No. B343120

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION FOUR

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

KEVIN PERELMAN,
Defendant and Appellant.

Los Angeles County Superior Court Case No. LA099813
The Honorable Gregory A. Dohi, Judge

RESPONDENT'S BRIEF

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INTRODUCTION

Appellant was convicted by a jury of two acts of vandalism (a misdemeanor and a felony). He was sentenced to 364 days of jail time for the misdemeanor followed by a two-year period of formal probation based on the middle term for the felony.

On appeal, appellant claims that surveillance videos of the vandalism incidents should have been excluded at trial on authentication and chain of custody grounds. These claims should be rejected. The trial court acted within its discretion by finding that the prosecution had adequately established the foundation for admission of the videos.

Appellant further claims that the court erred under Penal Code section 1170, subdivision (h) by imposing an unauthorized hybrid jail and mandatory supervision term. Appellant misapprehends what occurred at sentencing. He was not given a hybrid sentence. Rather, appellant was properly sentenced to 364 days in jail for his misdemeanor conviction followed by two years of formal probation for his felony conviction.

STATEMENT OF THE CASE

Following a jury trial, appellant was convicted of felony destruction or damage to property over $400 (count 2; Pen. Code[1] § 594, subd. (a)), and misdemeanor destruction of damage to property (count 3; § 594, subd. (a)). (CT 206-207, 213; RT 2117.)[2]

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[1] All further statutory references are to the Penal Code unless otherwise specified.

[2] The jury hung 11 to 1 in favor of another felony vandalism count, and that charge was dismissed in the interest of justice. (CT 213.)

The court imposed a 364-day jail term based on the misdemeanor (270 days plus 94 days credit) followed by two years of formal probation for the felony based on the middle term. (CT 219, 221; RT 2414.) The court imposed several conditions of probation. (RT 2414-2415.) Appellant was awarded 94 days of presentence custody credit.[3] Appellant appeals from the judgment of conviction. (CT 222.)

STATEMENT OF FACTS

A. Count 3 (misdemeanor vandalism at Warner Plaza)

Randy Christensen worked as an operations manager for Retail Opportunity Investments, Corporation ("ROCI"). He was familiar with Warner Plaza, which was located at 21855 Ventura Boulevard in Los Angeles. (RT 1547-1548.) ROCI owned and operated Warner Plaza. Christensen usually went to the property on Tuesdays and Thursdays. (RT 1548-1549.)

The center had video cameras. The video footage was stored on a server facility for American Virtual Monitoring. (RT 1549-1550.) The video footage had either 128 or 256-bit encryption which prevented tampering with the video or time stamp. Christensen had been informed it was the same encryption used by the FBI. (RT 1550.) He identified other camera views of the property (Exhibits 14 and 15). Christensen opined the footage was a fair and accurate representation of the commercial plaza on June 11, 2023. (RT 1558-1559, 1562-1563.)

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[3] Appellant's credit for time served plus the order to serve another 270 days equaled 364 days, which was the amount of time imposed for the misdemeanor.

The video footage and a photograph depicted appellant's S.U.V., with "www.kevinperelman.com" painted on the side. (Exh. 13; RT 1552-1553.) Appellant's S.U.V. entered the Sprout's parking lot and drove near the Nick the Greek and Urban Plates restaurants. (Exh. 12; RT 1551-1554.) Someone in appellant's vehicle dropped objects onto the ground near a dumpster. (Exh. 14; RT 1554-1555; 1846 [description of video in prosecutor's closing argument].) The video also showed a man using his extended right arm to make marks on the side wall of Nick the Greek. (Exh. 15; RT 1558-1560, 1565, 1846-1847 [prosecutor's description].)

On June 11, 2023, two days after the surveillance video showing appellant's S.U.V., Christensen noticed two, fist-sized green dots spray-painted on the side wall of the Nick the Greek restaurant. (RT 1560, 1564-1566.) Christensen took photographs of the dots himself as he almost always did. ((Exh. 16; RT 1560-1561.) Those dots were not there when Christensen previously visited the site, on Thursday, June 8, 2023. (RT 1567, see also (Exh. 17; 1562-1563 [Google Maps photograph before incident, apparently not showing the marks].) It cost about $35 to repair the spray-painting damage. (RT 1562.) Christensen also found multiple business cards thrown throughout the property. The cards had "www.perleman" plus something else printed on them, but Christensen mostly concerned himself with removing the cards. He often found such cards when he visited the property on Tuesdays and Thursdays. (RT 1555-1558.)

B. Counts 1 and 2 (vandalism to parked cars in appellant's residential complex)[4]

Appellant lived in the Woodland Oaks condominium complex on Ventura Boulevard in Woodland Hills which had a condominium side and a townhouse side. (RT 1510.) This complex was close to the Warner Plaza on Burbank Boulevard in Woodland Hills. (RT 1510, 1547.) Terrance Scroggin and Pedram Ezadpana lived in the same complex. Scroggin lived on the townhouse side. Scroggin knew appellant for over 20 years. Appellant also lived on the townhouse side. (RT 1509-1511.)

On August 1, 2023, Scroggin and Ezadpana discovered that both of their cars, which were parked in different underground parking garages in the complex, had been damaged. (RT 1289-1291 [Ezadpana], 1517-1518 [Scroggin].) Scroggin's car had scratches in the paint all over the car except the rag top, including a criss-cross "X" on his hood. The scratches were deep and "went to the metal." (Exhs. 7 & 8; RT 1517-1520.) Ezadpana's car had six-inch marks on the rear passenger door. (Exh. 5; RT 1289-1292.)

Surveillance camera videos from the previous night, July 31, 2023, showed appellant approach the passenger side of Ezadpana's car, remain for a few seconds. (Exhs. 2 & 3; RT 1285-1289, 1292.) Appellant then walked swiftly to the other garage and to Scroggin's car, where he made an asterisk-like mark on the hood and marked other parts of the car. (Exhs. 4, 7 & 8; RT 1516-1519.)

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[4] As noted, Count 1, alleging felony vandalism to Pedram Ezadpana's car, was dismissed following a hung jury. (CT 213.)

At trial, Scroggin identified appellant in court and as the person shown in the surveillance videos. (Exhs. 1-3; RT 1511-1514.) The estimates to repair the damage to Scroggin's and Ezadpana's cars were $5,012.16 and $3,618.71, respectively. (RT 1296, 1522.)

ARGUMENT

I. THE TRIAL COURT PROPERLY FOUND THE PROSECUTION HAD ESTABLISHED ADEQUATE FOUNDATION TO ADMIT THE VIDEO EVIDENCE

Appellant claims the trial court erred by admitting the video evidence without proper authentication for the video footage supporting count 2 (Woodland Oaks parking garage) and count 3 (Warner Plaza). (AOB 21-30.) Respondent disagrees. The prosecution provided adequate evidence that would permit a reasonable trier of fact to find that each video was a fair and accurate representation of the scene depicted.

A. The trial court rules the prosecution provided sufficient evidence to permit a reasonable trier of fact to find the videos were a fair and accurate representation of the scenes depicted

Prior to trial, appellant objected on foundation grounds to the admission of surveillance video allegedly depicting appellant damaging property. (RT 906-908, 1215-1216.) A hearing was held. The court stated that the prosecution must provide reasonable evidence that would permit a reasonable trier of fact to find that the video is a fair and accurate representation of the scene depicted. The foundation could be supplied by the person who took the images, a person who witnessed the event being recorded, or by other witness testimony, circumstantial evidence, content, and location. (RT 1217.) The court found the

prosecution's offer of proof was sufficient. Appellant objected and the court stated it would reconsider the issues if the proffered evidence was not produced at trial. (RT 1219-1220.) After hearing the evidence (set forth below), the trial court admitted the videos into evidence. (RT 1620; CT 171, 173-174.)

1. Warner Plaza

The prosecution called Christensen, an operations manager for ROCI. He was familiar with Warner Plaza located at 21855 Ventura Boulevard in Los Angeles. (RT 1208.) The company owned and operated Warner Plaza. Christensen usually went to the property on Tuesdays and Thursdays. (RT 1209.) The center had video cameras running continuously. The video footage was stored on a server facility for American Virtual Monitoring. (RT 1209.) Christensen was aware of the vandalism incident occurring on June 11, 2023. He had personally seen the paint dots and scattered business cards on the property. He had seen three green dots multiple times. (RT 1209-1210.) Christensen took photographs and submitted them to the company. (RT 1210.)

Christensen had not previously reviewed the surveillance video for the case, but he was aware the video footage carried a date/time stamp. ROIC relied on the security company to ensure the date/time stamp was accurate. He noted that videos were routinely handed over to the police when crimes occurred. (RT 1210.) Christensen had viewed past video recordings of the same property. (RT 1211.) For this case, Christensen put the police in contact with April Sheffield. (RT 1211.) Sheffield's duties

included retaining video requested by police departments. (RT 1211-1212.) She would first request footage from American Virtual Monitoring. (RT 1214.) The court examined Christensen. He viewed Exhibits 12, 13, and 14 at trial and testified that they appeared to be security video from the commercial property. Christensen was unsure if he provided the videos to the police directly or if the police obtained them from his office. Typically, American Virtual Monitoring would be contacted. They would send the files which would be forwarded to the police. (RT 1568.)

2. Woodland Oaks parking garages

Steven Bear had lived at the Woodland Oaks condominium complex since 1990. He was the president of the homeowner's association. He was "[v]ery familiar with the property." (RT 1316-1317.) He was also familiar with the video security system. There were 25 cameras. The complex had 69 condominiums on three floors and 24 townhomes on the same property. There were two parking garages. There were six cameras in each parking lot. (RT 1318.) There were also cameras off the elevators on all floors. All the building's exits had cameras. The video footage was stored on DVR recorders. It stored footage for 45 days. (RT 1318-1319.)

Bear retrieved video footage for July 31, 2023, after receiving complaints about cars being vandalized in the parking lots. (RT 1319.) Bear wanted to transmit the video footage as soon as possible due to the ongoing unsolved vandalism. Bear explained that a security consultant could retrieve the video, but sometimes he was out of the county or was otherwise delayed in

performing this task. Bear decided to pull up the video on his home computer and used his cellphone to make a video of the security footage displayed on his computer screen. (RT 1319-1320.) This was the fastest way to put the security footage into a format that could be emailed. (RT 1320-1321.)

Bear emailed the cellphone videos to Shawna Gatlin. She was a member of the homeowner's association. He had sent her security footage in the past. (RT 1321-1322.) Bear identified Exhibit 1 and identified appellant in the video footage. (RT 1322-1323.) Bear did not alter the video in any way. (RT 1323.) Bear opined that the video date and time stamp were accurate but might be off by a few minutes if there was a power outage. (RT 1323-1324.) Bear was not aware of any power outage on July 31, 2023. (RT 1333.) Bear likewise identified Exhibits 2, 3, and 4. He did not alter these videos. He sent them to Gatlin. (RT 1324-1328.)

Beginning in 2022, Gatlin managed the Woodland Oaks condominium complex located at 21620 Burbank Boulevard. (RT 1235.) She was familiar with the property. She usually visited quarterly. (RT 1235-1236.) The property included a three-floor condominium building with its own parking structure. (RT 1236.) The complex had a video recording system that included 25 cameras. The system was installed for security and safety purposes. (RT 1237.) The garage included six motion-based cameras. (RT 1238.) The garage had an independent DVR that stored the video footage. (RT 1238.) Based on reports of an incident on July 31, 2023, Gatlin requested multiple videos. She

viewed the footage. It had a date and time stamp for the date of the reported incident. (RT 1239-1240.) She forwarded the videos to Officer Dinse and again to Detective Ruiz. (RT 1240, 1243.)

Exhibit 1 was played for the jury.[5] Gatlin recognized the footage as the elevators at the property at Woodland Oaks going to the parking garage. The stamp indicated July 31, 2023, at 17:54 and 23 seconds. (RT 1245.) Gatlin testified she knew of no reason why the stamp would be inaccurate. (RT 1245.) Exhibit 1 was one of the videos she sent to law enforcement. The video was not modified or altered in any way. It depicted a male getting out of the elevator to the parking garage. (RT 1245-1246.)

Exhibit 2 was a 45-second video clip. (RT 1246.) The stamp indicated July 31, 2023, at 17:54 and 29 seconds. Gatlin identified the footage depicting the parking garage. (RT 1246.) The footage included the same door the parking garage as Exhibit 1. (RT 1247.) The video showed a male walking between two cars parked in spaces 23 and 24. Those spaces were assigned to Ezadpana. (RT 1248-1249.) Gatlin sent this video to Officer Dinse. The video did not appear to be altered in any way. (RT 1249.) Exhibit 3 was a 13-second video. (RT 1249.) It depicted the same parking garage from another angle. A person is seen walking. She sent this video to Officer Dinse. The video did not appear to be altered in any way. (RT 1250-1251.)

Exhibit 4 was a 40-second video clip depicting a different parking garage at the same property at Woodland Oaks. (RT 1251-1252.) That parking garage was for the townhouses

[5] Appellant's objection was deemed ongoing. (RT 1246.)

on the property rather than the condominiums (Exhibits 1-3). (RT 1252.) Woodland Oaks was not a large property, so it was easy to get from one garage to the other. Gatlin testified "[i]t could be no time at all." (RT 1253.) The video stamp was July 31, 2023, at approximately 5:28 p.m. (RT 1253.) Gatlin viewed the video. She saw someone walking near Scroggin's vehicle. Gatlin sent this video to Officer Dinse. It did not appear to be altered. (RT 1253-1254.)

Gatlin testified that all four videos (Exhibits 1 through 4) were fair and accurate depictions of what was sent to Officer Dinse. (RT 1254.) Gatlin obtained the video clips via email from Bear, a Woodland Oaks board member who lived at the property and had the software needed to download video from the security system. (RT 1258-1259, 1264, 1268-1269.) Gatlin believed that Bear took a cellphone video of the clips and sent the cellphone video to Gatlin. (RT 1259-1260.) Gatlin did not believe that Bear had the technical expertise to manipulate video footage with his cellphone's video. (RT 1261.) Gatlin then emailed the video clips to Officer Dinse. (RT 1260.) Gatlin never viewed the footage on a computer. (RT 1261.)[6] Gatlin believed it was obvious that the video clips sent had been taken with a cellphone. (RT 1269-1270.) Gatlin had no reason to believe that Bear would alter the security video or cellphone video. (RT 1270-1271.)

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[6] Cross-examination ceased while the parties discussed the testimony about an unidentified board member taking a cellphone video of the security footage. The court stated the chain of custody would need examination. (RT 1262-1263.) The court allowed testimony to continue subject to being struck due to lack of foundation. (RT 1264.)

B. Authentication

"Photographs and video recordings with imprinted data are writings as defined by the Evidence Code. (Evid. Code, § 250.)" (*People v. Goldsmith* (2014) 59 Cal.4th 258, 266.) "To be admissible in evidence, a writing must be relevant and authenticated. (Evid. Code, §§ 350, 1401.)" (*Ibid.*) "The proffered evidence must be an original writing or otherwise admissible secondary evidence of the writing's content. (Evid. Code, §§ 1520, 1521.) And it must not be subject to any exclusionary rule. (See, e.g., Evid. Code, § 1200.)" (*Ibid.*) The proponent of the recorded media has the burden of producing sufficient evidence to sustain a finding that it is authentic. (Evid. Code, § 403, subd. (a)(3).) On appeal, a trial court's ruling on the admissibility of evidence is reviewed for abuse of discretion. (*Goldsmith*, *supra*, 59 Cal.4th at p. 266.) Accordingly, a reviewing court will not disturb the trial court's ruling unless the appellant shows the court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*Ibid.*)

The "foundation" for authenticating a recording "requires that there be sufficient evidence for a trier of fact to find that the [recording] is what it purports to be, i.e., that it is genuine for the purpose offered." (*Goldsmith*, *supra*, 59 Cal.4th at p. 267.) "This foundation may, but need not be, supplied by the person [who made the recording] or by a person who witnessed the event being recorded. [Citations.] It may be supplied by other witness testimony, circumstantial evidence, content and location." (*Id.* at p. 268.) "Essentially, what is necessary is a prima facie case. 'As

long as the evidence would support a finding of authenticity, the [recording] is admissible. The fact conflicting inferences can be drawn regarding authenticity goes to the [recording's] weight as evidence, not its admissibility.'" (*Id.* at p. 267; see, e.g., *In re K.B.*, *supra*, 238 Cal.App.4th at p. 998 [photographs of juvenile holding firearm sufficiently authenticated by evidence that he was arrested wearing the same clothes and in the same location depicted in the photographs].)

The secondary evidence rule provides that the "content of a writing may be proved by otherwise admissible secondary evidence," except that the court "shall exclude secondary evidence" of the writing's content if it determines either "[a] genuine dispute exists concerning material terms of the writing and justice requires the exclusion" or "[a]dmission of the secondary evidence would be unfair." (Evid. Code, § 1521, subd. (a)(1) & (2); *People v. Skiles* (2011) 51 Cal.4th 1178, 1188; see *People v. Landry* (2016) 2 Cal.5th 52, 86 ["A writing that qualifies for admission under the secondary evidence rule must, nonetheless, be authenticated before it can be admitted"]; see also *People v. Son* (2020) 56 Cal.App.5th 689, 696 ["A video is a writing for purposes of the secondary evidence rule."].) A "classic circumstance for exclusion" under the unfairness exception is if "the proponent" of the evidence "destroyed the original with fraudulent intent or the doctrine of spoliation of evidence otherwise applies." (Cal. Law Revision Com. com., West's Ann. Evid. Code (1998 ed.) foll. § 1521; *Victor Valley Union High*

School Dist. v. Superior Court (2023) 91 Cal.App.5th 1121, 1138-1139; *Meeks v. Autozone, Inc.* (2018) 24 Cal.App.5th 855, 864.)

C. The trial court acted within its discretion

As set forth above, the prosecution provided evidence permitting a reasonable trier of fact to find that the video evidence was a fair and accurate representation of the Warner Center and the Woodland Oaks parking garages. Christensen verified that the scene depicted in Exhibits 12 to 17 was the Warner Center on the operative date. (RT 1558-1559, 1562-1563.) Multiple witnesses verified that the scenes depicted in those exhibits were the Woodland Oaks parking garages for that residence (RT 1245-1254 [Gatlan]; RT 1322-1328 [Bear]; RT 1511-1519 [Scroggins].) (See *People v. Chism* (2014) 58 Cal.4th 1266, 1303 ["it is well settled that the showing may be made by the testimony of anyone who knows that the picture correctly depicts what it purports to represent"], internal quotation omitted.)

Appellant does not seem to dispute that this evidence accurately depicts these places. Rather, he argues that the prosecution should have been required to call an expert to establish that the videos had not been altered or manipulated to make it appear appellant committed the charged incidents of vandalism. However, as discussed below, these arguments lack merit.

1. Warner Plaza

As to the Warner Plaza video, appellant complains that Christiansen and Dinse did not know whether American Virtual

Monitoring could edit the video. Appellant asserts that neither "Christiansen nor Sheffield had knowledge about American Virtual Monitoring's practices and conduct." (AOB 27-28.) Appellant's argument makes the unreasonable assumption that video security companies are routinely in the business of tampering with video footage from the security cameras they provide to clients. This is simply a bridge too far. The very purpose of such companies is to provide accurate video footage. No "serious question of tampering" has been presented in this case. Rather, an assertion of tampering based on bare speculation is an issue for the jury to consider. (See *People v. Diaz* (1992) 3 Cal.4th 495, 559 ["'when it is the barest speculation that there was tampering, it is proper to admit the evidence and let what doubt remains go to its weight'"]; see also *People v. Gibson* (2001) 90 Cal.App.4th 371, 383, [writings authenticated as writings by defendant by content, location, and absence of evidence they were written by anybody else].) "The fact conflicting inferences can be drawn regarding authenticity goes to the document's weight as evidence, not its admissibility." (*Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 321.)

In sum, the proponent's threshold burden for admissibility "is not to establish validity or negate falsity in a categorical fashion, but rather to make a showing on which the trier of fact reasonably could conclude the proffered writing is authentic." (*Valdez*, *supra*, 201 Cal.App.4th at p. 1437.) This was clearly done in this case. Accordingly, the trial court acted within its discretion by letting the jury decide whether the video evidence

was what it purported to be. (See *People v. Williams* (2009) 170 Cal.App.4th 587, 606 [a trial court abuses its discretion only if the court's ruling is arbitrary, capricious, or patently absurd].)

Notably, defense counsel argued that the videos *did not clearly demonstrate* appellant committed the alleged vandalism; but counsel *never argued* that the jury should conclude that the videos had been *altered to frame appellant*. (RT 1853-1854, 1857-1859, 1861.) Counsel argued to the jury: "*Watch the video*. You don't have to accept Officer Dinse's opinion . . . *Watch the video see if you can tell from the video yourselves*. Is that Kevin Perelman?" (RT 1858, emphasis added.) This tends to demonstrate that there was no cogent argument that the video evidence had been altered or tampered.

2. Woodland Oaks parking garages

Appellant complains that "Bear circumvented the normal process and downloaded the videos onto his own computer rather than getting a hardcopy from the DVR." (AOB 27.) But appellant cannot explain why this would make any difference. Each is merely a way to transfer the *digital images* off the security system. There is no original "film" anymore for video surveillance.

Under the authentication rules set forth in *Goldsmith*, the trial court did not abuse its discretion by finding the video evidence had been properly authenticated. The prosecution was not required to establish authentication through the testimony of any particular person who could acquire the video or how video was "normally" delivered on prior occasions. (*Goldsmith*, *supra*,

59 Cal.4th at p. 267.) As mentioned, three different witnesses familiar with the parking garages testified that the videos were fair and accurate depictions of those garages. (RT 1245-1254 [Gatlan]; RT 1322-1328 [Bear]; RT 1511-1519 [Scroggins].)

Further, the fact that Bear recorded the video displayed on his laptop with his cellphone so it could be emailed to the police was explored during examination, and the jury could have considered this in evaluating the video. There was no indication that a cellphone video was created after the original was intentionally destroyed to hide something. Therefore, appellant's "secondary evidence" argument (AOB 29-31) fails. (*Victor Valley Union High School Dist. v. Superior Court* (2023) 91 Cal.App.5th 1121, 1138-1139 [spoliation occurs "when the party in possession and/or control of the electronically stored information was objectively aware the evidence was relevant to reasonably foreseeable future litigation" and fails to preserve it for another party's use]; compare *Meeks v. Autozone, Inc.* (2018) 24 Cal.App.5th 855, 864 [exclusion of testimony under secondary evidence rule was erroneous where it was undisputed that proponent did "not have possession or control of the original or a copy of the texts and that they were not reasonably procurable through the court's process or other available means"].)

Appellant relies on *People v. Beckley* (2010) 185 Cal.App.4th 509. However, as another appellate court has opined, that case was wrongly decided, and in any event, it is distinguishable. The *Beckley* court considered whether a photo downloaded from MySpace had been properly authenticated. A defendant's

girlfriend testified that she demanded that defendant to stop associating with a gang when they began dating. (*Id*. at pp. 513-514.) The prosecution sought to impeach her with a photograph depicting her flashing a gang sign. The testifying officer said he had downloaded the photograph from that defendant's MySpace page. The defendant's objected based on lack of authentication was overruled at trial. (*Id*. at p. 514.) The court of appeal held the trial court erred. The court reasoned that while it was conceded the photograph was of the girlfriend, the officer who downloaded it "could not testify from his personal knowledge that the photograph truthfully portrayed [the girlfriend] flashing the gang sign." The court found that the prosecution should have called an expert to opine the photograph was not "faked" or "a composite." The court believed "[s]uch expert testimony [was] critical . . . to prevent[ing] the admission of manipulated images." (*Id*. at 515-516.)

The *Beckley* opinion has drawn criticism. As the First Appellate District, Division Four observed,

> To the extent *Beckley*'s language can be read as requiring a conventional evidentiary foundation to show the authenticity of photographic images appearing online, i.e., testimony of the person who actually created and uploaded the image, or testimony from an expert witness that the image has not been altered, we cannot endorse it. Such an analysis also appears to be inconsistent with the most recent language in *Goldsmith* which explained that in authenticating photographic evidence, the evidentiary foundation "may—but need not be—supplied by the person taking the photograph or by a person who witnessed the event being recorded. [Citations.]" In addition, authentication "may be supplied by other witness testimony,

> circumstantial evidence, content and location" and "also may be established 'by any other means provided by law' ([Evid.Code,] § 1400), including a statutory presumption. [Citation.]" (*Goldsmith*, supra, 59 Cal.4th at p. 268, 172 Cal.Rptr.3d 637, 326 P.3d 239.)

(*In re K.B.* (2015) 238 Cal.App.4th 989, 997.) The *K.B.* court also opined:

> Furthermore, reading *Beckley* as equating authentication with proving genuineness would ignore a fundamental principal underlying authentication emphasized in *Goldsmith*. In making the initial authenticity determination, the court need only conclude that a prima facie showing has been made that the photograph is an accurate representation of what it purports to depict. The ultimate determination of the authenticity of the evidence is for the trier of fact, who must consider any rebuttal evidence and balance it against the authenticating evidence in order to arrive at a final determination on whether the photograph, in fact, is authentic.

(*Ibid*.)

Thus, contrary to any assertion in *Beckley* that experts should be routinely required, an expert should rarely be required and only for a specific reason. While it is possible for people to manipulate digital photographs before posting them on social media, there was no indication this was done in *Beckley*, and no cogent reason to suppose it was done in the current case. "As long as the evidence would support a finding of authenticity, the writing is admissible. The fact conflicting inferences can be drawn regarding authenticity goes to the document's weight as evidence, not its admissibility." (*Jazayeri*, *supra*, 174 Cal.App.4th at p. 321; see e.g. *People v. Valdez* (2011) 201

Cal.App.4th 1429, 1434-1437 [court upheld the admission of MySpace documents, finding an adequate foundation for admissibility was established by Valdez's photograph, greetings addressed to him, and by the apparent relationship to others in a comments section].)

Further, *Beckley* is also distinguishable. 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. But appellant has not explained how this applies to security video footage or a cellphone recording of the same. Here, the security footage was available to a few people and the person who took a cellphone video of the footage testified. Appellant has not adequately explained how a person with a cellphone can record another video and alter the video to: (1) add a person who was not there and make it appear as if they were damaging someone's vehicle; or (2) alter an image of a real person damaging a vehicle but make it appear to be a different specific person.

In sum, the circumstantial evidence and testimony from multiple witnesses was sufficient to authenticate the video evidence. Warner Center was highly familiar to Christensen, who testified that the video evidence depicted the center as he knew it. The video had a time stamp to indicate the day and time. (RT 1558-1559, 1562-1563.) The video of the parking garage was highly familiar to three different witnesses, including the person whose car was vandalized. (RT 1245-1254 [Gatlan]; RT 1322-1328 [Bear]; RT 1511-1519 [Scroggins].) There was no evidence that any of the videos were "planted or false."

(See *Valdez*, *supra*, 201 Cal.App.4th at p. 1436.) And the evidence provided met the requisite "prima facie case" of authenticity. (*Goldsmith*, *supra*, at p. 267; see e.g., *In re K.B.* (2015) 238 Cal.App.4th 989, 998 [the circumstantial evidence of the defendant appearing in the video and other "factors point to the authenticity and genuineness of the photographs" and that there was no evidence indicating the photographs were inaccurate show "the prosecution sufficiently authenticated the incriminating photographs"].) Accordingly, appellant has failed to show that the trial court abused its discretion in admitting the video and leaving any final determinations of authenticity to the jury.

II. THE TRIAL COURT ACTED WITHIN ITS DISCRETION BY FINDING THE PROSECUTION HAD ESTABLISHED AN ADEQUATE CHAIN OF CUSTODY

Appellant also claims the trial court abused its discretion by finding the prosecution had established an adequate chain of custody to admit the video evidence. (AOB 31-33.) Respondent disagrees. The prosecution provided adequate evidence supporting a proper chain of custody connecting the evidence with the case and raising no serious questions of tampering.

A. Relevant proceedings

Over appellant's objections (chain of custody, foundation, and authentication), the trial court admitted the videos into evidence. (RT 1620; CT 174.) Regarding count three, the Warner Plaza count, the trial court reasoned that Officer Dinse's testimony established the videos' chain of custody. Officer Dinse testified regarding where he obtained all the videos.

Christiansen testified regarding the company's standard practices. (RT 1620.) Christiansen recognized the videos and testified that they appeared to be the surveillance videos from the shopping plaza. (RT 1620.) Regarding count two, the court noted that Bear had identified them as the videos he had obtained, testified that he had recorded them off screen, and explained what software he used. (RT 1620.) The court noted that a perfect chain of custody is ideal, but gaps will not result in the exclusion of the evidence so long as the links offered connect the evidence with the case and raise no serious questions of tampering. (RT 1218.) The court found the prosecution's offer of proof would meet the requirements of authentication and chain of custody. (RT 1218.)

B. The trial court acted within its discretion by finding that the prosecution met its burden of showing that it was reasonably certain the video footage was not altered considering all the circumstances

"The abuse of discretion standard of review applies to a trial court's ruling on a party's motion to exclude evidence based on an insufficient showing of chain of custody of that evidence." (*People v. Catlin* (2001) 26 Cal.4th 81, 134; *People v. Williams* (1997) 16 Cal.4th 153, 196-197 ["[o]n appeal, a trial court's decision to admit or not admit evidence, whether made in limine or following a hearing pursuant to Evidence Code section 402, is reviewed only for abuse of discretion"].) When chain of custody is questioned, the party offering the evidence bears the burden of showing that it is reasonably certain the samples were not altered considering all the circumstances, including the ease or

difficulty of alteration. (*Catlin*, *supra*, 26 Cal.4th at p. 134; *People v. Riser* (1956) 47 Cal.2d 566, 580-581 ["[t]he requirement of reasonable certainty is not met when some vital link in the chain of possession is not accounted for, because then it is as likely as not that the evidence analyzed was not the evidence originally received. . . . [c]onversely, when it is the barest speculation that there was tampering, it is proper to admit the evidence and let what doubt remains go to its weight"], disapproved on another ground in *People v. Chapman* (1959) 52 Cal.2d 95, 98.) However, on appeal, a reviewing court must review the record in the light most favorable to the court's ruling below. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849.)

Here, the trial court acted within its discretion by finding that the prosecution met the burden of showing that it was reasonably certain the videos were not altered considering all the circumstances. Each link in the chain was adequately accounted for. Appellant offers speculation rather than any evidence that the videos were altered in a way to frame appellant for crimes he did not commit. (AOB 31-32.) When viewed in the light most favorable to the prosecution, this speculation of tampering was properly left as a jury issue.

Indeed, as noted previously, the defense never suggested to the jury that the videos were altered to falsely depict appellant. Rather, defense counsel argued that the videos were not clear enough to discern that appellant was the perpetrator. (RT 1858 ["Watch the video. You don't have to accept Officer Dinse's opinion . . . Watch the video see if you can tell from the video

yourselves. Is that Kevin Perelman?"] see also generally RT 1853-1854, 1857-1859, 1861.) This tends to demonstrate that there was no cogent pretrial argument that the video evidence could have been altered based on the chain of custody.

III. THE TRIAL COURT PROPERLY IMPOSED A 364-DAY JAIL TERM FOR THE MISDEMEANOR CONVICTION FOLLOWED BY A TWO-YEAR PERIOD OF FORMAL PROBATION FOR THE FELONY; THUS, CONTRARY TO APPELLANT'S CLAIM, THE COURT DID NOT PLACE APPELLANT ON MANDATORY SUPERVISION PURSUANT TO SECTION 1170, SUBDIVISION (B)

Finally, appellant claims the trial court unlawfully imposed two years of mandatory supervision under section 1170, subdivision (h) for the felony conviction. (AOB 33-34.) Appellant misapprehends what occurred at sentencing. The court did not impose a "hybrid*" jail term plus mandatory supervision* under section 1170, subdivision (h)(5)(B*)* for the felony conviction as appellant claims. Rather, the record demonstrates that appellant was sentenced to 364 days in county jail (270 days plus 94 days credit) based on the misdemeanor, followed by a two-year period of *formal probation* for the felony (middle term).

A. Relevant proceedings

Prior to sentencing, the court had proffered an indicated sentence of two years formal probation and 150 days in county jail. At sentencing, the prosecution asked for the low term of 16 months for the felony along with protective orders for the victims. The court questioned whether it could issue any kind of protective orders if probation was denied. (RT 2404-2405.)

Before imposing a sentence, the court heard from victim Scroggins, who told the court that appellant was a continuous

source of trouble and that he also filmed anyone who confronted him about his actions. Scroggins, who was 81 years old, described appellant's actions and stated that they caused other vulnerable residents to be fearful or vexed. (RT 2406-2408.)

The court stated that without aggravating circumstances, the maximum term was two years (middle term) for the felony plus 364 days for the misdemeanor. (RT 2409.) The court addressed defense counsel and asked whether appellant was willing to engage in some form of treatment. The court proposed a "split sentence." The court reiterated that denying probation would preclude issuing protective orders, but granting probation could result in inadequate jail time for the offenses. The court proposed that appellant serve a certain amount of time but remain under court's probationary supervision for the rest of that time. Under that scenario, the court could impose stayaway conditions. (RT 2410.) Appellant requested probation. (RT 2410-2412.)

The court addressed appellant, stating:

> This is a really kind of a complicated – it's a difficult situation because you have been living in this place, Mr. Perelman, for many, many years, but it's clear that you're making life really unbearable for the other people who live there.
>
> You strike me as somebody who's pretty smart, pretty resourceful, pretty capable, but there's something going on that just puts you in conflict with so many people around you. There's a mental health issue here that's just going unaddressed. I can't force you into treatment, and even if I could it really wouldn't take unless you're willing to admit that there's a problem here.

> I'm thinking years and years of conflict with your neighbors and other people might be a red flag that there's a real problem here. I can't make you face up to it. I can't make you address it. What I can do though is issue some orders to make sure that people who live around you and that their property is safe.
>
> So this is what I'm going to do. I'm going to split the sentence. It's kind of somewhere halfway between granting probation and denying it and sentencing to you straight custody.

(RT 2412-2413.)

As to the felony, the court stated it was sentencing appellant to the "mid term of two years." (RT 2413.) As to the misdemeanor, the court stated it was sentencing appellant to "364 days in the county jail." (RT 2413.) The court stated the total sentence was "three years" which would be "split." The court informed appellant: "I'm going to require you to serve 270 days in the county jail and the balance of the sentence is going to be mandatory supervision." (RT 2413.) Appellant lodged no objections. (RT 2414.) Appellant was ordered inter alia, to obey all laws and orders of the court, and to report to the probation officer within 48 hours of your release from custody." (RT 2414-2415.) The court ordered appellant "to stay 100 yards away from Mr. Scroggin and stay 100 yards away from the ROIC property." (RT 2415.) The court stated appellant had 47 of actual custody plus 47 good time custody credit. (RT 2418.)

The minute order states: "As to Count 002 PC594(a), Felony: Probation is Denied. The Court selects the Mid Term of 2 Years in County Jail pursuant to Penal Code Section 1170(h). 2 Years stayed[.]" (CT 218, emphasis added.) This minute order also

stated: "As to Count 003 PC594(a), Misdemeanor: Probation is Denied. The Defendant is ordered to serve 364 Days in Los Angeles County Jail." (CT 219.) However, in a subsequent nunc pro tunc order, the minute order corrected the probation status, stating: "Defendant is placed on 2 years formal probation." Another probation condition, mentioned during sentencing, was added: "Defendant is admonished to stay at least 100 yards away from Mr. Terrance Scroggin." (CT 222, emphasis added.) As to custody credits, the minute order indicated: "The Defendant is given total credit of 93 Days as follows: 47 Days Actual Custody Credit and 46 Days Good Time/Work Time." Finally, the order stated: "Defendant on Mandatory Supervision/Committed to County Jail." (CT 219.) The felony sentencing memorandum also indicated that the court imposed the middle term of two years for the felony, 364 days for the misdemeanor, with 93 days of custody credit. (CT 221.)

B. The record shows the court imposed 364 days of jail time for the misdemeanor followed by formal probation for two years for the felony

Although not perfectly clear,[7] the record demonstrates that the trial court imposed 364 days of jail time for the misdemeanor followed by a two-year period of supervised formal probation for the felony. Further, nothing in the record indicates that the

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[7] The court spoke of "splitting" and used the term "mandatory supervision." However, the record, when viewed in its entirety, demonstrates that the court imposed "formal probation" rather than "mandatory supervision" as asserted in the opening brief. Appellant's argument fails to mention the court's nunc pro tunc order plainly stating: "Defendant is placed on 2 years formal probation." (CT 221.)

court intended to utilize section § 1170, subdivision (h)(5)(B). The nunc pro tunc order expressly states that for the felony: "Defendant is placed on 2 years formal probation." The minute order does not specify appellant was sentenced to county jail for the felony. Nor does it state that the court imposed mandatory supervision under section 1170, subdivision (h)(5)(B). (CT 222.) The felony sentencing memorandum is consistent with the corrected minute orders in these aspects. (CT 221.)

Based on the trial court's comment that it could imposed a "split sentence," appellant assumes that the court utilized the hybrid jail term plus "mandatory supervision" provision of section 1170, subdivision (h)(5)(B). (AOB 33-34.) However, this assumption is unsupported by the record and makes little sense given the facts.

Under section 1170, subdivision (h), a trial court has the discretion to either sentence a low-level felony offender to county jail or impose a "'split sentence consisting of county jail followed by a period of mandatory supervision.'" (*People v. Camp* (2015) 233 Cal.App.4th 461, 467; see also *People v. Scott* (2014) 58 Cal.4th 1415, 1418-1419.) In the latter scenario, the court suspends execution of the concluding portion of the offender's sentence and releases them into the community under the supervision of the probation department. (*People v. Avignone* (2017) 16 Cal.App.5th 1233, 1240.) When a defendant is on mandatory supervision, the defendant is supervised by the probation department "in accordance with the terms, conditions, and procedures generally applicable to persons placed on

probation." (§ 1170, subd. (h)(5)(B).) Although mandatory supervision has been characterized as "akin to probation" (*People v. Griffis* (2013) 212 Cal.App.4th 956, 963, fn. 2), mandatory supervision is "distinct from both probation and parole." (Bryant, at pp. 982-983).

Here, appellant was placed on *formal probation* rather than *mandatory supervision*. As discussed above, the record shows that the court was worried that if it imposed a prison sentence for the felony, it would be unable to impose formal probation conditions that would protect appellant's neighbors in the future. At the same time, if the court imposed formal probation for the felony, then appellant might not serve a sentence commensurate with his offenses. Under section 1170, subdivision (h), the court was *authorized* to split appellant's two-year felony term, with a portion in jail and the remaining portion on mandatory supervision.

But the court *did not need this tool* because appellant was *also convicted of a misdemeanor carrying a 364-day jail term*. For this reason, the court chose to impose the full 364-day jail term for the misdemeanor (270 days plus 94 days credit = 364) to satisfy the punishment needed while preserving the court's ability to protect appellant's neighbors with formal probation conditions for two years based on the felony. Finally, appellant's argument ignores the fact that the court imposed *364 days for the misdemeanor*.

Accordingly, appellant's claim is based on a misunderstanding of what occurred at sentencing. The court

merely "split" the misdemeanor from the felony; the court imposed 364 days of jail time for the misdemeanor followed by two-years of formal supervised probation for the felony. (See, gen., *People v. Woodward* (2025) 339 Cal.Rptr.3d 311, 317 ["'[t]he Legislature has classified most crimes as either a felony or a misdemeanor, by explicitly labeling the crime as such, or by the punishment prescribed'"], quoting *People v. Park* (2013) 56 Cal.4th 782, 789.)[8]

[8] If this Court concludes that it is unclear what sentence was imposed or that the imposed sentence is unauthorized, then the proper remedy is to remand the matter to the trial court for clarification or to impose an authorized sentence.

CONCLUSION

For the foregoing reasons, appellant respectfully requests that the judgment be affirmed.

Respectfully submitted,

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February 13, 2026

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S BRIEF uses a 13-point Century Schoolbook font and contains 7,340 words.

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February 13, 2026

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DECLARATION OF ELECTRONIC SERVICE

Case Name: ***People v. Kevin Perelman***

No.: **B343120**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On February 13, 2026, I electronically served the attached RESPONDENT'S BRIEF by transmitting a true copy via this Court's TrueFiling system and/or electronic mail addressed, as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on February 13, 2026, at Los Angeles, California.

Virginia Gow	/s/ Virginia Gow
Declarant	Signature

STATE OF CALIFORNIA California Court of Appeal, Second Appellate District	***PROOF OF SERVICE*** **STATE OF CALIFORNIA** California Court of Appeal, Second Appellate District

Case Name: **The People v. Perelman**
Case Number: **B343120**
Lower Court Case Number: **LA099813**

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