B343120

COURT OF APPEAL OF THE STATE OF CALIFORNIA
Second Appellate District, Division Four

THE PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff and Respondent,

v.

KEVIN PERELMAN
Defendant and Appellant.

Appeal from the Superior Court of the State of California,
for the County of Los Angeles
Hon. Gregory Dohi
Van Nuys West | Dept. E
Case No.: LA099813

APPELLANT'S REPLY BRIEF

Yisrael Gelb
(SBN: 344924)
GELB LAW, APC
369 S. Doheny Dr. #336
Beverly Hills, CA 90212
T: (323) 632-6864
yisrael@gelblawapc.com

Attorneys for Defendant and Appellant Kevin Perelman

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

REPLY 5

I. LACKING FOUNDATION FROM THE PHOTOGRAPHER OR PERCIPIENT WITNESS, AUTHENTICATING A VIDEO OR PHOTO IN THIS CASE REQUIRES EXPERT TESTIMONY. 5

a. The Woodland Oak videos. *8*

b. The Warner Plaza videos. *9*

II. THE PEOPLE FAIL TO ACCOUNT FOR EVERY STEP OF CUSTODY OF THE VIDEOS. 11

III. THE SENTENCING WAS AT THE VERY LEAST INACCURATE, AND IN REMEDY THE COURT SHOULD TERMINATE DEFENDANT'S MANDATORY SUPERVISION. 11

CERTIFICATE OF WORD COUNT 14

TABLE OF AUTHORITIES

STATE CASES

People v. Beckley
(2010) 185 Cal.App.4th 509 ..... 5, 8

Martinez v. Public Employees' Retirement System
(2019) 33 Cal.App.5th 1156 5

People v. Goldsmith
(2014) 59 Cal.4th 258 5

In re K.B.
(2015) 238 Cal.App.4th 989 5

Kinda v. Carpenter
(2016) 247 Cal.App.4th 1268 5

People v. Valdez
(2011) 201 Cal.App.4th 1429 ..... 6, 7

People v. Cruz
(2020) 46 Cal.App.5th 715 ..... 6, 7

People v. Hall
(2010) 187 Cal.App.4th 282 11

Victor Valley Union High School Dist. V. Superior Court
(2023) 91 Cal.App.5th 1121 9

STATE STATUTES

Evidence Code § 1552 5

Evid. Code § 403(a)(3) 6, 7

Evid. Code § 1521(c) 9

Penal Code § 1170 12

Pen. Code § 1170(h) 12

Pen. Code § 1170(h)(2) 13

Pen. Code § 1260 13

STATE RULES

Cal. Rules of Court 8.360 14

REPLY

I. Lacking foundation from the photographer or percipient witness, authenticating a video or photo in this case requires expert testimony.

The People would have this Court overlook its own precedent in favor of inapposite decisions from other districts. (RB 22-25.) But no good reason exists for this Court to veer from its prior holding in *People v. Beckley* (2010) 185 Cal.App.4th 509, 515-516 (*Beckley*). (*Martinez v. Public Employees' Retirement System* (2019) 33 Cal.App.5th 1156, 1176.)

The People overlook this critical point: because the videos are being offered for their substance as a "silent witness" that Defendant vandalized the cars and plaza wall, demonstrating that the video depicts the scene is not enough. (*People v. Goldsmith* (2014) 59 Cal.4th 258, 267.) Instead, there must be sufficient admissible evidence that Defendant was at the scene committing the alleged crimes. (*Ibid.* at pp. 267-268; *In re K.B.* (2015) 238 Cal.App.4th 989, 998 [photographs of juvenile holding firearm sufficiently authenticated *only* because additional evidence admitted showed that juvenile was arrested wearing the same clothes and in the same location depicted in the photographs]; *Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1284 [Evidence Code section 1552 presumption doesn't extend to authenticate the *"content"* (italics original)].)

Thus, the People have simply not met their statutory burden demonstrating that either scene is an accurate depiction of Perelman committing a crime. (Evid. Code § 403, subd. (a)(3); *People v. Valdez* (2011) 201 Cal.App.4th 1429, 1434-1435.)

Instead, the People argue that *Beckley* is distinguishable because a "single image taken with a digital camera can be manipulated by software available to the public prior to posting the image on social media." (RB 25.) That is an odd argument to make, considering that (1) there is no difference between an image taken with a digital camera and an image taken with a video camera, and (2) any image can be manipulated by easily accessible software and AI tools.

In any event, the People's argument helps Perelman and cements this case in line with *People v. Cruz* (2020) 46 Cal.App.5th 715, 730-731.)

In that case, defendant challenged the authenticity of Facebook messages containing criminal threats that he allegedly sent under fictitious names to his former girlfriend in violation of a restraining order. (*Ibid* at p. 728.) The girlfriend had received multiple messages threatening to cut off her ears and that "she would get what's coming to her. (*Id.* at p. 728.) While some came from fictious names and unidentified numbers, others came directly from defendant's phone. (*Id.* at pp. 728-729.)

The fourth district held that *Beckley* was not on point and distinguishable because there was circumstantial evidence that the Facebook messages was sent by defendant. (*Id.* at p. 731.) There were direct messages from defendant to the victim, and the Facebook messages contained information that only defendant could have known. (*Id.*)

On the other hand, *Beckley*, required authentication of "*a photograph of a person doing something* … and the possibility that the photograph was faked." (*Id.* [italics original].)

A recent federal court called California law on this issue "not yet … fully developed." (*Damm v. Santoro* (C.D.Cal. Feb. 27, 2025, No. CV 19-5246 HDV (AGR)) 2025 LX 115606, at *27.) While the California courts of appeal have not provided a "bright line rule or conceptual framework … each decision [is] reached on the basis of analysis of the particular facts at issue." (*Ibid.*)

But that characterization might not be so fair, because a brightline rule can be stated as: "a video depicting a person doing something is authenticated either through a percipient witness or expert testimony that the video has not been altered."

Given the statutory burden is placed on the proponent, the weight is squarely on the People to provide sufficient evidence. (Evid. Code § 403, subd. (a)(3); *People v. Valdez* (2011) 201 Cal.App.4th 1429, 1434-1435.) Because the

evidence was introduced to show Perelman *doing something*, authentication requires either a percipient witness or an expert witness to establish that the videos were not altered.

a. The Woodland Oak videos.

The People argue that they provided enough evidence that "the scenes depicted in those exhibits were the Woodland Oaks parking garages for that residence." (RB 19, 22.)

The footage in the Woodland Oak videos, shows an unidentified man inside the condominium's garage making "X" movements over victim Scroggin's car. (RT 1516-1519.) Scroggins later identified Perelman as the person in the video. (RT 1511-1514.)

But under the *Beckley/Cruz/Kinda* rule that "*a photograph of a person doing something*" or "*content*" requires additional authentication, that evidence is insufficient. If all that was required was to identify the location, then the People would be correct.

But that is not the case. Just like in *Buckley* it was insufficient that the defendant admitted that his face was the face in the MySpace photograph. (*Beckley*, *supra*, 185 Cal.App.4th at p. 515.) More was needed: either personal knowledge that a gang sign was flashed or an expert witness that the photograph was not faked. (*Id.*)

So too here, the question is whether Perelman *scratched* or *vandalized* the cars, as depicted in the videos. That "doing something" or "content" requires expert testimony. (*Buckley*, *supra*, at p. 515.) And that need is heightened when the videos were admittedly not the originals. (Evid. Code § 1521, subd. (c); *Goldsmith*, *supra*, at p. 271.) [1] [2]

b. The Warner Plaza videos.

The same is true for the Warner Plaza videos. Video evidence shot from several angles and different security cameras showed a person driving up, exiting his vehicle, running to the wall for a moment, moving his hand, and then returning to his vehicle. (People's Exhibits 12-15.) Although Randy Christiansen had witnessed paint dots splattered and business cards scattered on various parts of Warner Plaza, he did not witness Perelman paint the dots.

---

[1] The People's argument that "[e]ach is merely a way to transfer the digital images off the security system" (RB 21), substitutes their argument for the expert testimony they should have presented.

[2] The People also misstate the standard for spoliation. It is not as they suggest that "[t]here was no indication that a cellphone video was created after the original was intentionally destroyed to hide something." (RB 22.) Spoliation can occur any time after a party becomes aware of the need to preserve the evidence. (*Victor Valley Union High School Dist. V. Superior Court* (2023) 91 Cal.App.5th 1121, 1138-1139.)

(RT 1208-10.) Thus, as the "silent witness," the video is testifying to Perelman doing something: painting the green dots on the wall. Thus, under the *Beckley/Cruz/Kinda* rule, an expert testimony is needed.

And in this incident, there is a significant gap between the video company and Randy Christiansen. Christiansen testified that he was not involved with obtaining the footage but that another employee, April Sheffield, told him that she (1) requested the June 11, 2023, footage from American Virtual Monitoring, and (2) emailed the video footage to LAPD. (RT 1214; RT 1569.) Christiansen had no independent knowledge of the monitoring program used by American Virtual Monitoring, not whether the video could be edited, nor whether the video was an accurate depiction of the events recorded at the time. (RT 1214.) ROIC depended on American Virtual Monitoring to ensure accuracy of the video footage. (RT 1210.) Christiansen could not verify that Sheffield sent the videos to LAPD or that LAPD received the videos from Sheffield. (RT 1212-1213.) Nor could Christiansen say whether the videos could be modified by any computer program. (RT 1214.)

These facts show and demonstrate the need for expert testimony as laid out by the *Buckley* court.

II. The People fail to account for every step of custody of the videos.

In conclusory fashion, and without explanation, the People assert that they accounted for proper custody of both videos. (RB 28.) The People's sole argument is to call Defendant's speculative. (RB 28.) Defendant's opening brief pinpoints the missing links. (AOB 32-33.)

Given the nature of the case, where both videos were produced by the victims of the alleged crimes[3] and given how easily the videos can be altered, the videos should be excluded based on chain of custody. (*See* *People v. Hall* (2010) 187 Cal.App.4th 282, 296 [less credence given when there is "skin in the game"].)

III. The sentencing was at the very least inaccurate, and in remedy the Court should terminate Defendant's mandatory supervision.

The People agree that the trial court's sentencing was confusing and "not perfectly clear."

On the record, the trial court stated that it would "split the sentence." (RT 2413.) The trial court immediately defined the sentence as "it's kind of somewhere halfway between granting probation and denying it and sentencing to

---

[3] Steven Bear was not a direct victim but as the president of the HOA has "skin in the game" to keep the premises crime-free. And several people had complained about Defendant in the past.

you straight custody." (RT 2413.) The trial court then imposed a two-year sentence for count two (the mid-term), and 364 days for count three, calculating the total as "three years" and again stating that "I'm going to split it." (RT 2413.) The trial court then stated that it will take the entire three years and split it, by requiring 274 days in jail, and mandatory supervision for the remainder. (RT 2413.) And again, the court then imposed terms of "supervision," including restitution to the victim. (RT 2413.) The minute order states that under the count two (felony) probation is denied and a two-year sentence was imposed *pursuant to Penal Code section 1170*. (CT 218 [italics added].) Under count three, the minute order states that probation is denied and imposes 364 days in jail. (CT 219.) The minute order then credits Defendant with 47 days for actual custody and 46 days for good time/work time. (CT 219.) The final line of the minute order then states that "Defendant on mandatory supervision/committed to county jail." (CT 219.) A nunc pro tunc order was then entered that Defendant was placed on a two-year probation. (CT 222.) [4]

Under Penal Code section 1170, a atrial court has discretion to "suspend execution of a concluding portion of the term for a period selected at the court's discretion." (Pen.

---

[4] The formal sentencing memorandum omits any mention of mandatory supervision. (CT 221.)

Code § 1170, subd. (h)(5(A).) That suspension is called "mandatory supervision." Only a felony can be subject to mandatory supervision. (Ibid., subd. (h)(2).)

Thus, any mandatory supervision given to Defendant for count three must be stricken. The People harp on the felony (count two) whether it was probation or mandatory supervision, which is odd since Defendant's argument in his opening brief was only about imposing mandatory supervision on a misdemeanor. (CT 219; AOB 34.) But once raised by the People, any way we look at the sentencing, it was error for the trial court to calculate a combined sentence and mete out sentencing based on the combined jail times. In the People's view, jail time was only given for the misdemeanor, while probation was given for the felony. Even if true, the minute order states that Defendant received mandatory supervision for the misdemeanor. (CT 219.) The People also cannot account for the minute order imposing two years "*under section 1170(h).*" (CT 218.) That order confirms that Defendant was to receive mandatory supervision for his felony, which would have cut into his jail time. Whichever way understood, Defendant was improperly sentenced.

The Court has statutory authority to strike any mandatory supervision improperly imposed. (Pen. Code, § 1260.) It was error for the trial court to combine the sentencing for the two counts.

CERTIFICATE OF WORD COUNT

Pursuant to Cal. Rules of Court, Rule 8.360, subd. (b)(1) the word count of Appellant's Reply Brief is approximately 2055 words, including footnotes.

Dated: March 2, 2026

Gelb Law, APC

/s/ Yisrael Gelb

Yisrael Gelb,

Attorney for Appellant, Kevin Perelman