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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

THE PEOPLE, Plaintiff and Respondent, v. ULYSSES LEE, Defendant and Appellant.	B291256 (Los Angeles County Super. Ct. No. NA108527)

APPEAL from judgment of the Superior Court of Los Angeles County. Richard R. Romero, Judge. Affirmed with directions.

Pamela J. Voich, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Senior Assistant Attorney General, Kenneth C. Byrne and Gregory B. Wagner, Deputy Attorneys General, for Plaintiff and Respondent.

Ulysses Lee appeals the judgment entered following a jury trial in which he was convicted of driving under the influence of alcohol (Veh. Code,[1] § 23152, subd. (a); count 1) and driving with a blood-alcohol content of .08 or more (§ 23152, subd. (b); count 2). In bifurcated proceedings the trial court found that appellant had been convicted of three prior driving under the influence (DUI) offenses and found true the enhancement allegations that appellant drove under the influence with a blood-alcohol content of .08 or more within 10 years of three prior DUI convictions. (§ 23550) The trial court imposed a 3-year sentence, to be served in county jail.[2]

Appellant contends his identity as the defendant was not established by the certified minute orders offered as evidence of the prior convictions and therefore the trial court's true findings on the three prior DUI convictions were not supported by substantial evidence. We disagree and affirm. We also reject appellant's further contention that the imposition of a state prison sentence as reflected in the court's minutes and abstract of judgment constituted an unauthorized sentence requiring remand for resentencing.

FACTUAL BACKGROUND

Appellant was pulled over by a police officer on Interstate 110 in Harbor City around 7:50 p.m. on September 25, 2016, after

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[1] Undesignated statutory references are to the Vehicle Code.

[2] While the trial court orally ordered that appellant serve his sentence in county jail, the court minutes and the abstract of judgment indicate appellant was to serve his sentence in state prison.

the officer observed him weaving in the lane and nearly colliding with another vehicle. The officer noticed that appellant's eyes appeared glossy, his speech was slurred, and he had difficulty finding his driver's license. Appellant told the officer he had consumed one margarita with his girlfriend. The officer requested assistance from the California Highway Patrol (CHP) in connection with a DUI investigation.

When CHP Officer Trevor Cullen responded to the location at 8:30 p.m., he immediately noticed appellant was exhibiting "objective signs and symptoms of intoxication," including red and watery eyes, thick slurred speech, and the smell of alcohol emanating from appellant and the vehicle. Appellant told Officer Cullen he had consumed one margarita at 5:30 p.m. and had stopped drinking by 6:00 p.m. The officer then conducted several field sobriety tests and had appellant blow into a preliminary alcohol screening (PAS) device. Appellant's performance on the field sobriety tests indicated impairment due to alcohol consumption, and the two samples from the PAS device showed a blood-alcohol content of .187 and .179.

Officer Cullen arrested appellant for driving under the influence, and appellant submitted to a chemical breath test at the station. The two samples from that test both gave blood-alcohol measurements of .17. A criminalist calculated that in order for a male subject weighing 200 pounds to register a .17 blood-alcohol concentration, he would have approximately 7.3 standard drinks in his system when the test was administered. The criminalist opined that these results indicated appellant was too mentally impaired to operate a motor vehicle safely.

Appellant testified that he was driving home to Lomita from a party in Rowland Heights with high school classmates and had just exited the freeway when he was pulled over. He

explained that as he approached the off-ramp he had slammed on his brakes because the vehicle in front of him had abruptly slowed down. Appellant averred that he had consumed just one margarita with his meal at the party, and he recalled performing well on the field sobriety tests. Although he admitted his eyes were red and glassy that night, he insisted it was not from drinking. Appellant also disputed Officer Cullen's testimony that appellant had nearly fallen over during one of the field sobriety tests, explaining that he was often unsteady on his feet when it was cold outside due to a knee surgery he had had 20 years ago.

DISCUSSION

I. Substantial Evidence Supported the Trial Court's Finding that Appellant Had Suffered Three Prior DUI Convictions

Appellant contends that because of slight variations between the names on the certified dockets of the prior DUI convictions and appellant's name as charged in this offense, the evidence was insufficient to establish appellant's identity as the person who suffered those convictions. We disagree.

A. *Procedural background*

Following his conviction, appellant waived his right to a jury and elected a court trial to determine the truth of the three prior DUI conviction allegations. The court admitted the certified dockets from the three prior convictions into evidence and took judicial notice of the case files in those matters.

People's exhibit 12, the certified docket from Los Angeles Superior Court (LASC) No. 0CP11619, identified the defendant as "Ulysses Lee." It listed two misdemeanor violations of section 23152 on or about September 17, 2010, for which the defendant was arrested by the Los Angeles County Sheriff's Department in

Compton. On July 8, 2011, the defendant pleaded no contest to a violation of section 23152, subdivision (b).

People's exhibit 13, the certified docket from LASC No. 4WA10452, listed the defendant's name as "Ulysses Lestrus Lee Jr." The minute order showed the defendant was arrested by El Segundo police and charged with committing two misdemeanor violations of section 23152 on or about December 8, 2013. On May 7, 2014, the defendant pleaded no contest to a violation of section 23152, subdivision (b), and he was placed on probation for five years.

People's exhibit 14, the certified docket from LASC No. 5CP02523, identified the defendant as "Ulysses L. Lee," and showed him charged in three counts with the commission of two misdemeanor DUI offenses and one violation of section 14601.2, subdivisions (a) and (d)(2) (driving when the privilege has been suspended or revoked for driving under the influence) on or about March 5, 2015. The minute order also reflected two prior DUI convictions in LASC Nos. "011619" and 4WA10452 alleged in connection with counts 1 and 2. On June 17, 2016, the defendant pleaded no contest to violations of sections 23152, subdivision (b) and 23546, and he admitted the prior conviction in LASC No. 4WA10452. Sentence was suspended, and the defendant was placed on summary probation for four years.

In determining the truth of the prior conviction allegations the trial court also considered the court records and evidence from the current case, including the charging information, the minute order from the arraignment, the probation report, and appellant's testimony at trial. The charging information reflected appellant's name as "Ulysses L. Lee, Jr.," which appellant stated at his arraignment was his true name. The probation report identified appellant as "Ulysses Lee Jr." and "Ulysses L. Lee." In

the summary of appellant's criminal history, the probation report listed the three prior DUI convictions reflected in People's exhibits 12, 13, and 14.

Finally, appellant testified during the court trial on the priors and disputed that he suffered a DUI conviction arising out of his 2010 arrest in Compton. Appellant explained that he was originally charged in that case with a DUI based on "having an alcohol on the breath," but the charge was reduced to a "reckless driving misdemeanor," to which he pleaded no contest. Appellant argued that the case should not count as one of the three prior DUI conviction allegations. The prosecutor countered that People's exhibit 12 established that the 2010 offense was a DUI, which had not been reduced.

B. *Legal principles*

The prosecution must prove every element of a sentence enhancement beyond a reasonable doubt. (*People v. Miles* (2008) 43 Cal.4th 1074, 1082; *People v. Tenner* (1993) 6 Cal.4th 559, 566 (*Tenner*).) This burden includes proving the defendant's identity as the person who suffered a prior conviction beyond a reasonable doubt. (*People v. Saez* (2015) 237 Cal.App.4th 1177, 1190; see *People v. Soper* (2009) 45 Cal.4th 759, 777 [it is prosecution's burden to establish element of identity beyond a reasonable doubt].) However, courts have long recognized that the identity of a person may be presumed or inferred from identity of name unless controverted by other evidence. (*People v. Riley* (1888) 75 Cal. 98, 100 ["Identity of person is a deduction which the law expressly directs shall be made from identity of name"]; *Saez*, at p. 1190; *People v. Lovio* (1963) 222 Cal.App.2d 79, 82 [in establishing prior conviction, identity of person is presumed from identity of name].)

A challenge to the sufficiency of the evidence in support of a true finding of a prior conviction is reviewed under the same substantial evidence standard as a challenge to the evidentiary support for the underlying conviction. (*People v. Delgado* (2008) 43 Cal.4th 1059, 1067; *Tenner*, *supra*, 6 Cal.4th at p. 567.) We review the record in the light most favorable to the court's findings to determine whether those findings are supported by substantial evidence—" 'i.e., evidence that is reasonable, credible, and of solid value' " such that a reasonable trier of fact could find the essential elements of the sentence enhancement beyond a reasonable doubt. (*People v. Manibusan* (2013) 58 Cal.4th 40, 87, quoting *People v. Zamudio* (2008) 43 Cal.4th 327, 357.) We also must presume in support of the trial court's findings " ' "the existence of every fact the [court] could reasonably have deduced from the evidence." ' " (*People v. Gomez* (2018) 6 Cal.5th 243, 278, quoting *Manibusan*, at p. 87.) Finally, "[a] reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support" ' the [court's findings]." (*Zamudio*, at p. 357.)

C. *Substantial evidence established appellant's identity as the defendant in each of the three prior DUI convictions*

As a preliminary matter, we find the differences among the names in the record in this case to be inconsequential. California follows the common law rule (Civ. Code, § 22.2) that a legal name consists of one given or first name, and one surname or last name: Middle names and initials are generally disregarded. (*People v. Mendoza* (1986) 183 Cal.App.3d 390, 400–401; *Langley v. Zurich Gen. Acc. & L. Ins. Co.* (1929) 97 Cal.App. 434, 437 ["By the common law, since the Norman Conquest, a legal name has consisted of one Christian name and of one surname].) Thus, in the absence of countervailing evidence showing that variations in

the middle name or initials actually designate different people, trivial differences and omissions pertaining to a person's middle name are "manifestly immaterial" in terms of identifying that person. (*Mendoza*, at p. 401; *Langley*, at p. 437 ["under the well-settled rule that the law recognizes only one Christian name, it has been repeatedly held that the insertion, omission of, or mistake in the middle name, or initial in a criminal or civil proceeding is therefore immaterial"].)

There is no such countervailing evidence here. To the contrary, in the certified dockets admitted into evidence, as well as the probation report, the minute orders, and the charging information in the current case, the defendant is identified by the first name "Ulysses" and by the last name "Lee." No evidence appears on this record to suggest that the differences in these defendants' and appellant's middle names and initials across all of these documents have any significance whatsoever.

In any event, we find abundant evidence supported the trial court's conclusion that the identities of appellant and the defendants in each of the prior DUI convictions were one and the same.

1. LASC No. 0CP11619—Exhibit 12

During his jury trial appellant testified that he was arrested in 2010 for a DUI. He further admitted in the court trial that he was stopped by police in Compton in 2010 and was charged with a DUI in that case. Exhibit 12 showed the defendant in that case with the same name as appellant was arrested by Compton police on September 17, 2010, for a DUI, and he pleaded no contest to a DUI on July 8, 2011. Based on the identical first and last names and appellant's admissions matching the offense date and information provided in the docket,

substantial evidence supports the trial court's finding that appellant suffered the DUI conviction in LASC No. 0CP11619.

2. LASC Case No. 4WA10452—Exhibit 13

Exhibit 13 together with another admission by appellant established that appellant was the Ulysses Lestrus Lee Jr. convicted of a DUI in LASC No. 4WA10452. At trial appellant testified that he was arrested for and charged with a DUI on December 8, 2013, the same date the certified docket showed the defendant committed the DUI offense for which he was convicted on May 7, 2014. The matching dates and identical first and last names constitute substantial evidence to support the finding that appellant suffered the DUI conviction in LASC No. 4WA10452.

3. LASC No. 5CP02523—Exhibit 14

Exhibit 14 showed that "Ulysses L. Lee" was convicted of a DUI offense on June 17, 2016. Once again, appellant's admission at trial established he was the Ulysses L. Lee who suffered that conviction. Appellant admitted that he was charged with a DUI arising out of an arrest on March 5, 2015, the same date the certified docket in LASC No. 5CP02523 stated Ulysses L. Lee committed the DUI offense. The matching names and date provided substantial evidence that appellant suffered his third DUI conviction in LASC No. 5CP02523.

II. The Court's Minutes and Abstract of Judgment Reflecting Imposition of a State Prison Sentence Are Contrary to the Oral Pronouncement of Judgment and Did Not Render the Sentence Imposed "Unauthorized"

Appellant contends the trial court imposed an unauthorized sentence based on indications in the minute order of the sentencing hearing and the abstract of judgment[3] that he was ordered to serve his sentence in state prison. He asserts that the case must be remanded for resentencing because his felony conviction under section 23550 could only be punished by imprisonment in county jail under Penal Code section 1170, subdivision (h)(2).[4]

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[3] Section 4 of the abstract of judgment indicates appellant was sentenced "to prison per [Penal Code section] 1170(a), 1170.1(a) or 1170(h)(3) due to [a] current or prior serious or violent felony." The instant offense was not a serious or violent felony, however, and there is no indication in the record that appellant has any prior conviction for a serious or violent felony.

[4] Pointing to nothing in the record to support the assertion, respondent counters that appellant's contention is moot because he has already been released from prison. The point is well-taken if true. However, we cannot take such a representation in respondent's brief on faith and must disregard facts and allegations that are unsupported by the record and not subject to judicial notice. (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 102 ["Appellate review is generally limited to matters contained in the record. Factual matters that are not part of the appellate record will not be considered on appeal and such matters should not be referred to in the briefs"]; *Millan v.*

Although the record is ambiguous as to where appellant actually served his sentence, the trial court explicitly sentenced appellant to a three-year term in county jail. Because the oral pronouncement of judgment controls over the court's minutes and the abstract of judgment, the sentence was not unauthorized, and remand for resentencing is unnecessary. (*People v. Sanchez* (2019) 38 Cal.App.5th 907, 918–919; *People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1183 ["The court's oral pronouncement controls over the abstract of judgment as the latter cannot add to or modify the judgment which it purports to summarize"]; *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2 ["The record of the oral pronouncement of the court controls over the clerk's minute order"].)

Nevertheless, section 4 of the abstract of judgment should be amended to correctly reflect the court's order that appellant was "sentenced to county jail per 1170(h)(1) or (2)."

Restaurant Enterprises Group, Inc. (1993) 14 Cal.App.4th 477, 485.)

DISPOSITION

The trial court is ordered to prepare a new abstract of judgment showing the defendant was sentenced to county jail per Penal Code section 1170, subdivision (h)(1) or (2), and to forward the same to the California Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.