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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.

ANDRE DEMONDE LOVE II,

Defendant and Appellant.

B292534

Los Angeles County
Super. Ct. No. SA097154

APPEAL from a judgment of the Superior Court of Los Angeles County, Lauren Weis Birnstein, Judge. Affirmed and remanded with directions.

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

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Idan Ivri and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Andre Demonde Love II of possession of a firearm by a felon and of bringing a loaded firearm onto, or possessing a loaded firearm on, a university campus. On appeal, Love contends the prosecution failed to prove the corpus delicti of the crimes independently of the statements he made to a witness at the scene and later to police. He also asserts the prosecution did not prove the Ronald Reagan UCLA Medical Center is on the UCLA campus. In addition, Love argues remand is required for the trial court to determine his ability to pay the restitution fine and court assessments. We find no error and therefore affirm Love's conviction. We remand the case for further proceedings on the restitution fine and mandatory assessments.

FACTS AND PROCEDURAL BACKGROUND

On January 3, 2018, Kristin Nobles was a patient at the Ronald Reagan UCLA Medical Center. She opened the door to a one-person gender-neutral bathroom in the hallway of the hospital and saw a handgun on a small table. Nobles yelled, "There's a gun." A nurse came in and "immediately grabbed the gun." Nobles hadn't seen anyone put the gun in the bathroom.

Andrew Johnson had worked at the UCLA Medical Center for about 14 years. The medical center is on the UCLA campus. On January 3, 2018, he was outside a patient's room when another patient "came up and said that they found something in the restroom." Johnson then saw a nurse holding a gun "up in a bag." Johnson told his coworker, "We need to get out of here. They found a gun. There was a gun found in the bathroom."

As Johnson was "trying to leave," a man later identified as Andre Love approached him. Love asked Johnson if he knew where the gun was. Love said "he needed it because he was starting a security officer job." Love told Johnson "he might have mistakenly left it in the bathroom." Love asked Johnson if he "could retrieve the gun" "if at all possible." Johnson told Love the nurse had had the gun and then "the security guard had it."

UCLA Police Department Officer John Berkeland arrived at the scene. A police sergeant and several hospital workers were standing near a plastic bag with a gun in it. Berkeland removed the magazine from the gun; it contained eight 9-millimeter bullets. Berkeland ran the gun—a Smith & Wesson A-39 semi-automatic—through the Automatic Firearms System and “[i]t returned as a stolen gun.”

After Berkeland spoke with Johnson, he found Love visiting a patient in one of the hospital rooms. Love told Berkeland he didn’t know anything about the gun. Police arrested Love and took him to the UCLA Police Department.

Berkeland gave Love the *Miranda* admonitions¹ and then interviewed him. Love told Berkeland he was at the hospital visiting his brother and had been there since midnight or 1:00 a.m the night before. Berkeland asked Love, “[W]hat happened today?” Love replied, “Shit as far as I know I went to the bathroom I kind of seen something but it didn’t [*sic*] think it was serious, you know. I thought it was like fire security [*sic*] had left some shit back or something, you know but I didn’t really get a good glance. When I left out the bathroom I seen one of the like the workers or what not. I’m like man, why should I tell him or should I just leave it alone. Probably security is going to come back and pick it up or what not.”

Berkeland asked Love if he’d touched the gun and Love said, “Yeah I did.” He added, “I put it back to make sure it was real and not like a BB gun and put it back down.” Love then said, “I picked it up to make sure it was a BB gun and it wasn’t.” A few sentences later Love said, “And I was going to take it to be honest. I was. I was really going to take it. I said naw, I put it back down, so I don’t know if a security guard was going to be on his way back soon or not. You know? Straight up. I already touched the shit, so”

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

Berkeland told Love police had found his fingerprints “all over that thing”—“[t]he magazine, the bullets, the inside of it.” (This statement was a lie.) Love continued to insist the gun was already in the bathroom. Berkeland told Love to “[c]ut the shit.” Love then said he’d found the gun on the train. Then he said he’d found it in Long Beach: “I took a piss somewhere and just happened to see something shiny.” Love told Berkeland the gun was in a bush and he could sell it because it was valuable. Love said it was “stupid of [him] to leave it in there” and that he “wasn’t thinking when [he] went into the fucking hospital with this shit.”

The People charged Love with possession of a firearm by a felon (count 1) and bringing a loaded firearm onto or possessing a loaded firearm on the grounds of a university campus (count 2). The People alleged a prison prior under Penal Code section 667.5.² The jury convicted Love on both counts.³ The court sentenced Love to three years in the state prison: the midterm of two years on the felon-in-possession count plus one year for the prison prior (which Love admitted at the outset of trial). On the count for bringing or possessing a loaded gun on a campus, the court imposed the midterm of two years and stayed the sentence under section 654.

The court ordered Love to pay a restitution fine of \$300 under section 1202.4, subdivision (b); the court imposed and stayed a parole revocation restitution fine in the same amount under section 1202.45. The court made no mention of the court operations assessment under section 1465.8 or the conviction assessment under Government Code section 70373, but both

² Statutory references are to the Penal Code.

³ The People also charged Love with possession of a controlled substance with a firearm. Berkeland testified he found a baggie of white powder in Love’s jacket. At trial, the parties stipulated the white powder was cocaine. The jury acquitted Love on that count.

the minute order and the abstract of judgment indicate the court ordered those assessments.

DISCUSSION

1. *The prosecution presented sufficient evidence of the corpus delicti*

Love asserts “[t]here was no evidence below that [he] was in any way connected to the weapon until his extrajudicial statements were admitted against him,” in violation of the corpus delicti rule.

In *People v. Alvarez* (2002) 27 Cal.4th 1161 (*Alvarez*) our Supreme Court explained, “In every criminal trial, the prosecution must prove the corpus delicti, or the body of the crime itself—i.e., the fact of injury, loss, or harm, and the existence of a criminal agency as its cause. In California, it has traditionally been held, the prosecution cannot satisfy this burden by relying exclusively upon the extrajudicial statements, confessions, or admissions of the defendant.” (*Id.* at pp. 1168-1169, italics omitted.) “[A]s historically applied, the rule requires corroboration of the defendant’s extrajudicial utterances insofar as they indicate a crime was committed, and forces the People to supply, as part of their burden of proof in every criminal prosecution, some evidence of the corpus delicti aside from, or in addition to, such statements.” (*Id.* at p. 1178, italics omitted.)

“[T]he independent evidence need show only that a crime has been committed by someone. Proof of the corpus delicti does not require proof of the identity of the perpetrator of the crime, nor proof that the defendant committed the crime.” (*People v. Reeves* (1974) 39 Cal.App.3d 944, 946 (*Reeves*).) “Only a ‘slight or prima facie showing, permitting the reasonable inference that a crime was committed, is sufficient.’” (*People v. Ray* (1996) 13 Cal.4th 313, 342.) “The independent proof . . . is sufficient if it permits an inference of criminal conduct, even if a noncriminal explanation is also plausible.” (*Alvarez, supra*, 27 Cal.4th at p. 1171.)

Weapon possession cases establish that “the corpus delicti may

be proven by circumstantial evidence and reasonable inferences drawn therefrom” (*People v. Wilde* (1947) 82 Cal.App.2d 879, 880-881 (*Wilde*)). “In every case, once the necessary quantum of independent evidence is present, the defendant’s extrajudicial statements may then be considered for their full value to strengthen the case on all issues.” (*Alvarez*, at p. 1171.)

Here, witnesses found a stolen semi-automatic handgun, loaded with nine-millimeter ammunition, in a hospital bathroom on a university campus. Plainly, the gun did not move itself onto the campus. The existence of the stolen, loaded firearm on the campus established the corpus delicti of the charged offenses.

Reeves is instructive. In that case, a man (Robinson) fired a shotgun at a passing car, then ran into an alley when officers pursued him. Robinson came out of the alley, hands raised. A few yards away officers found a sawed-off shotgun. Two days later, Reeves went to the police station and told an officer that he and Robinson had gone to get a gun after an argument at a party and that the gun was his. (*Reeves, supra*, 39 Cal.App.3d at pp. 945-946.) The court of appeal stated, “In the instant case, the existence of the sawed-off shotgun alone established the corpus delicti of the offense of possession of a sawed-off shotgun. From the current active existence of the sawed-off shotgun it necessarily follows that someone sawed it off and someone possessed it.” (*Id.* at p. 946.) Similarly, here, someone loaded the handgun and brought it into the hospital bathroom on the UCLA campus.

Love argues *Reeves* is distinguishable because “the firearm here was *not* illegal *per se*.” Love notes a security officer could have left the gun in the bathroom. But a security officer would not be carrying around a stolen handgun. *Reeves* controls the result here.

Moreover, even assuming for argument’s sake that the prosecution was required also to prove it was Love who possessed the gun, the evidence was sufficient. The bathroom was in a

restricted area of the hospital that contained only 10 or 15 units. To enter, one must have an access card (issued to staff) or be buzzed in by a staff member. Love was in the immediate vicinity—“just a few paces” from the bathroom—visiting his brother. (Cf. *Wilde, supra*, 82 Cal.App.2d 879 [sufficient corpus delicti in felon-in-possession case when, after defendant’s apprehension and arrest, officers returned to scene and found loaded gun about three feet from where they’d seen defendant changing clothes and about 35 to 40 feet from defendant’s parked car].)

**2. *The prosecution proved the Ronald Reagan
UCLA Medical Center is on the UCLA campus***

Love contends there was insufficient evidence to prove the offense of bringing a firearm onto, or possessing a firearm on, a university campus because the prosecution failed to prove “the grounds of the campus or buildings were contiguous or clearly marked university property” as section 626.9, subdivision (h) requires. Love’s contention is meritless.

Andrew Johnson, who has worked at the Ronald Reagan UCLA Medical Center for some 14 years, testified the hospital is on the UCLA campus. UCLA police officer Berkeland testified about signage. The prosecutor asked him, “When you enter . . . the actual campus at UCLA, when you’re coming down Westwood Boulevard, is there a sign that says ‘UCLA’ when you come in?” Berkeland answered, “Yes, several.” The prosecutor asked, “And is [*sic*] there also signs that say ‘UCLA’ as you come in from other entrances into the campus?” Berkeland responded, “I think pretty much every entrance says ‘UCLA campus.’”

Love argues “the incident occurring herein occurred in the Ronald Reagan UCLA Medical Center, not on the university campus proper.” It is difficult to discern what Love means by this statement. In any event, Johnson testified the medical center is *on the UCLA campus*. “Contiguous” means “being in actual contact” with or “next to or touching another,

usually similar, thing.” (Merriam-Webster Dict. (2019) <<https://www.merriam-webster.com/dictionary/contiguous>> [as of Oct. 3, 2019], archived at <<https://perma.cc/EH62-VSCF>>; Cambridge Dict. (2019) <<https://dictionary.cambridge.org/us/dictionary/english/contiguous>> [as of Oct. 3, 2019], archived at <<https://perma.cc/6C57-6FQ5>>.) Johnson’s sworn testimony is sufficient to establish that the medical center touches the campus, i.e., the building itself is on the grounds of the campus. Berkeland’s testimony about signs at the entrances to the campus corroborates Johnson’s testimony but even if not every entrance has a UCLA sign as Love suggests, Johnson’s testimony was enough to satisfy this element of the offense.

3. *We remand for further proceedings on the restitution fine and assessments*

Finally, citing *People v. Dueñas* (2019) 30 Cal.App.5th 1157, Love asserts we should remand the case for the trial court to determine his ability to pay the restitution fine and assessments. The Attorney General does not agree with Love’s *Dueñas* argument, but does agree we should remand the case. The Attorney General notes the trial court “failed to impose the mandatory assessments at the sentencing hearing” so Love never had an opportunity to object. The Attorney General notes, on remand, the trial court should impose the assessments and Love may request an ability to pay hearing if he wishes.

As noted, at sentencing the trial court never mentioned the court operations assessment or the criminal conviction assessment but the court staff apparently included those in the minute order and abstract. However, in a criminal case, the oral pronouncement of sentence constitutes the judgment. (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385; *People v. Mesa* (1975) 14 Cal.3d 466, 471.) Accordingly, as the parties request, we remand the case for further proceedings on the restitution fine, any ability to pay issue, and the mandatory assessments.

DISPOSITION

We affirm Andre Demonde Love II's conviction. We remand the case for the trial court to impose any assessments it deems required and to consider any inability to pay contentions Love may wish to raise. Love has the right to be present, with counsel, at those proceedings. (*People v. Rocha* (2019) 32 Cal.App.5th 352, 359-360.)

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EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.