L.A.S.C. App. No. BR053990
L.A.S.C. Case No. 7VW04099

IN THE APPELLATE DIVISION
Superior Court
County of Los Angeles

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff, *RESPONDENT,*

v.

KEVIN PERELMAN,

Defendant, *APPELLANT.*

APPEAL FROM
SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE ERIC HARMON, JUDGE PRESIDING

RESPONDENT'S BRIEF

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PEOPLE OF THE STATE OF CALIFORNIA

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Bullshit

Bullshit

Phillips Guilty

Contacted by Kinsey Paid off by taxpayer division

Yes for 18 yr worldwide Rodney King

weird, trying to make me look Crazy based on what is on my website

I never made this Claim

need to look into this

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INTRODUCTION

Appellant thuggishly threatened an elderly, disabled neighbor and viciously attacked another neighbor merely because they wanted him to stop infecting their neighborhood sidewalks, parks, streets, and cars with business cards promoting his website. Appellant testified in the 5-6 years preceding his arrest he unloaded about 150,000 cards throughout the neighborhood. Appellant was convicted of making a criminal threat, battery, creating a public nuisance, and violating two municipal ordinances for placing "handbills" on vehicles, streets, sidewalks, and parks.

Appellant does not currently dispute the criminal threat and the battery convictions. Instead, he argues the prosecutor improperly vouched for the victim in the criminal threat count and he asserts "cruel and unusual punishment" error for these two counts. There was no vouching because the prosecutor's closing argument sentence fragment was based upon admitted evidence. Appellant sought an incarceration suspended sentence and mental health treatment. The court ordered incarceration and mental health treatment. This sentence does not "shock the conscious."

Appellant was convicted on two counts under the Municipal Code for illegally depositing his handbills on vehicles, the street, sidewalk, or park and two counts of creating a public nuisance. Although appellant's brief spills gallons of ink espousing his odd version of the First Amendment, the brief does not proffer a facial or as-applied challenge to these laws. Instead, this wholly unnecessary exposition is a predicate for his claimed instructional error. Appellant's rightfully rejected two special jury instructions were confusing, ambiguous, and a transparently incorrect statement of law because contrary to these instructions, the First Amendment does not absolutely protect all non-commercial speech from governmental restraint.

Appellant lastly claims trial court error in denying his motion for acquittal on the Municipal Code and nuisance counts only. Assuming appellant did not

forfeit this argument by failing to actually make any briefed argument, the People are truly at a loss for the basis of the claimed error. If appellant claims that the People failed to prove the cards were commercial speech because non-commercial speech is "absolutely protected," that distinction is patently wrong as a matter of law. And appellant admitted to slapping his business cards on cars and dumping them on the ground.

The judgment should be affirmed.

STATEMENT OF THE CASE

On August 7, 2017, the People filed their five count complaint against appellant. (CT 1.)

On October 26, 2017, appellant was ordered to stay away from Baily Barnard (Barnard) and Terrance Scroggin (Scroggin). (CT 9.)

On April 4, 2018, the court ordered the complaint amended by interlineation to add counts 7-9, inclusive. (CT 66.)

Also on April 4, 2018, the People filed their operative first amended complaint (CT 63), which alleges:

- Count 1: Between March 21, 2017 and August 2, 2017, appellant committed a public nuisance (Pen. Code, § 370) by obstructing the free passage and use of a park, square, street, or highway.
- Count 2: On May 18, 2017, appellant criminally threatened (Pen. Code, § 422, subd. (a)) Scroggin.
- Count 3: On May 9, 2017, appellant unlawfully deposited rubbish on a city street. (L.A. Mun. Code., § 66.25.)
- Count 4: On April 28, 2017, appellant unlawfully deposited rubbish on a city street. (L.A. Mun. Code., § 66.25.)
- Count 5: On March 21, 2017, appellant unlawfully deposited rubbish on a city street. (L.A. Mun. Code., § 66.25.)

- Count 6: From August 3, 2017 to September 20, 2017, appellant committed a public nuisance (Pen. Code, § 370) by obstructing the free passage and use of a park, square, street, or highway.
- Count 7: On August 18, 2017, appellant battered Barnard. (Pen. Code, § 242.)
- Count 8: On September 20, 2017, appellant unlawfully threw or placed handbills on vehicles. (L.A. Mun. Code, § 28.01(a).)
- Count 9: From March 21, 2017 to March 6, 2018, appellant unlawfully deposited handbills on a street, sidewalk, or park. (L.A. Mun. Code, § 28.01.1(b).) (CT 63-66.)

On May 5, 2018, the court dismissed counts 3, 4, and 5 pursuant to Penal Code section 1385. (CT 77.)

On May 17, 2018, after the People rested, the court denied appellant's motion for acquittal (Pen. Code, § 1118.1) on counts 1, 6, 8, 9; the motion was not made for the criminal threat and battery counts (counts 2 and 7). (2RT 658; CT 83.)

On May 18, 2018, the trial court denied appellant's request to give the defense's Special Jury Instruction Nos. 1, 2. (3RT 915, 919; CT 84; Court ex. A.)

On May 21, 2018, the jury found appellant guilty on counts 1, 2, 6, 7, 8, 9. (CT 117-122, 134.)

On May 21, 2018, appellant requested immediate sentencing after the verdict was recorded. (CT 136.)

On May 21, 2018, appellant was sentenced on the nuisance counts (counts 1 and 6) to 36 months summary probation, 52 weeks of mental health counselling through the county's mental health department, and fines and fees. For criminally threatening Scroggin (Count 2), appellant was sentenced 36 months summary probation provided that he serve 30 days in jail, 52 weeks of mental health counselling, and fines and fees. For battering Barnard (Count 7), appellant was sentenced to 36 months summary probation provided that he serve 90 days in jail, less four days total credit. The time was to run consecutively with Count 2.

Why did Judge gs/c Me and not my Layer Set up by his friend Eric Harmon

done Brief witnessing and Psych Eval on my site there are lying

believe only applies small area downtown LA not Valley

Appellant was also sentenced to 52 weeks of mental health counselling, and fines and fees. The sentence for placing the business cards on vehicles and littering pursuant to the Municipal Code (counts 8 and 9) was stayed pursuant to Penal Code section 654. (CT 123-128, 136-141.)

Also on May 21, 2018, a three-year stay away order was issued for Scroggin, Barnard, Linda Cannon (Cannon) and Brittany Duffy (Duffy). (CT 129.)

On May 23, 2018, appellant filed his notice of appeal. (CT 146.)

I am in danger of them and a lot on Video Seymour Refuse to use

STATEMENT OF FACTS

A. Appellant Spewed About 150,000 Business Cards In The Neighborhood

must be one of the gngs started hunting me there

Cannon lived near appellant's condominium complex for 30 years. (2RT 308-309.) Cannon saw "hundreds" of appellant's business cards strewn "all over [the] neighborhood." (2RT 308-309.) The cards said "www.KevinPerelmanTarget.com [¶] World [sic] wide campaign to remove me from society since childhood." (People's ex. 5.) Cannon saw these cards in alleys, on sidewalks, in the street "almost every day" and she was "always picking them up," as were her neighbors. (2RT 308-309.) Cannon in one instance saw appellant throw "hundreds" of cards from his car on a windy day. (2RT 312.) These cards created a "mess." (2RT 310.)

Duffy similarly testified that she saw "trails of . . . [appellant's] business cards that went around the block." (2RT 359.) They were "all over" the neighborhood. (2RT 361.) She saw these cards deposited on cars "every day" from 2016 until July 2017, when she left the neighborhood. (2RT 359.) Duffy said appellant's cards created a "mess," they were an "eyesore" which "broke my heart." (2RT 361.)

LAPD Officer Dinse testified he received numerous complaints that appellant's businegss cards were "all over" the area of appellant's condominium

Paid off to lock me in mental institions because started pulling Eyebrows at 12

complex, shopping centers, and parks. (2RT 371-372.) On May 18, 2017, while responding to Scroggin's emergency call, Officer Dinse saw more than 100 of appellant's business cards on cars and in the street. (2RT 373.)

LAPD Officer Brent Rygh similarly testified that he saw more than 1,000 of appellant's business cards near a park, near appellant's condominium complex, on cars, and on sidewalks. (2RT 387.)

Appellant testified in the preceding 5-6 years he dispensed about 150,000 cards in the neighborhood. (3RT 940.) He admitted to slapping his business cards on cars and dumping them on the ground. (2RT 684-685; 3RT 955.)

B.

Appellant Without Provocation Criminally Threatened To "Slice. . .Open" Scroggin, His Elderly, Disabled Neighbor

Appellant and Scroggin lived in the same condominium complex. (2RT 321.) Scroggin was a 75-year-old army combat veteran who was 100% physically and mentally disabled; he had controlled PTSD, and he was enrolled in an anger management class. (2RT 328, 331, 345, 348-349.) On May 18, 2017, Scroggin saw appellant in the middle of the street throwing his "cards down"; they were "everywhere." (2RT 321-322.) The cards were on the street and sidewalk. (2RT 323.) After appellant left, Scroggin "easily" collected "over 50" cards. (2RT 321-323.) Scroggin was "very tired of picking up [appellant's] stuff," so he took the cards to appellant's condominium. (2RT 323-324, 334.) After knocking on appellant's door and ringing the doorbell, Scroggin left the cards on appellant's patio. (2RT 323-324.)

Scroggin then chatted with a neighbor on the sidewalk. (2RT 324.) About five minutes later appellant approached and said "did you do that?" (2RT 324, 326.) Appellant walked in the middle of the street and again started throwing cards on the ground. (2RT 324.) Scroggin approached appellant, he told him "you can't do this." (2RT 324, 327.) Appellant from a distance of about two feet chillingly responded

self defense mass Attack world wide We all know is Going on

100k-1mil Attack per day escalating 18 yrs ago

Bullshit hunted by Scroggins + dinse w/ ww support

Read his court Convos he is Allowe to hunt those he doesn't like down

multiple blackmail stalking threat from Scroggins

wrong

Scroggins Ran up to me Yelling. I told him he needs to stop he kept

told him if he did not leave me alone [conditional] I will cut him down and tried to get away from him

"if you do this one more time I will slice you open." (2RT 327.) Scroggin was "afraid," he thought the "bigger and stronger"[1] appellant "meant it." (2RT 327, 346.) Scroggin called 911 to report the threat. (2RT 328.)

C.

Appellant Without Provocation Viciously Attacked And Battered Barnard

Barnard lived in the vicinity of appellant's condominium complex since February 2016. (2RT 604.) Barnard saw "thousands" of appellant's business cards in "various places all over town"; sidewalks, parks, driveways, car windows, and on the ground. (2RT 605.) These cards were "all over the neighborhood all the time." (2RT 604.)

Say in Court he followed me home

On August 18, 2017, at about 6:00 p.m., Barnard saw appellant place his cards on car windows and on the street. (2RT 604.) As Barnard approached appellant, he saw appellant dropping "dozens" of cards in a trail about 50 feet long; he asked appellant to stop littering. (2RT 604, 607.)

Bullshit

Appellant immediately became aggressive and animated, he "started ranting and raving." (2RT 608.) Barnard continued asking appellant to stop littering, but appellant advanced toward Barnard and threatened to "blow my brains off if [Barnard] came into his home." (2RT at 608.) Barnard was "afraid"; appellant suddenly punched Barnard in the side of his face; the blow landed on his chin. (2RT 608, 611.) Appellant struck Barnard with so much force that it knocked off his glasses and they both fell to the ground. (2RT 611.) Appellant was on top of Barnard; he continued to viciously punch and grab Barnard. (2RT 611.) Barnard finally restrained appellant with a headlock to end the fight which lasted between one to two minutes. (2RT 613-614.) After they both got off the ground, Barnard began looking for his glasses, but appellant brutally swung his DSLR camera at Barnard grazing his arm. (2RT 614.) Appellant fled and a few moments later, while

told them they needed to leave me alone

he came on my Prop throwing cards

followed me some blocks gate

Never Even Connected Either of us

I called Police

Assault + Battered first

Covering up for his prior

we Grabbled thats it

security guard Jon

Attacked

[1] The stay away order said appellant was age 46. (CT 129.)

Barnard was on the telephone with the 911 operator, Barnard saw a car with appellant's website address on its side speed away. (2 RT 614; ex. D.)

After appellant's savage attack, from August 2017 to March 2018, Barnard and his wife collected as many as a "couple of thousand" business cards which they picked up in the neighborhood, primarily from Warner Park. (2RT 622.) Barnard brought these cards to court when he testified. (2RT 622.)

I called first + went to Station

STANDARD OF REVIEW

A.
Vouching

Vouching is a specie of prosecutorial misconduct. (*People v. Martinez* (2010) 47 Cal.4th 911, 955.) "Under the federal standard, prosecutorial misconduct that infects the trial with such '"unfairness as to make the resulting conviction a denial of due process"' is reversible error. (*Darden v. Wainwright* (1986) 477 U.S. 168, 181.) In contrast, under our state law, prosecutorial misconduct is reversible error where the prosecutor uses 'deceptive or reprehensible methods to persuade either the court or the jury' (*People v. Price* (1991) 1 Cal.4th 324, 447) and '"it is reasonably probable that a result more favorable to the defendant would have been reached without the misconduct"' (*People v. Wallace* (2008) 44 Cal.4th 1032, 1071)." (*Id.*, at 955-966.)

Philips Guilty

B.
Cruel And Unusual Punishment

"'Whether a punishment is cruel or unusual is a question of law for the appellate court, but the underlying disputed facts must be viewed in the light most favorable to the judgment. [Citations.]' (*People v. Martinez* (1999) 76 Cal.App.4th 489, 496.) Cruel and unusual punishment is prohibited by the Eighth Amendment to the United States Constitution and article I, section 17 of the California

Constitution.'" (*People v. Mantanez* (2002) 98 Cal.App.4th 354, 358; *People v. Em* (2009) 171 Cal.App.4th 964, 971.)

C.
Instructional Error

Reversal will result if "it is reasonably probable that [the appellant] might have achieved a more favorable result . . ." if the jury was correctly instructed. (*People v. Cabral* (2004) 121 Cal.App.4th 748, 753, citation omitted.) "'Instructions should be interpreted, if possible, so as to support the judgment rather than defeat it if they are reasonably susceptible to such interpretation.' [Citation.]" (*People v. Ramos* (2008) 163 Cal.App.4th 1082, 1088.) A court "must ultimately look to the *evidence* considered by defendant's jury under the instructions given in assessing the prejudicial impact or harmless nature of the error." (*People v. Harris* (1994) 9 Cal.4th 407, 428, emphasis original.)

D.
Motion For Acquittal (Pen. Code, § 1118.1)

A motion for acquittal tests the sufficiency of the evidence "at the point where the motion is made . . . [t]he question is one of law, subject to independent review." (*People v. Stevens* (2007) 41 Cal.4th 182, 200; *People v. Cole* (2004) 33 Cal.4th 1158, 1213.)

DISCUSSION

I.

THE PROSECUTOR DID NOT "VOUCH" FOR VICTIM SCROGGIN BECAUSE HER COMMENTS WERE BASED ON SCROGGIN'S TESTIMONY.

In *People v. Huggins* (2006) 38 Cal.4th 175, 206-207 the Supreme Court explained "improper vouching for the strength of the prosecution's case '"'involves an attempt to bolster a witness by reference to facts *outside the record*.'"' (*People v. Williams* (1997) 16 Cal.4th 153, 257, italics added.) "Thus, it is misconduct for

Phillips beyond Guilty of

prosecutors to vouch for the strength of their cases by invoking their personal prestige, reputation, or depth of experience, or the prestige or reputation of their office, in support of it. (See, *e.g.*, *People v. Ayala* (2000) 24 Cal.4th 243, 288; *Williams, supra,* at p. 257; *People v. Medina* (1995) 11 Cal.4th 694, 756–758.) Specifically, a prosecutor's reference to his or her own experience, comparing a defendant's case negatively to others the prosecutor knows about or has tried, is improper. (*Medina, supra,* at p. 758.) Nor may prosecutors offer their personal opinions when they are based solely on their experience or on other facts outside the record. (See *People v. Farnam* (2002) 28 Cal.4th 107, 200; *People v. Frye* (1998) 18 Cal.4th 894, 975–976, 1018–1019.)"

"'However, so long as a prosecutor's assurances regarding the apparent honesty or reliability of prosecution witnesses are based on the "facts from the record and the inferences reasonably drawn therefrom, rather than any purported personal knowledge or belief," her comments cannot be characterized as improper vouching.' (*People v. Frye* [, *supra*,] 18 Cal.4th 894, 971, disapproved on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421 & fn. 22; see *People v. Boyette* (2002) 29 Cal.4th 381, 433 . . .) Misconduct arises only if, in arguing the veracity of a witness, the prosecutor implies she has evidence about which the jury is unaware. (*People v. Padilla* (1995) 11 Cal.4th 891, 945–946, overruled on another point in [*People* v.] *Hill* [(1998) 17 Cal.4th 800], 823, fn. 1.)'" (*People v. Fernandez* (2013) 216 Cal.App.4th 540, 561.)

Here the prosecutor characterized Scroggin as the "one of the more brutally honest witnesses I have ever come across . . ."; the court overruled appellant's vouching objection. (3RT 988.) The prosecutor through her resumed closing argument said "my point was" Scroggin candidly told about his personal issues including his PTSD due to his military service and his anger management problems. (3RT 988.) The prosecutor said, without objection, this testimony was "brutally honest." (3RT 988.) Since the prosecutor's "brutally honest" comment was based

Scroggins states can hunt anyone he doesn't like - states - is in anger management - states Contact by dinse beforehand

Why are they trying to give me PTSD since a young age?

Pathological / liar (non Legal)

upon facts and inferences in the record there was no vouching. (*People v. Fernandez, supra*, 216 Cal.App.4th 540, 561.)

Paid off + = illegal ops
Jury tampering

II.

ASSUMING THE PROSECUTOR IMPROPERLY VOUCHED FOR SCROGGIN, THE ERROR WAS HARMLESS.

The standard of review for assessing prejudice caused by vouching depends on whether the error amounted to federal constitutional error. If so, then the standard is whether the error was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24; *People v. Estrada* (1998) 63 Cal.App.4th 1090, 1106-1107.) If the error was not of federal constitutional dimension, then the California constitutional standard would be whether there was a reasonable probability of a different result. (*People v. Watson* (1956) 46 Cal.2d 818, 835; *People v. Espinoza* (1992) 3 Cal.4th 806, 820-821.)

In *U.S. v. Martinez* (6th Cir. 1992) 981 F.2d 867, 871 the court elucidated "[i]n this case, we believe that the prosecutor's comment was simply an isolated misstatement. It is unlikely that it prejudiced Escamilla. [Citation.] Any possible prejudice that Escamilla might have suffered was ameliorated by the trial court's instruction to the jury that 'the lawyers' statements . . . and their arguments are not evidence.' [Citation.] This instruction was sufficient to neutralize the prosecutor's slight impropriety. [Citation.] Therefore, we conclude that the district court's ruling was not reversible error."

Under either the federal or state standard there was no prejudice. The prosecutor's Scroggin statement was a single, isolated sentence fragment made in the context of a lengthy closing argument after considerable evidence was heard by the jury. Even though the objection was overruled, the court immediately admonished the jury that the "prosecutor's opinion as to the veracity of a witness does not matter or her opinion as how this witness compares to anybody else in any other case doesn't matter. Disregard it." (3RT 998.)

Then intent because heard his Crime on the stand

Any possible prejudice was further ameliorated because the jury was instructed that the lawyer's statements and arguments were not evidence. (CT 92; 3RT 965-966.) The jury is presumed to follow the court's instructions, including curative instructions. (*People v. Sanchez* (2001) 26 Cal.4th 834, 852 [court will presume the jury will follow its instructions]; *People v. Grimes* (2015) 60 Cal.4th 729, 780 [court will presume jury will follow curative instruction]; *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 173 [same].) Moreover, the prosecutor immediately after the court gave its curative instruction said "my apologies" (3RT 988), which reinforced the trial court's admonition to disregard her slip.

Accordingly, a more favorable result would not have occurred absent the prosecutor's isolated statement because the prosecutor without objection explained from the evidence what she meant by her comment. And on appeal, appellant does not contest his threatening Scroggin, beating Barnard, and at trial he admitted to spewing tens of thousands of business cards in the neighborhood. (*People v. Medina, supra*, 11 Cal.4th 694, 758.)

III.

APPELLANT'S CRUEL AND UNUSUAL PUNISHMENT CLAIM IS FORFEITED BECAUSE HE DID NOT RAISE IT IN THE TRIAL COURT.

"A defendant's failure to contemporaneously object that his sentence constitutes cruel and unusual punishment forfeits the claim on appellate review. [Citations.] A claim a sentence is cruel and unusual is forfeited on appeal if it is not raised in the trial court because the issue often requires a fact-bound inquiry." (*People v. Speight* (2014) 227 Cal.App.4th 1229, 1247; accord *People v. Gamache* (2010) 48 Cal.4th 347, 403; *People v. Mungia* (2008) 44 Cal.4th 1101, 1140-1141; *People v. Burgener* (2003) 29 Cal.4th 833, 886; *People v. Russell* (2010) 187 Cal.App.4th 981, 993; *People v. Jackson*(1996) 13 Cal.4th 1164, 1231, fn. 17 [claims of constitutional error based on federal and state constitutions are waived in the absence of a constitutional objection in the trial court].)

I have no relevance
I don't even know when this was stated in trial
unless talking about appeals trial

Appellant forfeited his claim of cruel and unusual punishment by failing to object, either on state or federal constitutional grounds. If he had, that would have triggered a factual inquiry (*People v. Speight*, *supra*, 227 Cal.App.4th 1229, 1247), which was not conducted. (See 3RT 1247-1254-1500.)

IV.

ASSUMING APPELLANT DID NOT FORFEIT HIS CRUEL AND UNUSUAL CLAIM, HE FRIVOLOUSLY CLAIMS HIS CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN HE WAS SENTENCED TO JAIL.

The court in *People v. Landry* (2016) 2 Cal.5th 52, 125 explicated:

> """To determine whether a sentence is cruel or unusual as-applied to a particular defendant, a reviewing court must examine the circumstances of the offense, including its motive, the extent of the defendant's involvement in the crime, the manner in which the crime was committed, and the consequences of the defendant's acts. The court must also consider the personal characteristics of the defendant, including age, prior criminality, and mental capabilities. [Citation.]" [Citation.] "If the court concludes that the penalty imposed is 'grossly disproportionate to the defendant's individual culpability' [citation], or, stated another way, that the **punishment** """**shocks the conscience** and offends fundamental notions of human dignity""" [citation], the court must invalidate the sentence as unconstitutional."" (*People v. Virgil* (2011) 51 Cal.4th 1210, 1287.)" (See *People v. Cage* (2015) 62 Cal.4th 256, 294 [same]; *People v. Cunningham* (2015) 61 Cal.4th 609, 670; *People v. Jackson* (2014) 58 Cal.4th 724, 771 [same], emphasis added.)

There were cruel and unusual things done in Jail Connected to Lawyers + Jail Sys

Appellant's cruel and unusual punishment claim is frivolous. First, appellant falsely states he was sentenced to incarceration only (AOB 24-25); the court repeatedly ordered appellant to receive 52 weeks of mental health treatment. (CT 136-139; 3RT 1247-1248, 1251-1252.)

Second, defense counsel did not per se oppose incarceration, rather he urged the court to impose a suspended jail sentence as a sword of Damocles to compel appellant to obtain seek psychiatric counselling. (3RT 1246-1247.) The court

We know have Video proof I am Sane and not lying

imposed incarceration and mental health counselling. The Eight Amendment is not violated merely because appellant did not petulantly get what he wanted.

Third, appellant was not punished, *i.e.*, sentenced to jail, because he was apparently mentally ill. (AOB 24-25.) Appellant was sentenced to jail because he threatened to "slice . . . open" the elderly and disabled Scroggin and battered Barnard. (CT 137-139; 3RT 1247-1249, 1251-1252.) The trial court said appellant's "mental health didn't deprive him of the ability to distinguish between what's right and what's wrong. . . He wasn't punching a park bench, he was beating up a neighbor. He wasn't threatening an ATM machine; he was threatening a person who was defined as, by counsel, as an upstanding citizen. And mentioned earlier, an elderly guy who suffers from PTSD. . . . [¶] I'm going to treat [appellant], as I would anyone who's done an act of violence, because that's where I draw the line. . . [¶] Where I have to draw the line is when somebody lays hands on another human being and there's no justification for it." (3RT 1247-1248.)

Fourth, in the cruel and unusual punishment context, the defendant's mental health is only one of several factors considered by the court at sentencing. (*People v. Landry*, *supra*, 2 Cal.5th 52, 125; *People v. Cage*, *supra*, 62 Cal.4th 256, 294.) Appellant does not question the quality of the mental health portion of his sentence.

Fifth, appellant without citation to authority[2] claims the "legislature[sic] has made clear through its enactment of mental health diversion and other mental health legislation that it prefers mental health treatment over incarceration." (AOB 25.) Accepting for the moment the accuracy of this claim, appellant never requested diversion. Moreover, appellant asserts these unspecified statutes merely "prefer" mental health counselling; these so-called statutes do not preclude the trial court

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[2] Appellant's argument is also forfeited because he failed to support it with authority. (*People v. Stanley* (1995) 10 Cal.4th 764, 793 *Estate of Cairns* (2010) 188 Cal.App.4th 937, 949; (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979; *Akins v. State of California* (1998) 61 Cal.App.4th 1, 50; California Rules of Court, rule 8.204(a)(1)(B).)

from exercising its broad sentencing discretion to impose incarceration. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067; *People v. Carmony* (2004) 33 Cal.4th 367, 377.)

Accordingly, appellant frivolously failed to establish his that sentence "shocks the conscience and offends fundamental notions of human dignity." (*People v. Landry*, *supra*, 2 Cal.5th 52, 125; *People v. Cage*, *supra*, 62 Cal.4th 256, 294.)

problem isn't the Sentence, Its the defense attorney intentionally wont bring in truth or factual evidence because hes Paid off

V.

THE TRIAL COURT RIGHTLY REJECTED APPELLANT'S TWO SPECIAL JURY INSTRUCTIONS BECAUSE THEY WERE INCORRECT STATEMENTS OF THE LAW, AMBIGUOUS, OR CONFUSING.

A.

Preface

Despite the opening brief's First Amendment loquaciousness appellant does not raise an as-applied or facial challenge to Los Angeles Municipal Code sections 28.01 or 28.01.1 or Penal Code section 370. Appellant in the trial court expressly eschewed a facial challenge to the two Municipal Code sections at issue (2RT 29) and the in the opening brief appellant argues that he wants to "preserv[e] the constitutionality of [the two Municipal Code sections]."[3] (AOB 18.)

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[3] Appellant in a flashing comment offhandedly asserts if his odd construction of the two Municipal Code sections is not accepted, then they would "violate the First Amendment for overbreadth." (AOB 18.) This *conditional*, momentary rhetorical flourish is not an assignment of error. (*Picerne Construction Corp. v. Villas* (2016) 244 Cal.App.4th 1201 [appellate courts are "not required to examine underdeveloped claims"]; *McComber v. Wells* (1999) 72 Cal.App.4th 512, 522-523 [appellant's contentions must be supported by *meaningful argument* and citation to pertinent authority]; *People v. Carter* (2018) 26 Cal.App.5th 985, 995 [where constitutional issue is raised, but appellant "offers no argument, and we need not consider it"]; *Jefferson Street Ventures, LLC v. City of Indio* (2015) 236 Cal.App.4th 1175, 1196, fn. 2 [where an argument is "devoid of any reasoned legal analysis" it is forfeited on appeal]; *People v. Stanley* (1995) 10 Cal.4th 764, 793 [same]; Cal. Rules of Court, rules 8.883(a), 1.5(b)(1)].)

Instead, appellant seeks reversal of his conviction for violating Los Angeles Municipal Code sections 28.01 (Count 8), 28.01.1 (Count 9), and Penal Code section 370 (counts 1, 6) because the trial court refused to instruct the jury with his Special Instruction Nos. 1 and 2. (Court ex. A; AOB 12, 13, 18-20, 22-23.) Snarled into these arguments is an extensive and at times confused exposition of First Amendment jurisprudence which is nothing more than a distracting detour from the real issue: instructional error. (AOB 13-18; 20-22.)

There is no need for this court to address appellant's odd interpretation of the First Amendment because both of appellant's rejected jury instructions are facially and fatally defective, and as such, this court may resolve these issues by looking only at the proffered instructions without elucidating upon appellant's odd version of the First Amendment.[4] (*City of Dana Point v. California Coastal Com.*

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[4] Los Angeles Municipal Code section 28.01(a) prohibits attaching handbills to any vehicles. Since there is no constitutional challenge to the ordinances and statute, appellant unnecessarily spills a considerable volume of ink relying upon *Klein v. City of San Clemente* (9th Cir. 2009) 584 F.3d 1196, asserting it is "impossible to distinguish [it] from the present case." (AOB 15.) In *Klein*, at 1199, the court held the city's ordinance which prohibited placing commercial and non-commercial leaflets on vehicles parked on city streets to prevent littering violated the First Amendment. (See also AOB 15.) This court is "not bound by the Ninth Circuit's construction" of the First Amendment. (*Karuk Tribe of Northern California v. California Regional Water Quality Control Bd., North Coast Region* (2010) 183 Cal.App.4th 330, 352; *People v. Mackey* (2015) 233 Cal.App.4th 432, 487 [same]; *People v. Guillen* (2014) 227 Cal.App.4th 934, 1007 [same].) A contrary result was reached in *Jobe v. City of Catlettsburg* (6th Cir. 2005) 409 F.3d 261, 268-270, which upheld a content neutral anti-littering ordinance prohibiting commercial and non-commercial political speech from being placed on car windshields while they are parked on public streets. In *Savage v. Trammell Crow Co.* (1990) 223 Cal.App.3d 1562, 1571, the court upheld a public forum shopping center's regulation prohibiting the distribution of religious pamphlets on vehicles in its parking lot as a valid time, place, and manner regulation. *Savage* was "cited with approval" by the Supreme Court in *International Society for Krishna Consciousness of California, Inc. v. City of Los Angeles* (2010) 48 Cal.4th 446, 457-458 (*ISKCON*). (*Prigmore v. City of Redding* (2012) 211 Cal.App.4th 1322, 1345.) In *ISKCON*, at 458, the Supreme Court said in *Savage* the "ban on leafleting was narrowly drawn

(2013) 217 Cal.App.4th 170, 209 citing *Lying v. Northwest Indian Cemetery Prit. Assn.* (1988) U.S. 439, 445 [courts avoid reaching constitutional issues unless it is necessary to decide them]; *Citizens to Save California v. California Fair Political Practices Com.* (2006) 145 Cal.App.4th 736, 745 [same].)

B.

The Trial Court Properly Rejected Appellant's Special Instruction No. 2 For Counts 8 And 9 Which Is Wrong As A Matter Of Law, Confusing, And Ambiguous.

only applies small area downtown LA

Count 8, which charged appellant with placing handbills on vehicles in violation of Los Angeles Municipal Code section 28.01. Count 9 charged appellant with throwing or casting handbills onto any street, sidewalk, or park in violation Los Angeles Municipal Code section 28.01.1(b). On appeal, appellant does not quarrel with the offenses' jury instructions (CT 111, 112), rather he complains the trial court refused to instruct the jury with his Special Jury Instruction No. 2. (3RT 912-913, 915, 918-919.) Special Jury Instruction No. 2 provides: "An item that is not for a commercial or business purpose does not constitute a handbill. *Or in the alternative* [¶] An item that is not for a commercial or business purpose [*sic*] but is distributed for the purpose of engaging in free speech does not constitute a handbill." (Court ex. A, emphasis original.)

I have no clue about this

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because it furthered the shopping center's 'interest in controlling litter and traffic.'" In *Prigmore v. City of Redding*, *supra*, 211 Cal.App.4th 1322, 1345, the court after extensively criticizing *Klein* and in reliance on *Savage* upheld a content neutral ordinance which prohibited leafletting in a public library's parking lot because of the potential danger to public safety.

Los Angeles Municipal Code section 28.01.1 prohibits any person from directly depositing any handbill on any street, sidewalk, or park, *i.e.*, littering. (See *Schneider v. New Jersey* (1939) 308 U.S. 147, 162 [the First Amendment "does not deprive a city of all power to prevent littering. There are obvious methods to prevent street littering. Amongst these is the punishment of those who actually throw papers on the streets"]; *Van Nuys Publishing Co. v. Thousand Oaks* (1971) 5 Cal.3d 817, 821-822 [public entity may control the littering of papers thrown on lawns or sidewalks]; 7 Witkin, Summary of Cal. Law (11th ed. 2017), Constitutional Law, § 388, at 611-612.)

Much is wrong with this proposed jury instruction. First, appellant cannot rewrite the ordinance's definition of a handbill. Los Angeles Municipal Code section 28.00 defines a handbill to mean "*any* hand-bill, dodger, commercial advertising circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice, or *other written, printed or painted matter* calculated to attract attention of the public." This definition was read by the court to the jury. (CT 111, emphasis added.)

The ordinance's text broadly includes both non-commercial and commercial speech. The ordinance includes "any" of the 14 specified types of handbills and if these classifications are insufficient the ordinance's catch-all clause adds any "other written, printed or painted matter calculated to attract the attention of the public." "Commercial advertising" is just one type of handbill.

Appellant is not a super legislature, he cannot rewrite the ordinance to crab his conduct from criminality.[5] (*Witt Home Ranch, Inc. v. County of Sonoma* (2008) 165 Cal.App.4th 543, 559 [internal statutory definitions control the meaning of words used in the statute]; *Schnyder v. State Bd. of Equalization* (2002) 101 Cal.App.4th 538, 545 [same]; *Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263, 270-271 [when the language of a statute is defined by reference to a definitional provision, the express definition should not be disturbed to reach an implicit, not readily apparent, or convoluted result]; *Orr v. City of Stockton* (2007) 150 Cal.App.4th 622, 628 [when a statute provides a special definition it is controlling]; *Professional Engineers v. Wilson* (1998) 61 Cal.App.4th 1013, 1019 [same].)

Second, the overarching theme of appellant's brief, as expressed by his rejected jury instruction, is the distribution of a non-commercial handbill "is absolutely protected by the First Amendment." (AOB 16-81, 21.) The argument is nonsense. (See *Hague v. C.I.O.* (1939) 307 U.S. 496, 515-516 [free expression of

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[5] Appellant bizarrely argues without explanation that Los Angeles Municipal Code sections 28.01 and 28.01.1 by their "own text expressly limits its [*sic*] reach to commercial speech." (AOB 17.)

public questions in public forums such as streets and parks is "not absolute," it is "exercised in subordination to the general comfort and convenience, and in consonance with peace and good order. . . ."].) In *City Council v. Taxpayers for Vincent* (1984) 466 U.S. 789, 817, the Supreme Court upheld Los Angeles Municipal Code section 28.04, which banned the posting of a political candidate's signs from city utility poles. Municipal Code sections 28.01, 28.01.1, and 28.04 are all governed by Municipal Code section 28.00's definition of handbill. (See also *Jamison v. Texas* (1943) 318 U.S. 413, 416-417 [distribution of religious handbills on city streets subject to time, place, and manner regulation]; *Jobe v. City of Catlettsburg*, *supra*, 409 F.3d 261, 268-270, 274 [content neutral anti-littering ordinance may regulate non-commercial speech including political speech, and car windshield is not a public forum even if the car is on a public street]; *Prigmore v. City of Redding*, *supra*, 211 Cal.App.4th 1322, 1345 [content neutral ordinance could prohibit the distribution of Tea Party political pamphlets in library parking lot]; *Savage v. Trammell Crow Co.*, *supra*, 223 Cal.App.3d 1562, 1571 [public forum shopping center regulation may prohibit distribution of religious pamphlets on vehicles in its parking lot as a valid time, place, and manner regulation].)

Lastly, appellant's "alternative" jury instruction, has the "free speech" clause. The proposed instruction does not define "free speech." To be sure, it is appellant's colloquial version of the First Amendment's "freedom of speech" clause, but the First Amendment's expansive—and arguably elusive—meaning of free speech would fill a library with judicial opinions, law review articles, and scholarly tracts. In the context of a jury instruction, the "free speech" clause without an attached definition is hopelessly ambiguous and confusing, especially when it is the lynchpin of the instruction.

The trial court rightly refused to use appellant's Special Instruction No. 2. (*People v. Peoples* (2016) 62 Cal.4th, 718, 768 [general rule is a trial court may refuse a proffered instruction which is an incorrect statement of the law or if it will confuse a jury]; *People v. Sanders* (1995) 11 Cal.4th 475, 560 [a court "must refuse

an instruction that is an incorrect statement of the law"]; *People v. Frye (1998) 18 Cal.4th 894, 1028; Dicken v. Souther* (1943) 59 Cal.App.2d 203, 207.)

C.

The Trial Court Properly Rejected Appellant'sSpecial Instruction No. 1 for Counts 1 and 6 Which Is Wrong As A Matter of Law, Confusing, And Ambiguous.

Appellant was found guilty at counts 1 and 6 for creating a public nuisance.

Appellant wanted the jury to be instructed with Special Instruction No. 1 which provides: "[t]he exercise of free speech *cannot be considered injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin*, or any public park, square, street, or highway, to constitute a public nuisance" (Court ex. A, underscore and italics added.)

The trial court refused to give this instruction. (3RT 912, 915-918.) The underscored, undefined free speech clause suffers from the same infirmities as the free speech clause at appellant's Special Jury Instruction No. 2. (See §V. B., *ante*.) Absent a definition of "free speech," the rejected instruction is confusing and ambiguous. (*People v. Peoples*, *supra*, 62 Cal.4th, 718, 768; *People v. Gurule* (2002) 28 Cal.4th 557, 659.) Moreover, distilled to its essence the instruction incomprehensibly says undefined free speech is not a public nuisance. (*Bell v. H.F. Cox, Inc.* (2012) 209 Cal.App.4th 62, 80 [trial court may refuse an incomprehensible jury instruction].)

The italicized portion of the instruction is a verbatim restatement of Penal Code section 370 which defines a public nuisance. (See Pen. Code, § 370.) This portion of Special Jury Instruction No. 1 rehashes the public nuisance charging instruction, Pinpoint #1, which was read to the jury by the court. (CT 106.) The

italicized portion of Special Jury Instruction No. 1 is improperly repetitious. (*People v. Ochoa* (2001) 26 Cal.4th 398, 455 [trial court may refuse to read to jury a special instruction which duplicates other instructions; it provides the jury with no additional information it received from other instructions]; *People v. Gurule* (2002) 28 Cal.4th 557, 660 [duplicative instruction properly refused by the trial court]; *People v. Brown* (2003) 31 Cal.4th 518, 564 [same].)

The trial court properly rejected Special Jury Instruction No. 1. (*People v. Edwards* (2013) 57 Cal.4th 658, 745 [special jury instruction properly refused where its first sentence was confusing and the second sentence was already contained in the jury instructions].)

VI.

APPELLANT FORFEITED HIS MOTION FOR ACQUITTAL ARGUMENT ON APPEAL BECAUSE APPELLANT NEVER IDENTIFIED THE EVIDENCE WHICH WAS INSUFFICIENT AND THERE IS NO MEANINGFUL ARGUMENT.

The People incorporate by reference their authorities from footnote 2, *ante*. The opening brief spartanly mentions Penal Code section 1118.1[6] by gossamer reference only. (See AOB 13, 20, 22, 23.) The brief does not cite to any motion for acquittal authority, there is no discrete motion for acquittal analysis, and the brief never specifically explains how the evidence was insufficient for the contested counts. Instead, appellant fleetingly alludes to Penal Code section 1118.1 at the dawn of his two First Amendment expositions, then after concluding the court erred by refusing to give his special jury instructions he gratuitously asserts the motion for acquittal should have been granted. The issue is forfeited.

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[6] Penal Code section 1118.1 provides in pertinent part "[i]n a case tried before a jury, the court on motion of the defendant or on its own motion, at the close of the evidence on either side and before the case is submitted to the jury for decision, shall order the entry of a judgment of acquittal of one or more of the offenses charged in the accusatory pleading if the evidence then before the court is insufficient to sustain a conviction of such offense or offenses on appeal."

VII.

ASSUMING APPELLANT DID NOT FORFEIT THE MOTION FOR ACQUITTAL ISSUE, SUBSTANTIAL EVIDENCE SUPPORTS APPELLANT'S GUILT FOR COUNTS 1, 6, 8, AND 9.

Motions for acquittal pursuant to Penal Code section 1118.1 are reviewed by the substantial evidence standard. (*People v. Stevens* (2007) 41 Cal.4th 182, 200), based on the state of the evidence at the time the motion was made. (*People v. Stevens* (2007) 41 Cal.4th 182, 200.) The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt. [Citations.]" (*People v. Mincey* (1992) 2 Cal.4th 408, 432.) The question, accordingly, is "'"whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." [Citations.]' [Citation.]" (*People v. Farnam* (2002) 28 Cal.4th 107, 142, emphasis original.) Under the substantial evidence standard the conviction shall be reversed only if "'upon no hypothesis whatsoever there is sufficient substantial evidence to support [the conviction.' [Citation]." (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

After the People rested (2RT 656), appellant moved for acquittal pursuant to Penal Code section 1118.1. (2RT 568.) The token motion was devoid of all argument; appellant said it should be granted on all counts except the criminal threat (Count 2) and battery (Count 7). (2RT 658.) The court quickly denied the motion stating that there was sufficient evidence for the jury to find appellant guilty on the Municipal Code and public nuisance counts. (2RT 658-659.)

Since appellant in the trial court excluded from his motion for acquittal counts 2 and 7, he is precluded from doing so on appeal. (*People v. Ceja* (1988) 205 Cal.App.3d 1296, 1303-1304.) On appeal, appellant apparently is limiting his motion for acquittal "argument" to the Municipal Code and public nuisance violations.

Candidly, the People are at a loss to fathom how appellant claims the evidence is insufficient. If appellant claims that the People failed to prove that the business cards were commercial speech because non-commercial speech is "absolutely protected," that distinction is patently wrong as a matter of law; both types of speech are subject to government regulation. (See § V, *ante*.) And appellant admitted to slapping his business cards on cars and dumping them on the ground.

CONCLUSION

Predicated upon the foregoing, respondent the People of the State of California request the judgment be affirmed.

Dated: May 8, 2019

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their Evidence are hearsay or lies and ZERO proof I have solid proof they Lied and say is inadmissable as Evidence (Photos + Video)

WORD COUNT CERTIFICATE

Pursuant to California Rules of Court, rule 8.883(b)(1), a brief produced on a computer must not exceed 6,800, including footnotes. The word count certificate may exclude tables and any attachments to the brief. The attached brief contains 6,775 words, according to the computer's word processing software.

Dated: May 8, 2019

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PROOF OF SERVICE BY MAIL

APPELLATE DIVISION OF THE SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

PEOPLE v. KEVIN PERELMAN
BR053990 (Trial Court No. 7VW04099)

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the above-referenced action. My business address is 200 North Main Street, Eighth Floor, James K. Hahn City Hall East, Los Angeles, California 90012.

I am readily familiar with the practice of the Los Angeles City Attorney's Office, James K. Hahn City Hall East, for collection and processing correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On May 8, 2019 I served the foregoing document(s) described as **RESPONDENT'S BRIEF** on all interested parties in this action by placing copies thereof enclosed in a sealed envelope addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on May 8, 2019, at Los Angeles, California

Holly Bullard, Secretary