SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street, 2nd Floor
Riverside, CA 92501
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CLERK'S CERTIFICATE OF MAILING

ANTHONY MANUEL ALDEQUA

vs. CASE NO. APP1100063

PEOPLE OF THE STATE OF CALIFORNIA

TO: LAMBDA LEGAL DEFENSE AND EDUCATION FUND
3325 WILSHIRE BLVD., #1300
LOS ANGELES CA 90010

I certify that I am currently employed by the Superior Court of California, County of Riverside and I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the attached 11/09/12 on this date, by depositing said copy as stated above.

Court Executive Officer/Clerk

Dated: 01/03/13

by: _____
LETICIA G SERRANO, Deputy Clerk

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Riverside, CA 92501
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CLERK'S CERTIFICATE OF MAILING

DAVEVON COLBERG

vs. CASE NO. APP1100064

PEOPLE OF THE STATE OF CALIFORNIA

TO: LAMBDA LEGAL DEFENSE AND EDUCATION FUND
3325 WILSHIRE BLVD., #1300
LOS ANGELES CA 90010

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CLERK'S CERTIFICATE OF MAILING

EVERARDUS GERARDUS VANDERLINDEN

vs. CASE NO. APP1100065

PEOPLE OF THE STATE OF CALIFORNIA

TO: LAMBDA LEGAL DEFENSE AND EDUCATION FUND
3325 WILSHIRE BLVD., #1300
LOS ANGELES CA 90010

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CLERK'S CERTIFICATE OF MAILING

ERWIN MAURICE WALKER

vs. CASE NO. APP1100066

PEOPLE OF THE STATE OF CALIFORNIA

TO: LAMBDA LEGAL DEFENSE AND EDUCATION FUND
3325 WILSHIRE BLVD., #1300
LOS ANGELES CA 90010

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Dated: 01/03/13 by: _____
LETICIA G SERRANO, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

APPELLATE DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. **ANTHONY MANUEL ALDEQUA,** Defendant and Appellant. **AND CONSOLIDATED CASES**	Case No: APP1100063, consolidated with APP1100064, APP1100065, APP1100066 (Trial Court: INM199539, INM199752, INM200005, INM199549) **PER CURIAM OPINION**

Appeal from judgments of the Superior Court of Riverside County, David B. Downing and Steven Counelis, Judges. Affirmed.

James M. Crawford, on appointment by the Superior Court, for Defendant and Appellant Anthony Manuel Aldequa.

Wendy C. Forward, on appointment by the Superior Court, for Defendant and Appellant Davenon Colberg.

Eric Cioffi, on appointment by the Superior Court, for Defendant and Appellant Everardus Gerardus Vanderlinden.

Geoffrey Ojo, on appointment by the Superior Court, for Defendant and Appellant Erwin Maurice Walker.

Jon W. Davidson and Peter C. Renn for Lambda Legal Defense and Education Fund as Amicus Curiae on behalf of Appellants and Defendants.

Paul Zellerbach, District Attorney, and Matt Reilly, Deputy District Attorney, for Plaintiff and Respondent.

THE COURT

In these appeals, defendants Anthony Aldequa, Davenon Colberg, Evarardus Vanderlinden, and Erwin Walker challenge denial of their joint nonstatutory motion to dismiss their prosecutions for lewd exposure (Pen. Code, § 314, subd. (1)) and for solicitation of "lewd or dissolute conduct" in a public place (Pen. Code, § 647, subd. (a)). These four defendants were among nineteen men arrested during an undercover operation in which the Palm Springs Police Department (Department) used decoy officers to ferret out people engaging in public sex acts in the Warm Sands neighborhood of Palm Springs.

According to defendants, the police only targeted gay men and ignored reports that heterosexual men and women also engage in public sex acts in Palm Springs. This selective enforcement of the law, according to defendants, was done with the discriminatory purpose of targeting gay men in violation of their rights to equal protection under the law. After the trial court denied the motions to dismiss, the court permitted the prosecution to amend the complaints to allege a count of disturbing the peace. (Pen. Code, § 415, subd. (1).) Each defendant pleaded guilty to disturbing the peace, and the trial court granted the prosecution's motion to dismiss the remaining counts in the interests of justice. (Pen. Code, § 1385, subd. (a).) The trial court placed each defendant on summary probation for three years and

defendants timely appealed. We conclude the trial court did not err in denying defendants' motions to dismiss.

FACTS

In anticipation of moving to dismiss their cases on the ground of discriminatory prosecution, defendant moved the trial court, pursuant to *Murgia v. Municipal Court* (1975) 15 Cal.3d 286 (*Murgia*), for discovery of arrest reports for indecent exposure. The trial court found good cause for such discovery, and ordered the Department to produce records of arrests for indecent exposure in the two years immediately preceding the undercover operation.

A research assistant and paralegal employed by defense counsel analyzed these reports and produced two declarations setting forth their findings. According to these declarations, in the two-year period at issue the Department made no arrest of a heterosexual man or woman for consensual sex in public. All arrests in that period were of heterosexual men accused of indecent exposure or "flashing" of a non-consenting female victim, and of gay men arrested for engaging in consensual public sex, including the men arrested during the operation. At the hearing on defendants' joint motion to dismiss, the research assistant and paralegal admitted on cross-examination that they received no formal education or training in statistical analysis or in how to determine whether data is statistically significant, and they admitted to basing their findings solely on documented reports of indecent exposure received by the Department. Neither witness spoke to anyone at the Department or with the City of Palm Springs to determine whether the Department receives informal, undocumented reports of public sex or indecent exposure that would not be reflected in the discovery.

A number of witnesses testified that the Warm Sands neighborhood is a mixed residential and resort area of Palm Springs. The "resort end" of Warm Sands contains a number of nationally and internationally known resorts catering primarily to gay men, including some clothing-optional resorts and hotels. Before the undercover operation at issue took place, the Department conducted other undercover operations directed at suppressing consensual sex taking place in plain view of the sidewalk adjacent to the resort area. Because of the almost exclusively gay male clientele for the resorts and hotels in this area, all arrestees were either gay men or men engaging in sex acts with other men. Warm Sands was also known to have a high crime rate and to have recurring "quality of life" issues such as heterosexual prostitution near a Motel 6 on a separate end of Warm Sands, as well as drug use and sales.

In the year before this operation, David Ready, the City Manager of Palm Springs, hired David Dominguez as Chief of Police. Ready hired Dominguez in large part because of his proven track record of community outreach and good relations with members of the lesbian, gay, bisexual, and transgender (LGBT) community in the City of Riverside while employed with the Riverside Police Department. Very soon after taking his post as Chief, Dominguez met with members of various segments of the community, including members of the LGBT community and with some of the Warm Sands hoteliers. Among other concerns that Dominguez heard was the recurring problem of men loitering near the sidewalk and public avenues of Warm Sands in front of the resorts and engaging in consensual sex acts in plain view. In response, the Department increased the volume and visibility of vehicle patrols in the area, but no arrests were made and the problem did not appear to abate.

In mid-2009, City Councilman Rick Hutcheson received an email from William Burgess, a friend and resident of Warm Sands, complaining of problems in Warm Sands. In particular, Burgess complained that prostitutes were working out of the parking lot of the Motel 6, that drug use and sales was still a problem, and that he and other residents had witnessed "sex trade" taking place. Burgess's did not explain in his email what he meant by "sex trade" or in what part of Warm Sands it was taking place, but he testified after the fact that he was referring to the heterosexual prostitution taking place at the Motel 6. Burgess also testified that he was complaining about activity at Zelda's, a nightclub catering to heterosexuals, and not about gay sex in the resort end of Warm Sands. Hutchinson forwarded Burgess' email to Ready. Hutchinson also met with members of the Warm Sands community, including hoteliers. Some of these residents and business people told Hutchinson that they did not believe crime was a bigger problem in Warm Sands than before, but that they would look into it. Hutchinson testified he did not tell Ready or anyone else in the Department that there was a problem with gay men having sex in public.

Ready testified that, in 2006, the Department conducted a similar undercover operation in Warm Sands directed at public sex acts. Following that operation, Ready received complaints from hoteliers and, after meeting with them, agreed that in the future the Department would inform the hoteliers before conducting another operation. Ready testified this policy was not formally adopted until after the most recent operation. Neither Dominguez nor any other senior officer testified to knowing about the informal policy before launching the current operation. Ready forwarded Burgess' email to Dominguez, with the expectation that the problems described therein would be appropriately investigated and addressed.

Upon receiving the Burgess email, Dominguez directed his subordinate officers to investigate the different complaints. Dominguez testified that he interpreted the email to address three concerns – prostitution near the Motel 6, drug use and sales, and "sex trade." Because the email referred to "sex trade" independently from prostitution, and based on the fact that he was told by Warm Sands hoteliers that their patrons were regularly "propositioned" for sex in public, Dominguez interpreted "sex trade" to refer to consensual public sex acts taking place in the resort end of Warm Sands. Dominguez then forwarded the email to Captain Hall, and talked to Ready about the need to determine what, if anything, was taking place.

Captain Hall assigned to Sergeant Bryan Anderson the task of investigating the complaint about public sex in Warm Sands. Anderson was already familiar with Warm Sands from patrolling the neighborhood and from his involvement in prior undercover operations there. From this experience, and from what was reported to him by more junior officers, Anderson was aware that Warm Sands had a recurring problem of men congregating near the resorts for the purposes of engaging in public sex acts. Over roughly a week, Anderson drove through the resort end of Warm Sands and saw a number of men engaged in various sex acts in plain sight from the roadway, including mutual masturbation and oral copulation. These observations reinforced Anderson's conclusion that another undercover operation in Warm Sands would be appropriate.

Anderson testified that the operation he recommended and implemented, and which Dominguez approved, was not directed at gay men per se, but was directed at public sex acts in Warm Sands. Anderson also testified that he believe that increased patrols and sporadic

arrests would not suffice to abate the problem. Instead, Anderson believed that an undercover operation resulting in arrests and appropriate charges, including charges which trigger mandatory sex offender registration, would have the deterrent effect that patrols and occasional arrests did not. Anderson and other officers testified that on a number of occasions officers encountered heterosexual couples and gay couples having sex in cars in the City of Palm Springs, or believed the couples had just had sex in a car, but did not make an arrest for one reason or another. Some officers also testified that they witnessed men having sex in public in Warm Sands but that they made no arrest but issued a warning or blew the air horn of their patrol vehicle to get the men to stop. Both Anderson and Dominguez testified that they were disappointed to hear that officers were not enforcing the law, but they also testified that officers have discretion to decide, under the circumstances, whether to make an arrest or merely to issue a warning.

Defendants presented written and oral testimony that heterosexuals had also been seen having sex in public in the City of Palm Springs, and argued this established the Department turned a blind eye to straight sex in public. A security guard testified that he personally witnessed men and women having sex inside and outside of their vehicles in the parking structure near Zelda's and other establishments which primarily cater to heterosexuals. Likewise, defendants introduced testimony that men and women were observed having sex in a Knott's water park, and that men had been reported for "flashing" non-consenting female victims. However, on the whole the testimony was that these incidents were not immediately reported to the Department, and that the extent and gravity of these incidents were not brought to the attention of the Department until after the 2009 undercover operation.

A number of officers testified about the operation. Male officers dressed in jeans and t-shirts, who were wired for sound, loitered in the area of a walkway between the parking lot of one of the resorts and the resort itself. The officers tried to "blend in" with their surrounding and not call attention to themselves as police officers. A number of these officers acted in suggestive manners, including simulating masturbation through their clothing or rubbing or simulating rubbing of their crotch area. The officers waited for men walking by to engage in conversation, and then engaged with these men. If the men did not engage in conversation or did not expose themselves or otherwise commit a lewd act, the decoy officers did nothing. During some of these engagements, decoy officers made comments such as "Show me what you got," and other suggestive statements. If the men exposed themselves, the decoy officers gave the "bust" signal of "Uncle Wally" and performed an arrest. All of this activity was viewed by officers stationed nearby in a surveillance van, and one officer in the van operated a hand-held video camera. The officers using the video camera did not record every moment of the operation, but exercised discretion to turn off the camera when there was no ongoing activity or after a decoy officer issued the bust signal.

Each officer testified that the operation was not directed at gay sex or at sex between men. Instead, each officer testified the operation was directed at public sex and at indecent exposure and lewd acts in public. All of the officers testified that they made no insensitive comments or gay slurs to any of the men passing by or to arrestees, and that they heard no other officer make any anti-gay comments or disparage or denigrate anyone on the basis of their sexual orientation.

A great deal of time was taken up in the hearing addressing two inappropriate comments made outside the presence of any civilian or arrestee, and which the media widely reported. A number of officers testified that they either directly heard or subsequently learned that, while inside the surveillance van, Anderson botched an offensive quote from a well-known Stanley Kubrick film. (Full Metal Jacket (Warner Bros. Pictures, 1987).) Anderson was overheard and recorded saying, "Are you a cocksucker? Yes, sir, I am." Anderson testified that he did not make the comment out of any animosity toward gay men and denied that it was directed at any particular person he observed during the operation. Instead, Anderson testified the situation inside the van was somewhat uncomfortable and tense among the officers considering what they were witnessing, and that he merely tried to "break the ice" by making a joke. Anderson fully acknowledged the comment was completely inappropriate and unprofessional. Indeed, the officer manning the video camera offered to "dub" over the audio, but Anderson declined the offer.

The second inappropriate comment occurred on the sole night that Dominguez visited the operation. Dominguez was overheard saying "filthy mother fuckers" as he was leaving or about to leave the surveillance van to return to the staging area. Dominguez testified that, in his 31 years of experience as a police officer, he had never witnessed so much blatant sex taking place in public by anyone, gay or straight, as he did that night in Warm Sands. Dominguez explained he was extremely "taken aback" by what he saw and blurted out the comment. Dominguez acknowledged the comment was wrong and out of character for him, but he denied that he said it because he was offended by men having sex with other men. The officer manning the video camera that evening testified that he was not running the camera

when Dominguez made his comment, so the question of dubbing over the comment simply never came up.

DISCUSSION

"'The prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek.' (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 451.) However, the prosecution may not exercise discretion 'deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.' (*Oyler v. Boles* (1962) 368 U.S. 448, 456.)" (*People v. Owens* (1997) 59 Cal.App.4th 798, 801 (*Owens*).)

Our Supreme Court last addressed the standards for a motion to dismiss for selective or discriminatory prosecution in *Baluyut v. Superior Court* (1996) 12 Cal.4th 826 (*Baluyut*): "Although referred to for convenience as a 'defense,' a defendant's claim of discriminatory prosecution goes not to the nature of the charged offense, but to a defect of constitutional dimension in the initiation of the prosecution. [Citation.] The defect lies in the denial of equal protection to persons who are singled out for a prosecution that is 'deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.' [Citation.] When a defendant establishes the elements of discriminatory prosecution, the action must be dismissed even if a serious crime is charged unless the People establish a compelling reason for the selective enforcement. [Citations.]

"Unequal treatment which results simply from laxity of enforcement or which reflects a nonarbitrary basis for selective enforcement of a statute does not deny equal protection and is

not constitutionally prohibited discriminatory enforcement. [Citations.] However, the unlawful administration by state officers of a state statute that is fair on its face, which results in unequal application to persons who are entitled to be treated alike, denies equal protection if it is the product of intentional or purposeful discrimination. [Citation.]

"In *Murgia* this court explained the showing necessary to establish discriminatory prosecution: '[I]n order to establish a claim of discriminatory enforcement a defendant must demonstrate that he has been deliberately singled out for prosecution on the basis of some invidious criterion. Because the particular defendant, unlike similarly situated individuals, suffers prosecution simply as the subject of invidious discrimination, such defendant is very much the direct victim of the discriminatory enforcement practice. Under these circumstances, discriminatory prosecution becomes a compelling ground for dismissal of the criminal charge, since the prosecution would not have been pursued except for the discriminatory design of the prosecuting authorities.' [Citation.]

"We again explained the necessary showing in *People v. Superior Court* (*Hartway*) (1977) 19 Cal.3d 338, 348 (*Hartway*): 'The elements of the defense of discriminatory enforcement were set forth in *Murgia v. Municipal Court*, *supra*. To establish the defense, the defendant must prove: (1) "that he has been deliberately singled out for prosecution on the basis of some invidious criterion"; and (2) that "the prosecution would not have been pursued except for the discriminatory design of the prosecuting authorities."'" (*Baluyut*, *supra*, 12 Cal.4th at pp. 831-832.)

In *Baluyut*, the court overruled the holding of the Court of Appeal in *People v. Smith* (1984) 155 Cal.App.3d 1103 (*Smith*) that a defendant moving to dismiss for discriminatory

prosecution must demonstrate the prosecutor meant to punish the defendant based on his or her membership in a protected class or for exercising a right. (*Baluyut*, *supra*, 12 Cal.4th at pp. 832-838.) "Nothing in *Murgia*, *Hartway*, or the controlling decisions of the United States Supreme Court supports the imposition of this additional burden on a defendant. Showing an intent to punish for membership in a group or class is not necessary to establish a violation of an individual's right to equal protection under the Fourteenth Amendment to the United States Constitution. There must be discrimination and that discrimination must be intentional and unjustified and thus 'invidious' because it is unrelated to legitimate law enforcement objectives, but the intent need not be to 'punish' the defendant for membership in a protected class or for the defendant's exercise of protected rights." (*Id.* at p. 833.)

"Because of the presumption that official duty has been properly, hence constitutionally, performed (Evid. Code, § 664), the defendant has the burden of proof in establishing the defense of discriminatory enforcement of the law. [Citations.]" (*Hartway*, *supra*, 19 Cal.3d at p. 348.) Introduction of statistics showing unequal prosecution of certain classes does not, by itself, satisfy the defendant's burden. "In *Oyler v. Boles* (1962) 368 U.S. 448, 456, the court recognized some selectivity in the enforcement of such statutes may occur without creating a violation of equal protection. The court said: 'Even though the statistics in this case might imply a policy of selective enforcement, it was not stated that the selection was deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification. Therefore, grounds supporting a finding of denial of equal protection were not alleged.' (*Ibid.*)" (*People v. Andrews* (1998) 65 Cal.App.4th 1098, 1103.) The defendant must still

introduce evidence he or she was "intentionally singled out by the prosecuting authorities on an invidiously discriminatory basis." (*Murgia, supra*, at p. 299.)

"[T]he [trial] court decides whether to dismiss an action for discriminatory prosecution [citation], making a factual determination as to whether the prosecution engaged in intentional and purposeful invidious discrimination [citation] . . . ." (*People v. Posey* (2004) 32 Cal.4th 193, 206.) On appeal from denial of a motion to dismiss for discriminatory prosecution, the reviewing court "[v]iew[s] the evidence in the light most favorable to the respondent" (*In re Elizabeth G.* (1977) 53 Cal.App.3d 725, 732-733) and reviews the trial courts' findings of fact for substantial evidence (*People v. Battin* (1978) 77 Cal.App.3d 635, 669-670; *People v. Fishel* (1991) 1 Cal.App.4th Supp. 1, 5, fn. 4). "[U]nder settled principles of review, . . . this court may [not] reweigh the evidence in order to come to a contrary conclusion. [Fn. omitted.]" (*Hartway, supra*, 19 Cal.3d at p. 350.)

"'The [substantial evidence] standard is deferential: "When a trial court's factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination . . . ."' [Citations.]" (*People v. Semaan* (2007) 42 Cal.4th 79, 88.) "Substantial evidence is evidence which is '"reasonable in nature, credible, and of solid value."' [Citation.]" (*People v. Medina* (2009) 46 Cal.4th 913, 919.) "'Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve

neither credibility issues nor evidentiary conflicts; we look for substantial evidence.' [Citation.]" (*People v. Lee* (2011) 51 Cal.4th 620, 632.)

During the hearing on the motion to dismiss and in defendants' and Lambda's briefs on appeal, defendants call into question the veracity of the complaints about public sex between men in Warm Sands. For instance, they place much weight on Burgess' testimony that he when he wrote to complain about "sex trade" he meant prostitution. Lambda cites to a number of sources for the proposition that "sex trade" is a term of art in the law enforcement community which refers to commercial sex. When issuing its oral ruling on defendants' motion to dismiss, the trial court noted that, notwithstanding the fact that Burgess' email may not have actually been a complaint about public sex between men in the resort area of Warm Sands, the Department did have before it legitimate complaints from other sources about that behavior. ". . . [I]t is clear that by the time the command staff of the [Department] decided to do the sting, they had evidence that sex between men was going on in Palm Springs in Warm Sands." This finding is supported by the record. Even putting aside the ambiguity in Burgess' email, there was ample evidence that men regularly congregated or loitered near the resorts in Warm Sands for the purpose of engaging in public sex acts in view of the street. The record simply does not support the inference that the issue of public sex in Warm Sands was manufactured by the Department.

Having concluded the problem of public sex acts in Warm Sands was a legitimate concern for the Department, the trial court next addressed whether the Department acted appropriately by using an undercover operation. The court acknowledged that perhaps the

Department should have arrested any persons seen engaging in public sex and not merely issued warnings or turn the other way. But that failure to arrest, whether from individual exercise of discretion by an officer on the scene or from laxity of enforcement, did not mean the Department was somehow precluded from conducting an undercover operation to address an actual problem. Again, we conclude the record supports this finding. Although some witnesses questioned the wisdom of using decoy officers in an undercover operation, there is no evidence in the record which demonstrates that such an operation would not advance the goal of addressing the problem at hand.

With respect to the elements of a *Murgia* claim, the trial court concluded the undercover operation was not used against gay men out of an invidious intention of singling them out for prosecution. "The sting, according to all the police witnesses, was not directed at gay men but was directed at sexual conduct in public between men." The court noted that in eight days of testimony, it heard no evidence that any of the 19 arrestees were mistreated physically. The decoy and uniformed officers did not call the arrestees names or otherwise mistreat them. Moreover, that the Department never employed an undercover operation targeting public sex by heterosexuals "doesn't mean that this selection was founded on invidious discrimination . . . ." We agree. The context and frequency of the conduct in Warm Sands was qualitatively different than the types of conduct occurring between heterosexuals at the water park and in the parking structure. Even if the defendants demonstrated the Department knew full well about that separate conduct that does not mean the Department had an invidious intent when it decided to address the regularly occurring conduct in Warm Sands.

The court also noted that, contrary to the defendants' suggestion during the hearing that the officers entrapped them through suggestive actions and words, "[t]he videotape . . . clearly showed that all 19 men violated two Penal Code sections; 314.1 and 647(a), indecent exposure and lewd acts in public." Moreover, the court noted that on each of the nights of the operation the officers arrested multiple persons. The fact that the operation was not having an effect in stopping the activity from going on was, in the trial court's opinion, evidence that the arrestees were not entrapped. We are not convinced that evidence of entrapment would have constituted clear evidence of a discriminatory intent, but on the whole the record supports the trial court's conclusion that a number of men regularly frequent Warm Sands with the goal of engaging in public sex there, and that the decoy officers' persuasion was not enough to convince these men to engage in conduct they were not already inclined toward.

With respect to Anderson's and Dominguez's inappropriate comments, the trial court recognized that in command structure organizations the views of senior officers is important because it can set the tone among junior officers about how the organization views certain people. Had Anderson or Dominguez made their comments during pre-operation briefings to the officers, the court said, "we wouldn't be here. I would have dismissed those cases back in June because that would have been obvious, outright, blatant discrimination, and that would have shown that these 19 guys were arrested for being gay. But that isn't what happened." Instead, the court noted the inappropriate comments were not directed at "any particular arrestee" and do not establish a discriminatory intent.

We conclude that finding is supported by the record. As unprofessional and inappropriate the comments may be they do not demonstrate discriminatory intent on the part

of the Department. Both Anderson and Dominguez recognized their comments were unprofessional. Both testified that sexual orientation of a suspect is not a proper factor for an officer to consider when exercising discretion to arrest or issue a warning. And both testified that the operation was not targeted at men because they were gay, but because they were engaged in public sex acts which defense counsel acknowledged is unlawful. While defendants contend this is semantics, proving the Department targeted defendants because they were gay was critical to proving intentional, invidious discrimination.

Finally, the court concluded that the use of the undercover operation was rationally related to a legitimate governmental interest. "Here, men were clearly engaged in public sex and the police could no longer ignore that. It is apparent to me that the police ignored public sex between men in Warm Sands for years. Now, . . . they decided not to, and they decided to deal with it by the sting . . . ." The undercover operation bore a "rational relationship" to the goal of "attempt[ing] to stop the blatant, illegal, daily-occurring, public sex in Warm Sands." Again, the record supports this conclusion.

In sum, we conclude there is substantial evidence to support the trial court's determination that prosecution did not engage in invidious discrimination.

DISPOSITION

The judgments are affirmed.

Sharon J. Waters
Presiding Judge of the Appellate Division

Jeffrey Prevost
Judge of the Appellate Division

Raquel Marquez
Judge of the Appellate Division

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
Superior Court of California

Minute Order/Judgment

CASE NO.1100063 DATE:01/03/13 DEPT:10A
CASE NAME: PEOPLE VS. ANTHONY M. ALDEQUA
CASE CATEGORY: Appeal from Judgment-Misdemeanor

HEARING: Ruling on Matter Submitted 11/09/12 RE: Appellate hearing

****

Honorable Judge Sharon J. Waters, Presiding

Honorable Judge Jeffrey J. Prevost, Presiding

Honorable Judge Raquel A Marquez, Presiding

Clerk: L. Serrano

Court Reporter: None

No appearance by either party.

Court subsequently rules on matter taken under submission on 11/09/12.

The judgment is affirmed.

Notice to be given by clerk.

Notice sent to JAMES M. CRAWFORD on 1/03/13

Notice sent to DISTRICT ATTORNEY RIVERSIDE on 1/03/13

Notice sent to DESERT JUDICIAL DISTRICT - INDIO BRANCH on 1/03/13

Notice sent to LAMBDA LEGAL DEFENSE AND EDUCATION FUND on 1/03/13

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
Superior Court of California

Minute Order/Judgment

CASE NO.1100064 DATE:01/03/13 DEPT:10A
CASE NAME: PEOPLE VS. DAVEVON COLBERG
CASE CATEGORY: Appeal from Judgment-Misdemeanor

HEARING: Ruling on Matter Submitted 11/09/12 RE: Appellate hearing

****

Honorable Judge Sharon J. Waters, Presiding

Honorable Judge Jeffrey J. Prevost, Presiding

Honorable Judge Raquel A Marquez, Presiding

Clerk: L. Serrano

Court Reporter: None

No appearance by either party.

Court subsequently rules on matter taken under submission on 11/09/12.

The judgment is affirmed.

Notice to be given by clerk.

Notice sent to ELISABETH A. BOWMAN on 1/03/13

Notice sent to DISTRICT ATTORNEY RIVERSIDE on 1/03/13

Notice sent to DESERT JUDICIAL DISTRICT - INDIO BRANCH on 1/03/13

Notice sent to LAMBDA LEGAL DEFENSE AND EDUCATION FUND on 1/03/13

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
Superior Court of California

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Honorable Judge Sharon J. Waters, Presiding

Honorable Judge Jeffrey J. Prevost, Presiding

Honorable Judge Raquel A Marquez, Presiding

Clerk: L. Serrano

Court Reporter: None

No appearance by either party.

Court subsequently rules on matter taken under submission on 11/09/12.

The judgment is affirmed.

Notice to be given by clerk.

Notice sent to ERIC CIOFFI on 1/03/13

Notice sent to DISTRICT ATTORNEY RIVERSIDE on 1/03/13

Notice sent to DESERT JUDICIAL DISTRICT - INDIO BRANCH on 1/03/13

Notice sent to LAMBDA LEGAL DEFENSE AND EDUCATION FUND on 1/03/13

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
Superior Court of California

Minute Order/Judgment

CASE NO.1100066 DATE:01/03/13 DEPT:10A
CASE NAME: PEOPLE VS. ERVIN M. WALKER
CASE CATEGORY: Appeal from Judgment-Misdemeanor

HEARING: Ruling on Matter Submitted 11/09/12 RE: Appellate hearing

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Honorable Judge Sharon J. Waters, Presiding

Honorable Judge Jeffrey J. Prevost, Presiding

Honorable Judge Raquel A Marquez, Presiding

Clerk: L. Serrano

Court Reporter: None

No appearance by either party.

Court subsequently rules on matter taken under submission on 11/09/12.

The judgment is affirmed.

Notice to be given by clerk.

Notice sent to GEOFFREY OJO on 1/03/13

Notice sent to DISTRICT ATTORNEY RIVERSIDE on 1/03/13

Notice sent to DESERT JUDICIAL DISTRICT - INDIO BRANCH on 1/03/13

Notice sent to LAMBDA LEGAL DEFENSE AND EDUCATION FUND on 1/03/13