] not a third strike," the trial court imposed sentence. As to count 1, the court sentenced Lewis to the mid-term of four years, doubled pursuant to the Three Strikes law to eight years. With regard to the allegation he served a prison term within the meaning of Penal Code section 667.5, subdivision (b), the trial court imposed a consecutive term of one year, for a total term of nine years. With regard to the allegation he had been convicted of a narcotics-related crime pursuant to Health and Safety Code section 11370.2, subdivision (a), the trial court imposed a prison term of three years, then stayed the term "in the interest of justice." The remaining allegations were dismissed.

Lewis was awarded presentence custody credit for 498 days actually served and 498 days of good time/work time, for a total of 996 days. The trial court then ordered

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<sup>11</sup> Although Lewis had not filed a written motion, the trial court allowed him to present his motion for a new trial orally. In short, Lewis argued that the trial court had failed to provide him with "the whole transcript of the testimony," that his retained counsel had been ineffective, that the prosecutor committed misconduct by failing to disclose evidence, and that the trial court made erroneous rulings. Lewis, however, failed to provide specific examples regarding his complaints and failed to indicate how he was prejudiced by any of the asserted errors.

Lewis to pay a \$240 restitution fine (Pen. Code, § 1202.4, subd. (b)), a stayed \$240 parole revocation restitution fine (Pen. Code, § 1202.45), a \$40 court security assessment (Pen. Code, § 1465.8, subd. (a)(1)), a \$30 criminal conviction assessment (Gov. Code, § 70373), a \$50 laboratory analysis fee (Health & Saf. Code, § 11372.5), a \$50 penalty assessment (Pen. Code, § 1464) and a \$35 penalty assessment pursuant to Government Code section 76000. In addition, the trial court ordered Lewis to pay “\$28 . . . for every \$10 pursuant to Penal Code section 1464 [and] Government Code sections 76000[,] 70372, 76000.5 [and] 76104.6; [and] 20 percent of the base fine pursuant to Penal Code section[s] 296 and 296.1.”

Lewis filed a timely notice of appeal on March 23, 2012.

### **CONTENTIONS**

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed December 11, 2012, the clerk of this court advised Lewis to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. On January 16, 2013, Lewis filed a 40-page handwritten document in which he asserted the trial court, his counsel when he was represented by counsel, and the prosecutor had made numerous errors. In addition, he contended the confidential source, Jesus Calbillo, committed perjury when he testified he had not met Lewis before the arranged narcotics transaction. In support of these allegations, Lewis submitted several exhibits which were not considered by the jury as evidence at trial. However, on appeal “[a]n appellate court is limited to a consideration of matters contained in the record of the

trial proceedings.” (*People v. Siplinger* (1967) 252 Cal.App.2d 817, 825.) Moreover, Lewis’s statements, without corroboration by independent, objective evidence, are insufficient to establish error. (*In re Alvernaz* (1992) 2 Cal.4th 924, 938, 945.) Viewed in accordance with the usual rule of appellate review (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence at trial more than established that Lewis sold cocaine base and suffered the alleged prior convictions and prison terms.

### **REVIEW ON APPEAL**

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

### **DISPOSITION**

The judgment is affirmed.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

CROSKEY, J.

We concur:

KLEIN, P. J.

KITCHING, J.