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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. DENNIS WATKINS, Defendant and Appellant.	B278161 (Los Angeles County Super. Ct. No. PA086568)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael J. O'Gara, Judge. Affirmed.

Kent D. Young, 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, Victoria B. Wilson and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

BACKGROUND

On the evening of June 16, 2016, Wynn Chilton was sitting at a computer in the computer room of the housing complex where he lived. He looked through the glass wall of the room and saw another resident of the complex, defendant Dennis Watkins, pull a wooden planter box in the courtyard down onto the ground. There were four such wooden planters in the courtyard. Residents who liked to garden planted herbs and strawberries in the boxes and tended the plants. Chilton saw Watkins destroy one planter. Five to 10 minutes later, Chilton went into the courtyard and saw that two more planter boxes had been destroyed. Surveillance video showed Watkins pulling down and destroying one or more of the boxes.

That same evening, Los Angeles Police Department patrol officer Marco Salas was driving his patrol car in the area. Watkins flagged Salas down. Watkins told Salas that another tenant in the apartment complex had been harassing him. Watkins wanted Salas to speak to the manager. Salas went into the complex and then learned of the destruction of the planter boxes. Salas asked Watkins if he had damaged the planters. Watkins answered, " 'I broke those boxes instead of hitting old boy. You can't charge me for those because I live here.' " Salas took "old boy" to mean the person who Watkins said had been harassing him.

The People charged Watkins with one count of felony vandalism. At a preliminary hearing on June 30, 2016, Officer Salas testified he went to the apartment complex around 9:40 p.m. on June 16, 2016. The prosecutor asked Salas if he had spoken with Watkins and Salas said he had. Defense counsel

raised no *Miranda*[1] objection. Salas testified he asked Watkins what had happened. According to Salas, Watkins said "that he broke the boxes instead of hitting 'old boy' . . . referring to the tenant that he had issues with and that we couldn't charge him for those boxes since he lived there." Salas testified he had not detained or handcuffed Watkins.

The parties waived jury and the court conducted a bench trial on September 12, 2016. Defense counsel made no motion to suppress or exclude Watkins's statements to Salas. At trial, Chilton testified to having seen Watkins destroy at least one of the planter boxes. Property manager Victor Barraza testified the boxes could not be repaired. He testified to the cost to replace the planters as well as the soil and plants.

The prosecution then called Officer Salas. Salas testified that he was working patrol that night, that he went to the apartment complex, and that he saw damaged planter boxes. This exchange followed:

"Q: Did you talk to the defendant about what you saw?

"A: Yes, I did.

"Q: And did you ask him whether he damaged the planter boxes?

"A: Yes.

"Q: And what did he tell you?

"A: He said, " 'I broke those boxes instead of hitting old boy. You can't charge me for those because I live here.' "

Defense counsel objected, "Hearsay." The court overruled the objection, noting that Watkins's statements to Salas were

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1 *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694] (*Miranda).*

admissions. (Evid. Code section 1220.) Defense counsel did not object to Salas's testimony based on *Miranda*, nor did she ask to take the witness on voir dire on that issue.

At the conclusion of the People's case, Watkins took the stand. Watkins testified that he owned three of the planters. Watkins said he had stored them in the garage, then noticed someone had moved them and filled them with dirt. Watkins testified he "had been asking them to take the dirt out of the planters because I was going to remove them from the property, and they wouldn't do it." So, on June 16, Watkins said, he "tipped it over and dumped the dirt out myself." When his attorney asked him why the planters were broken, Watkins answered, "[The] tenant was saying they were just going [to] put them back up like they did the previous one. And I said, 'I don't think so,' then I went back out and knocked the legs off." Watkins testified that he called 9-1-1 "and went and got the cops again." On cross-examination, Watkins said he had knocked the dirt out of the planters but not destroyed them. Watkins never testified that Salas had detained him, handcuffed him, or interrogated him.

At the conclusion of the trial, the court found Watkins guilty of felony vandalism. The court reduced the offense to a misdemeanor under Penal Code section 17(b). The court placed Watkins on summary probation, gave him credit for time served in the county jail, and ordered him to pay $550 in restitution to the apartment complex. The judge waived court fines and fees.

WATKINS'S CONTENTION

Watkins contends the trial court erred in failing to make an express finding that his confession comported with *Miranda*.

DISCUSSION

Watkins has forfeited his *Miranda* argument by failing to object on *Miranda* grounds to Officer Salas's testimony at trial. At no time -- not at the preliminary hearing, nor in any pretrial or trial motion, nor when Salas testified at trial -- did Watkins's counsel raise any *Miranda* issue or make any objection on that basis to Salas's testimony that he asked Watkins if he had broken the planters and Watkins said yes. For obvious reasons, the law does not permit a defendant to wait until his case is over to raise a *Miranda* issue for the first time on appeal.

Evidence Code section 353 provides, "A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless: [¶] (a) There appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion." This "rule requiring specificity applies to *Miranda*-based objections and motions to exclude." (*People v. Holt* (1997) 15 Cal.4th 619, 666 (*Holt*), citing *People v. Milner* (1988) 45 Cal.3d 227, 236.) "The reason for the rule is clear -- failure to identify the specific ground of objection denies the opposing party the opportunity to offer evidence to cure the asserted defect." (*Holt*, at p. 666, citing *People v. Wright* (1990) 52 Cal.3d 367, 404.) " 'While no particular form of objection is required [citation], the objection must be made in such a way as to alert the trial court to the nature of the anticipated evidence and the basis on which exclusion is sought, and to afford the People an opportunity to establish its admissibility.' " (*Holt*, at pp. 666-667, quoting *People v. Williams* (1988) 44 Cal.3d 883, 906; see also *People v. Peters* (1972) 23 Cal.App.3d 522, 530

["There is abundant authority in this state that if there is no objection at the trial to the admission of a confession or of statements obtained in violation of *Miranda*, the objection cannot be raised for the first time on appeal"].)

Had Watkins raised any *Miranda* challenge at trial, the prosecutor could have elicited testimony from Officer Salas to establish that Watkins was neither in custody nor being interrogated when Salas asked him the one question at issue: Did you break the planters? The testimony at trial established that it was Watkins who flagged down police, that Salas then went into the apartment complex at Watkins's request, that Salas then saw the broken planters, and that he asked Watkins if he had broken them. Watkins said yes.

In his reply brief, Watkins argues that the well-established forfeiture rule does not apply because the trial court failed to provide defense counsel with a meaningful opportunity to object. The record does not support this contention. As noted, fellow tenant and eyewitness Wynn Chilton testified he saw Watkins pull down and break one planter and he went out to the courtyard when officers arrived. Chilton said he saw officers speak with Watkins. The prosecutor asked Chilton, "And did you hear the defendant admit to breaking the planter boxes?" Chilton answered, "Yes." Defense counsel then said, "Objection. Hearsay." The court sustained the objection and granted counsel's motion to strike Chilton's answer. The prosecutor then asked Chilton, "What did you hear the defendant say?" Defense counsel again objected on hearsay grounds. The court then stated it was going to reconsider the previous ruling. The court said, "When I made my ruling, I assumed it was through a second

party. [Chilton]'s actually hearing the actual admission." "I'll let the attorney ask you further questions." This exchange followed:

> "[Prosecuter]: So you heard the defendant speaking to the officers?
>
> "[Chilton]: Yes.
>
> "[Prosecuter]: Do you recall what you heard him say?
>
> "[Chilton]: I heard him say -- he was saying these -- the officer asked him, 'Did you break these planter boxes?'
>
> "[Defense counsel]: Objection.
>
> "[Chilton]: And he said yes, because the residents were . . .
>
> "The Court: Hang on just a second. Without telling us what the officer said, what did you hear specifically Mr. Watkins say about those planter boxes? What did he say?
>
> "[Chilton]: He said the reason why he was destroying the planter boxes, he said because the residents were screwing with his head. And I didn't understand, but that's what he said, you know. And they he the officer that [*sic*]. I was standing there and I heard him say that."

Watkins's contention -- based on this exchange -- that his attorney attempted to challenge his statement to Salas based on *Miranda* but the trial court stopped her is meritless. Plainly, the entire exchange had to do with hearsay. The court seemed at first to think the prosecutor was asking Chilton about a statement by Salas, not Watkins. Once the court realized the question had to do with Salas's question to Watkins and Watkins's answer, the court correctly ruled that Watkins's statement to Salas was admissible under an exception to the hearsay rule because it was an admission of a party. (See Evid. Code, § 1220.) Defense counsel made the same objection -- based on hearsay, not *Miranda* -- when Salas testified. When the

prosecutor asked Salas what Watkins had said in response to Salas's question about whether Watkins had damaged the planters, defense counsel said, "Objection. Hearsay." The court overruled the objection, stating (correctly), "It's an admission."

Moreover, had defense counsel objected to Salas's testimony on *Miranda* grounds, that objection would have been overruled. There is no evidence that Watkins was being interrogated while in police custody. *Miranda* rights attach only when a suspect is in police custody: when the subject has been formally arrested or his freedom of movement has been restrained to a degree associated with a formal arrest. (*California v. Beheler* (1983) 463 U.S. 1121, 1123-1125, citing *Oregon v. Mathiason* (1977) 429 U.S. 495 [50 L.Ed.2d 714; see also *Stansbury v. California* (1994) 511 U.S. 318, 322 [128 L.Ed.2d 293] ["[a]n officer's obligation to administer *Miranda* warnings attaches . . . 'only where there has been such a restriction on a person's freedom as to render him "in custody" ' "].) The test is whether the totality of the circumstances would cause "a reasonable person to believe he was in custody or otherwise deprived of his freedom." (*People v. Chutan* (1999) 72 Cal.App.4th 1276, 1283.)

There is no evidence here that Salas had restrained Watkins's freedom of movement, much less arrested him. The testimony suggests that Watkins flagged down Salas and asked him to come into the complex to talk to the manager about the problem tenant, that Salas then learned of the broken planters, and that he then asked Watkins if he had damaged them. It appears Salas asked this question standing there in the courtyard with others, including Chilton, present. At the preliminary hearing, Salas testified he had not detained Watkins or handcuffed him.

Finally, any error is harmless. An eyewitness -- Chilton -- saw Watkins destroy at least one planter box, and surveillance video captured Watkins damaging one or more boxes as well. Watkins himself testified at trial that he had "knocked the legs off" the planters.

DISPOSITION

The judgment and sentence are affirmed.

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EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, 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.