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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. ANDREW LAWRENCE, Defendant and Appellant.	D052171 (Super. Ct. No. JCF19933)

APPEAL from a judgment of the Superior Court of Imperial County, Raymundo A. Cota, Judge. Affirmed.

Andrew Lawrence appeals from a judgment entered upon his conviction of possessing a weapon in prison. He contends that the trial court erred when it: (1) erroneously limited his cross-examination of a witness; (2) instructed the jury; and (3) ordered that he and the inmate witnesses appear in shackles. He also contends that the evidence was insufficient to sustain the conviction. We find no prejudicial error and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On March 30, 2007, a grand jury indicted Lawrence of possessing a weapon in prison. The indictment also alleged that Lawrence had three prison priors. At trial, Ricardo Magdaleno, a correctional officer at Calipatria State Prison, testified that on the day in question he was sitting in his office when Lawrence walked by. Officer Magdaleno approached to give Lawrence two razors that Lawrence had asked for earlier that day. When Lawrence was about ten feet away, Officer Magdaleno saw an object fall out of Lawrence's pocket onto the floor. At the time, Lawrence was wearing a T-shirt, blue shorts and boots. Officer Magdaleno described Lawrence's shorts as having front pockets and one back pocket, but he could not remember which pocket the object fell from.

After Lawrence quickly retrieved the item, Officer Magdaleno asked him what he had picked up. Officer Magdaleno suspected "something" was going on when Lawrence replied: "Nothing. Nothing." Lawrence then complied with Officer Magdaleno's request to turn around to be handcuffed. Officer Magdaleno noticed an object in Lawrence's right hand that he concluded was an inmate manufactured weapon. He described the object as a one and three-quarters inch pointed metal tip attached to a five inch plastic handle that had been part of a pen.

Lawrence testified in his own defense. He claimed to have been standing with his back to a podium in Officer Magdaleno's office to get his razors when the officer called his name. When he turned around, Officer Magdaleno pointed to an object on the floor about two feet away from Lawrence and asked: "What is this?" Lawrence picked up the object, believing it was a pen that Officer Magdaleno wanted him to retrieve. As Lawrence tried to

hand the object to Officer Magdaleno, the officer grabbed his right wrist and told him to "cuff up" or submit to handcuffing. At that point, Lawrence realized something was wrong, but he did not know what the object was until the yard officer came to talk to him about possessing a weapon.

Lawrence testified he was wearing boxer shorts without pockets and denied owning or dropping the object. He denied saying anything to Officer Magdaleno about the object and claimed the officer never asked him what he had in his hand. He admitted that inmates wore blue pants with one rear pocket and that some inmates cut these to create shorts, but denied having any shorts in his prison wardrobe.

Lawrence also called three prison inmates as witnesses, none of whom saw what occurred before Officer Magdaleno placed Lawrence in handcuffs. All three testified that Lawrence was wearing a T-shirt and boxers and that standard issue boxers have no pockets. Two of the witnesses stated that prison pants have one rear pocket and no front pockets and one witness claimed that state-issued shorts have one rear pocket.

In rebuttal, Officer Magdaleno claimed he would not allow an inmate to pick up an unknown object from the floor and that he became alarmed when Lawrence picked up the object because Lawrence acted quickly and nervously. He admitted that state-issued blue shorts have one rear pocket, but asserted that state-issued pants have front pockets and inmates frequently alter the pants to create shorts and add pockets.

A jury found Lawrence guilty and he later admitted the truth of one prior conviction with the understanding that the court would strike the remaining priors. The trial court

sentenced Lawrence to four years in prison, to be served consecutively to the term he was already serving. Lawrence timely appealed.

DISCUSSION

I. *Sufficiency of the Evidence*

A. Standard of Review

In reviewing challenges to the sufficiency of the evidence, we review the whole record in the light most favorable to the judgment to determine whether substantial evidence supported it. (*People v. Hill* (1998) 17 Cal.4th 800, 848-849.) Our sole function is to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Marshall* (1997) 15 Cal.4th 1, 34), resolving all conflicts in the evidence and questions of credibility in favor of the verdict, and indulging every reasonable inference the jury could draw from the evidence. (*People v. Autry* (1995) 37 Cal.App.4th 351, 358.) The standard does not differ where a case rests mainly on circumstantial evidence (*People v. Bean* (1988) 46 Cal.3d 919, 932-933) and the testimony of even one witness constitutes substantial evidence, so long as that testimony is not inherently incredible. (*People v. Provencio* (1989) 210 Cal.App.3d 290, 306.) We cannot reject the testimony of a witness the trier of fact chose to believe, unless the testimony is physically impossible or its falsity is plainly apparent. (*People v. Watts* (1999) 76 Cal.App.4th 1250, 1259.)

B. Analysis

To convict Lawrence of the charged crime, the prosecution had to prove he was confined in a state prison and knew the prohibited object was in his possession. (*People v.*

Reynolds (1988) 205 Cal.App.3d 776, 779, overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 484, 490, fn. 12.) The intent or purpose for which the defendant possessed the instrument is immaterial. (*People v. Steely* (1968) 266 Cal.App.2d 591, 594.)

Lawrence contends his conviction must be reversed because the record lacks substantial evidence to establish he knowingly possessed a weapon. He claims that Officer Magdaleno's testimony was not credible and the prosecution could have easily established what he wore on the day of the incident with photographs or through the testimony of other correctional officers.

Lawrence erroneously asks us to reweigh the evidence and reappraise the credibility of the witnesses. We cannot do this as there was nothing physically impossible in Officer Magdaleno's testimony. (*People v. Watts*, *supra*, 76 Cal.App.4th at p. 1259.) The jury implicitly believed Officer Magdaleno's testimony that he saw an object fall from Lawrence's pocket onto the floor and that the object turned out to be an inmate manufactured weapon. As defense counsel pointed out to the jury during closing argument, the prosecution could have presented other evidence to bolster its case. The prosecution, however, was not required to call all witnesses who might have information about the case or produce all physical evidence. (CALCRIM No. 300.) Additionally, Lawrence could have called any correctional officers as witnesses and cannot complain that the prosecution did not. Officer Magdaleno's testimony constituted substantial evidence supporting the jury's verdict and we are obliged to defer to the jury's resolution of the credibility issue.

II. *Restricting Defense Evidence*

A. Facts

During cross-examination, Officer Magdaleno testified that he did not use any force against Lawrence when he asked Lawrence to "cuff up." The trial court then sustained the prosecutor's relevancy objections to questions asking whether the officer had to restrain Lawrence or whether Lawrence had tried to run away. At sidebar, defense counsel argued there was no direct evidence on Lawrence's knowledge that he possessed a weapon, a necessary element of the crime, and that Lawrence's behavior was relevant on this issue.

Although the trial court agreed that the surrounding circumstances had "slight" probative value, it excluded the evidence as unduly consuming of the court's time under Evidence Code section 352. After further discussion, the trial court stated: "That's my ruling. I just don't believe that this is probative enough to allow you to go into this, you know, at length anyway. So I'll take them one at a time as I hear them. But at this point, I'll sustain the objection."

B. Analysis

Lawrence asserts that all the circumstances surrounding the incident were relevant on the issue of whether he knowingly possessed an illegal weapon and that limiting his cross-examination of Officer Magdaleno deprived him of his constitutional rights to due process, to present a defense and to confront the evidence against him. We conclude that any error was harmless.

Relevant evidence is 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; see also *id*., § 351 ["Except as otherwise provided by statute, all relevant evidence is admissible"].) We evaluate a trial court's relevance rulings under the abuse of discretion standard. (*People v. Kipp* (2001) 26 Cal.4th 1100, 1123.)

Here, after sustaining the prosecutor's relevancy objections, the trial court properly conceded during the sidebar conference that the proposed evidence had some probative value, but ultimately sustained the relevancy objection and excluded the evidence as unduly time consuming, stating it would not allow counsel to address the issue "at length" and would "take [the questions] one at a time[.]" We note that the trial court's ruling is seemingly contradictory as it sustained the objection and excluded the evidence, but also suggested it would allow defense counsel to again explore the matter.

The more sensible approach would have been to overrule the relevancy objections, allow defense counsel to obtain answers to the two questions and then rule on any objections to follow-up questions. (*People v. Wright* (1985) 39 Cal.3d 576, 584-585 [trial judges in criminal cases should give defendant the benefit of any reasonable doubt when passing on the admissibility of evidence].) Defense counsel, however, did not seek clarification of the ruling or ask Officer Magdaleno additional questions on this subject. In any event, we conclude that any error in limiting Lawrence's cross-examination of Officer Magdaleno was harmless and did not violate his constitutional rights.

Application of the ordinary rules of evidence does not impair a defendant's right to present a defense. (*People v. Boyette* (2002) 29 Cal.4th 381, 427-428.) Although completely excluding evidence of an accused's defense theoretically could infringe on his right to present a defense, excluding defense evidence on a minor or subsidiary point does

not. (*Ibid.*) Similarly, the confrontation clause does not prevent the trial court from placing reasonable limits on cross-examination. (*People v. Ledesma* (2006) 39 Cal.4th 641, 704-705.) The touchstone of due process is fundamental fairness. (*People v. Englebrecht* (2001) 88 Cal.App.4th 1236, 1250.)

While the trial court precluded Lawrence from delving into the details of his behavior when Officer Magdaleno asked him to "cuff up," it did not preclude all evidence on this subject. Substantial evidence on this point was admitted; namely, Officer Magdaleno testified four times that Lawrence complied with his request to turn around to be handcuffed. He also testified that he did not use any force when he asked Lawrence to "cuff up."

On this record, any error in excluding evidence of whether Lawrence had to be restrained or tried to run away was harmless in that it is not reasonably probable that a result more favorable to him would have been obtained. (See *People v. Watson* (1956) 46 Cal.2d 818, 836.) Additionally, we cannot conclude that the restriction compromised the fundamental fairness of the trial.

III. *Alleged Instructional Error*

A. Standard of Review

"In reviewing a claim of error in jury instructions in a criminal case, this court must first consider the jury instructions as a whole to determine whether error has been committed. [Citations.] We may not judge a single jury instruction in artificial isolation, but must view it in the context of the charge and the entire trial record. [Citation.] An appellate court cannot set aside a judgment on the basis of instructional error unless, after an examination of the entire record, the court concludes that the error has resulted in a

miscarriage of justice. (Cal. Const., art. VI, § 13.) A miscarriage of justice occurs only when it is reasonably probable that the jury would have reached a result more favorable to the appellant absent the error. [Citations.]" (*People v. Moore* (1996) 44 Cal.App.4th 1323, 1330-1331; *People v. Flood*, *supra*, 18 Cal.4th at p. 490 [the prejudicial effect of instructional error is determined by asking whether a reasonable probability exists the outcome would have been different but for the error].)

B. Consciousness of Guilt Instruction

At trial, the court instructed the jury with CALCRIM No. 362 regarding consciousness of guilt, an instruction Lawrence contends should not have been given because his statement to Officer Magdaleno ("nothing") was ambiguous and did not warrant such an instruction. He also argues that the instruction allowed the jury to consider his (1) statement as evidence of consciousness of guilt without a finding the statement was *willfully* false or misleading and (2) trial testimony as evidence of consciousness of guilt because it differed from Officer Magdaleno's testimony. We reject his contentions.

As delivered, this instruction provided: "If the *defendant made a false or misleading statement relating to the charged crime, knowing the statement was false or intending to mislead*, that conduct may show he was aware of his guilt of the crime and you may consider it in determining his guilt." (Italics added.) The instruction also included limiting language: "If you conclude that the defendant made the statement, it is up to you to decide its meaning and importance. However, evidence that the defendant made such a statement cannot prove guilt by itself.

Pretrial false statements by a defendant to arresting officers concerning matters within the defendant's own knowledge and relating to the issue of guilt or innocence may be admitted to support an inference of consciousness of guilt as such statements suggest there is no honest explanation for the incriminating circumstances. (*People v. Kimble* (1988) 44 Cal.3d 480, 496.) An instruction on consciousness of guilt is properly given when the evidence supports the inference that prior to trial, the defendant made a false statement concerning the charged offense. (*People v. Kelly* (1992) 1 Cal.4th 495, 531; *People v. Edwards* (1992) 8 Cal.App.4th 1092, 1103 (*Edwards*).) The falsity of a pretrial statement may be shown by other evidence even when the pretrial statement is not inconsistent with defendant's trial testimony. (*Edwards*, *supra*, 8 Cal.App.4th at p. 1103.)

Here, Officer Magdaleno testified that after he saw Lawrence pick up the fallen object, he asked Lawrence what he had in his hand and Lawrence replied: "Nothing. Nothing." The jury could reasonably conclude that Lawrence knew the statement was false or that he intended to mislead Officer Magdaleno in an attempt to explain away incriminating circumstances and deflect the officer's suspicions. The trial court was required to provide the jury with guidance as to how to treat defendant's statement to Officer Magdaleno. (*Edwards*, *supra*, 8 Cal.App.4th at pp. 1103-1104.)

Even if we were to accept Lawrence's argument that his statement to Officer Magdaleno was ambiguous and the evidence did not support the instruction, any error in giving the instruction was harmless because the instruction itself is conditional. It applies only "if" the jury concludes that defendant made a false or misleading statement. We

presume that the jury generally understood and followed CALCRIM No. 362 and the other instructions. (*People v. Delgado* (1993) 5 Cal.4th 312, 331.)

Lawrence also contends lack of the word "willfully" in CALCRIM No. 362 rendered the instruction infirm. This argument, however, is unavailing. (*People v. Mickey* (1991) 54 Cal.3d 612, 671-672 [rejecting a similar challenge to CALCRIM No. 362 predecessor, CALJIC No. 2.03; also *People v. McGowan* (2008) 160 Cal.App.4th 1099, 1104 [noting that difference in CALJIC No. 2.03 & CALCRIM No. 362 did not undermine our high court's approval of the language of these instructions].)

CALCRIM No. 362 not only requires the jury to find that the defendant made a "false or misleading statement," but also that the defendant knew the statement was false or intended to mislead. This is what the law requires. (*People v. Howard* (2008) 42 Cal.4th 1000, 1024 [addressing CALJIC No. 2.03].)

Finally, the fact Lawrence maintained his story at trial did not render CALCRIM No. 362 inapplicable. (*People v. Snow* (2003) 30 Cal.4th 43, 96 [instruction applies "whether or not the defendant himself contradicts his earlier statement"]; *Edwards*, *supra*, 8 Cal.App.4th at p. 1102.) The instruction is proper even where, as here, the only evidence that the defendant's statement was false or misleading was its inconsistency with the prosecution's case at trial. (*People v. Snow*, *supra*, 30 Cal.4th at p. 96; *People v. Arias* (1996) 13 Cal.4th 92, 141.) The instruction adequately told jurors that it was up to them to conclude whether Lawrence made the statement, to decide the meaning and importance of the statement, and that the statement could not prove guilt by itself. In sum, there was no error in giving CALCRIM No. 362.

C. Failure to Give Lack of Guilty Knowledge Instruction

Lawrence contends the trial court erred when it failed to instruct the jury on lack of guilty knowledge and momentary possession for purposes of disposal based on his testimony that he picked up the contraband, thinking it was a pen and believing Officer Magdaleno wanted him to do so. We disagree.

The trial court properly instructed the jury as to the elements of the charged crime, including that Lawrence "knew that the object was a sharp instrument that could be used as a stabbing weapon." (CALCRIM No. 2745.) Thus, in finding Lawrence guilty, the jury necessarily concluded that Lawrence knew the object was a sharp instrument and rejected his testimony to the contrary. Moreover, lack of guilty intent is not an element of the crime and the momentary possession of an item for the sole purpose of disposing of it has been rejected as a defense to this crime. (*People v. Brown* (2000) 82 Cal.App.4th 736, 739-740; *People v. Steely*, *supra*, 266 Cal.App.2d at pp. 594-595 [defendant not entitled to instruction that he could not be convicted if he merely picked up weapon to hand it to guard].) Thus, Lawrence's requested instruction was not a correct statement of the law.

IV. *Shackling*

A. Shackling of Defendant

1. Facts

Before trial, Lawrence filed a motion to allow him to appear without physical restraints and in civilian clothing. The trial court allowed him to appear in civilian clothing, but ordered that he be shackled at the ankles underneath counsel table. At the hearing on the motion, the prosecution indicated the Attorney General had jurisdiction over the issue and

did not object to Lawrence being shackled. Thereafter, the court ruled that Lawrence would be shackled and noted that defense counsel had spoken to a representative from the Attorney General's office and was told there would be no objection to the request for civilian clothing if Lawrence was shackled.

2. Analysis

Lawrence contends the trial court abused its discretion by ordering that he be physically restrained during the proceedings because there was no showing of manifest need for the restraints. The Attorney General concedes the error, but asserts Lawrence waived it by failing to argue the issue at the hearing and, in any event, the error was harmless.

"[A] defendant cannot be subjected to physical restraints of any kind in the courtroom while in the jury's presence, unless there is a showing of a manifest need for such restraints." (*People v. Duran* (1976) 16 Cal.3d 282, 290-291 (*Duran*).) The burden is on the People to establish in the record the manifest need for the shackling (*People v. Prado* (1977) 67 Cal.App.3d 267, 275), such as defendant's unruliness, threat of violence, or other nonconforming conduct. (*Duran*, *supra*, 16 Cal.3d at p. 292, fn. 11.) The imposition of physical restraints without such a showing will be deemed to constitute an abuse of discretion. (*Id.* at p. 291.)

Here, the court ordered Lawrence to be shackled without *any* evidentiary showing. While it is true that defense counsel did not attempt to dissuade the trial court from its intended course of action, we conclude that Lawrence's in limine motion sufficiently preserved the issue for appeal as it appears the trial court had a general policy that all defendants dressed in civilian clothing be shackled. We are at a loss to explain why the trial

court would ignore established case law requiring it to determine the propriety of using physical restraints on a case-by-case basis (*Duran*, *supra*, 16 Cal.3d at p. 293) and conclude it erred when it ordered that Lawrence be restrained.

Nonetheless, erroneous courtroom shackling is harmless if there is no evidence the jury saw the restraints, or if the restraints did not impair the defendant's right to testify or participate in his or her defense. (*People v. Anderson* (2001) 25 Cal.4th 543, 596.) Here, Lawrence was dressed in civilian clothing during trial, his hands were free and there is no evidence that the jury saw or heard the leg restraints or that the restraints prejudiced Lawrence's right to participate at trial. Lawrence argues the jury may have surmised he wore shackles because defense counsel asked for a brief recess and that the jury be excused after announcing Lawrence would testify next. Such speculation, however, is insufficient to show prejudice as even a jury's brief observations of physical restraints generally has been found nonprejudicial. (*People v. Slaughter* (2002) 27 Cal.4th 1187, 1213, & cases cited therein.)

B. Shackling of Defense Witnesses

1. Facts

During trial, defense counsel asked the court to admonish the jury about the inmate witnesses appearing in prison garb and shackles. During the discussion, defense counsel indicated his preference that these witnesses not be shackled, with the prosecutor noting that counsel had not filed a motion on the issue. Thereafter, the trial court told the jurors that several witnesses would be physically restrained and they were not to speculate why or discuss the fact and should evaluate the witnesses' testimony according to instructions they would later receive. The trial court later reiterated this instruction by giving CALCRIM No.

337, which also informed the jury that a witness's custodial status "does not by itself make a witness more or less believable."

In addition, the jury was given CALCRIM No. 226, which told the jury that, in evaluating a witness's credibility, it could consider certain enumerated items such as bias or prejudice, whether a witness had made prior inconsistent statements, the reasonableness of the testimony in the context of other evidence, and "anything that reasonably tends to prove or disprove the truth or accuracy of [the] testimony." The court also gave CALCRIM No. 316, which instructed the jury it could consider whether a witness had committed a crime in determining credibility and the weight given to the testimony.

2. Analysis

Lawrence argues the trial court erred when it required that his three inmate witnesses appear in prison garb and shackled. The Attorney General concedes that the above cited rules regarding the shackling of defendants also applies to the shackling of defense witnesses (*Duran*, *supra*, 16 Cal.3d at p. 288, fn. 4), but contends the error was harmless. We agree.

Although defense counsel never requested that the inmate witnesses testify without shackles and in civilian clothes, we decline to deem the issue waived because it appears the trial court has a blanket policy of requiring inmate witnesses testify in shackles without any evidentiary showing of manifest need. A trial court must make the decision to use physical restraints on a case-by-case basis and it is improper to shackle a witness based solely upon his or her status as an inmate without a proper evidentiary showing. (*People v. Allen* (1986) 42 Cal.3d 1222, 1264, fn. 22; *Duran*, *supra*, 16 Cal.3d at p. 293.) Additionally, assuming a manifest need exists for using restraints, the type used must be "as unobtrusive as possible,

although as effective as necessary under the circumstances." (*Duran*, *supra*, 16 Cal.3d at p. 291.)

Nonetheless, the erroneous shackling of a defense witness requires reversal only if "'it is reasonably probable that a result more favorable to [defendant] would have been reached in the absence of the error].'" (*People v. Ceniceros* (1994) 26 Cal.App.4th 266, 278 (*Ceniceros*), quoting *People v. Watson*, *supra*, 46 Cal.2d at p. 836.) The prejudicial effect of shackled witnesses in prison attire is less consequential because it does not directly affect the presumption of innocence or a defendant's decision to testify or communicate with his or her attorney. (*Duran*, *supra*, 16 Cal.3d at p. 288, fn. 4; *Ceniceros*, *supra*, 26 Cal.App.4th at pp. 279-280.) Additionally, the detrimental impact of the restraints on the witness's credibility is lessened by the witness's status as an inmate. (*Ceniceros*, *supra*, 26 Cal.App.4th at p. 281.)

Here, the trial court admonished the jurors that they must completely disregard physical restraints in deciding the case and that restraints did not make a witness more or less believable. We presume, in the absence of any contrary indication in the record, that the jury understood and followed this instruction. (*People v. Fauber* (1992) 2 Cal.4th 792, 823.) Additionally, the trial court fully instructed the jurors on how to assess witness credibility. (See *People v. Valenzuela* (1984) 151 Cal.App.3d 180, 194-195 [discussing the limited effect restraints have upon a jury's perception of an incarcerated witness's credibility].) Finally, none of the witnesses saw what transpired before Officer Magdaleno handcuffed Lawrence and it is unlikely that Lawrence would have received a more favorable outcome had these witnesses testified without restraints. Accordingly, we conclude the error was harmless.

DISPOSITION

The judgment is affirmed.

McINTYRE, J.

WE CONCUR:

BENKE, Acting P. J.

McDONALD, J.