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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN GALINDO,

Defendant and Appellant.

B280906

(Los Angeles County
Super. Ct. No. GA096020)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Michael D. Carter, Judge. Affirmed.

Victor Salerno for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Zee Rodriguez and Michael C. Keller, Deputy
Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Stephen Galindo (defendant) appeals from the judgment entered after he was convicted of possession of a controlled substance and possession of a controlled substance for sale. He contends that the judgment was unsupported by substantial evidence. We find no merit to defendant's contention, and affirm the judgment.

BACKGROUND

Defendant was charged with four counts of possession of a controlled substance as follows: count 1, possession of methamphetamine with a firearm, in violation of Health & Safety Code, section 11370.1, subdivision (a); count 2, possession of methamphetamine, in violation of section 11377, subdivision (a); count 3, possession of methamphetamine for sale, in violation of section 11378; and count 4, possession of cocaine, in violation of section 11350, subdivision (a). The information further alleged pursuant to Penal Code section 12022.1 that defendant had been released on bail in case No. GA084918 at the time of the offenses alleged in counts 3 and 4.

On the first day of trial the information was orally amended to designate count 4 a misdemeanor. The trial court dismissed counts 1 and 2. Counts 3 and 4 were renamed counts 1 and 2 on the verdict forms, and the jury found defendant guilty of both counts as charged. Defendant admitted he was out of custody on bail at the time of the offenses. The trial court placed defendant on formal probation for three years, imposing standard narcotics conditions and requiring defendant to spend 270 days in county jail. Defendant filed a timely notice of appeal from the judgment.

Prosecution evidence

On January 23, 2014, Los Angeles Sheriff's deputies detained defendant in a traffic stop over a mile from his home, while other deputies executed a search warrant at his home. Approximately 20 to 30 minutes elapsed between the time defendant left his house and when the search warrant was served.

Defendant's house was equipped with exterior surveillance cameras with an inside monitor showing the camera views. The

house had two bedrooms and an office. A bathroom was connected to the office. In the office on or near the desk, the search team found several methamphetamine pipes and what appeared to be methamphetamine. Beneath the desk were found defendant's (an attorney) client files. Nearby was a yellow billing statement bearing defendant's name. A computer screen on the desk showed what appeared to be a court calendar and a list of Alhambra judges. The deputies also found defendant's state bar card, a social security card, defendant's driver's license, a checkbook in defendant's name, three digital scales, a cigar box containing ecstasy pills, men's watches, a small amount of what appeared to be cocaine, a pipe, and a fourth digital scale. Near the bathroom connected to office, the team found unused plastic baggies in a plastic container and a gun safe containing shotguns, a rifle, and a coin collection. A methamphetamine pipe and a calculator were found in a bookshelf drawer.

Two other residents of the home were present when the deputies arrived. Deeann Barada (Barada) opened the front door within a minute after the deputies knocked. The deputies immediately saw Shinji Tanabe (Tanabe) inside the living room when the door opened. Barada and Tanabe occupied the back bedroom. Tanabe was arrested for possession of methamphetamine after some of the substance was found in the back bedroom in a pair of pants, together with his identification. He later pled guilty to that charge. In another bedroom an unlocked safe contained prescription bottles bearing defendant's name, and another pipe. Neither Barada nor Tanabe appeared to be under the influence of narcotics. In fact all the methamphetamine pipes recovered were cold to the touch.¹

Detective Justin Mazzei of the Sheriff's narcotics bureau testified as the prosecution expert. He explained that a "usable quantity" of narcotics meant the minimum amount that would have noticeable effect on user. A usable quantity of rock cocaine would be .02 grams. He added that .793 grams of cocaine base

¹ If anyone had smoked narcotics within 25 minutes of the deputies' arrival using the pipes recovered from the house that day, the pipes would have still been warm when found.

would yield about 10 doses. A usable quantity of methamphetamine is considered to be .02 grams, and 8.9 grams of methamphetamine would yield about 446 doses with a retail value of approximately \$900. Methamphetamine is usually packaged in small plastic bags. The parties stipulated that Sheriff's Department's senior criminalist Chien-Hsing Lee tested the suspected narcotics recovered from defendant's office, and determined that one lot, identified by receipt No. K535018, contained .2793 grams of cocaine base. Each of the remaining lots consisted of a substance containing methamphetamine in the following amounts: receipt No. K535011, .4641 grams; receipt No. K535012, 8.1054 grams; receipt No. K535013, .3833 grams; and receipt No. K535014, .0289 grams.

Given a hypothetical question mirroring the facts in evidence in this case, Detective Mazzei opined that methamphetamine in the amount recovered in the office would have been possessed for purposes of sales. He explained that in his experience and training, indications of an intent to sell the methamphetamine included the amount of the substance, the presence of digital scales and plastic bags, the surveillance system, and the presence of firearms in the office. He explained that drug traffickers commonly kept firearms and used surveillance systems to protect against robbery by other drug dealers or users, and to alert them when law enforcement was in the area. The retail cost of methamphetamine was usually about \$100 per gram. To have 8.9 grams, or approximately 446 doses of methamphetamine, would be unusual for personal use, as users usually buy the drug in single doses. Also, sellers typically use scales to measure doses in order to protect their profits, whereas users do not usually pre-measure. In one of the scales there was residue that looked like methamphetamine, and the plastic baggies were the zipping kind that sellers often use.

Defense evidence

Defendant testified that his friend and longtime neighbor, Barada, had been living in his home for about two years, and he was training her to be his legal assistant. Barada had met Tanabe through defendant and developed a relationship with Tanabe. On the day of the search, defendant was running late, left the house with his driver, and was stopped by deputies about

1.8 miles away. A deputy ordered him out of the car and told him that he was under arrest for possession. When defendant asked, "Possession for what," he was handcuffed and placed in the back seat of patrol car. The deputy informed him that a search warrant had been issued for his home based on probable cause that a woman was selling drugs out of the house. Deputies searched defendant's car and briefcase, and then drove him back to his house.

Defendant claimed he had never seen methamphetamine, any illegal drugs, or any methamphetamine paraphernalia around the house before that day. He also claimed to have installed a keypad lock on the office because he had been the victim of two burglaries in the past 12 months. He explained when Barada was home, the door was always left open so that she could answer the telephone. He never saw Tanabe go into the office.

Tanabe testified that on the morning of the search he and Barada were in their back room when the deputies arrived. There was a monitor for the surveillance cameras in their room, and Barada told him the police were there. Tanabe had lived in defendant's house for about six months prior to the search. During the preceding few months Barada had worked less and less as defendant's assistant, and the office door was usually closed when defendant was out of the house. Tanabe had occasionally been in the office, but did not go in there the morning of the search. Tanabe pled guilty to the charge that he possessed methamphetamine that day.

Bernadette Alvarez testified that she had known Barada for about eight years and defendant for about six years. She had been at defendant's house many times and had seen Barada working as defendant's legal assistant.

DISCUSSION

Defendant's sole contention on appeal is that his convictions of possession of methamphetamine for sale and simple possession of cocaine were not supported by substantial evidence. In particular, he contends that the evidence failed to show possession, knowledge of the illegal character of the drugs, or an intent to sell the drugs.

“The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]” (*People v. Jones* (1990) 51 Cal.3d 294, 314.) We do not reweigh the evidence or resolve conflicts in the evidence. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) “The same standard applies when the conviction rests primarily on circumstantial evidence. [Citation.]” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) “An appellate court must accept logical inferences that the jury might have drawn from the circumstantial evidence. [Citation.]” (*People v. Maury* (2003) 30 Cal.4th 342, 396.)

“[B]ecause ‘we *must* begin with the presumption that the evidence . . . *was* sufficient,’ it is defendant, as the appellant, who ‘bears the burden of convincing us otherwise.’ [Citation.]” (*People v. Hamlin* (2009) 170 Cal.App.4th 1412, 1430.) Reversal on a substantial evidence ground “is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

I. Possession

First, defendant challenges the sufficiency of the evidence to prove that he was in possession of the controlled substances or that he knew the substances found in his office were in fact illegal controlled substances. “The essential elements of unlawful possession of a controlled substance are ‘dominion and control of the substance in a quantity usable for consumption or sale, with knowledge of its presence and of its restricted dangerous drug character. Each of these elements may be established circumstantially.’ [Citations.]” (*People v. Martin* (2001) 25 Cal.4th 1180, 1184.) Simple possession is “illegal without regard to the specific intent in possessing the substance.” [Citation.] Although the possessor’s knowledge of the presence of the controlled substance and its nature as a restricted dangerous drug must be shown, no further showing of a subjective mental state is required. [Citation.]” (*Id.* at pp. 1184-1185, fn. omitted.)

Although defendant acknowledges that a substantial evidence review does not permit this court to reweigh the evidence or resolve credibility issues, he nevertheless argues: “It is extremely far-fetched and strains credulity to believe that he left his office in the morning to go to court, with knowledge of the methamphetamine . . . on his desk in four plastic baggies with diverse amounts.”

““Although an appellate court will not uphold a judgment or verdict based upon evidence inherently improbable, testimony which merely discloses unusual circumstances does not come within that category. [Citation.] . . . [Citation.]” . . .’ [Citation.]” (*People v. Barnes* (1986) 42 Cal.3d 284, 306.) Evidence is not inherently improbable unless its falsity is apparent without resorting to inferences or deductions. (*People v. Mayberry* (1975) 15 Cal.3d 143, 150.) That defendant left his narcotics in view on his desk is neither impossible nor inherently improbable. Defendant admitted that he was running late that morning when he left the house, and concedes here that he was on his way to court. It does not strain credulity that defendant’s rush to attend court on time made him careless and forgetful.

Defendant further argues that because Barada and Tanabe were both users and Tanabe admitted possessing methamphetamine, and both remained in the house after defendant left, the “only rational and reasonable inference” was that one or both of them placed the drugs on defendant’s desk before the deputies arrived. As respondent observes, possession may be shown without proof of exclusive possession, as constructive possession is sufficient and may be shown where a defendant exercises some control or right to control over the place where the drugs are found. (See *People v. Rushing* (1989) 209 Cal.App.3d 618, 622.) Thus, “[a] defendant does not avoid conviction if his right to exercise dominion and control over the place where the contraband was located is shared with others. [Citations.]” (*Ibid.*) Here, overwhelming evidence demonstrated that defendant exercised dominion and control over his law office and the narcotics found there. A court calendar was on the computer screen on his desk; there were client files under his desk, on which his bar card, social security card, checkbook, and a billing statement in his name were found. Defendant had

placed a lock on the office door, and according to Tanabe, the office door was usually closed when defendant was out of the house. Barada worked less and less as defendant's assistant, and defendant never saw Tanabe go into the office. Moreover, ample evidence indicates that neither Barada nor Tanabe placed the drugs and drug paraphernalia on defendant's desk before the deputies arrived. When deputies detained defendant, he was carrying a briefcase. As defendant kept his client files under his desk in his office and he was on his way to court, the jury could reasonably infer that he had been in his office that morning before leaving the house. Tanabe testified that he did not enter defendant's office on that morning, and that he and Barada were in their room when the deputies arrived. Barada opened the front door within seconds after they knocked. Such evidence is not insubstantial or insufficient simply because the circumstances can be reconciled with a contrary finding. (*People v. Harris* (2013) 57 Cal.4th 804, 850.)

II. Knowledge

Cocaine base is a controlled substance (Health & Saf. Code, § 11054, subd. (f)(1)), as is methamphetamine (§ 11055, subd.(d)(2)). As substantial evidence supported a finding of dominion and control over the office and its contents, and thus constructive possession of the narcotics found there, the evidence also supported a finding that defendant knew the illegal character of the substances. (See *People v. Carnesi* (1971) 16 Cal.App.3d 863, 872 ["an inference of knowledge is justified from mere possession"].)

III. Intent to sell

Defendant challenges the evidence supporting the finding that he possessed the controlled substances for sale.

"Unlawful possession of a controlled substance for sale requires proof the defendant possessed the contraband with the intent of selling it and with knowledge of both its presence and illegal character. [Citation.]' [Citations.] Intent to sell may be established by circumstantial evidence. [Citation.]" (*People v. Harris* (2000) 83 Cal.App.4th 371, 374.) "In cases involving possession of [controlled substances], it is settled that an officer with experience in the narcotics field may give his opinion that the narcotics are held for purposes of sale based upon matters

such as quantity, packaging, and the normal use of an individual. On the basis of such testimony convictions of possession for purposes of sale have been upheld. [Citations.]” (*People v. Hunt* (1971) 4 Cal.3d 231, 237; see also *People v. Newman* (1971) 5 Cal.3d 48, 53, disapproved on another point in *People v. Daniels* (1975) 14 Cal.3d 857, 861-862.)

Here, Detective Mazzei’s opinion that the methamphetamine was possessed for sale was based on the quantity found (8.9 grams), the presence of unused plastic baggies, the presence of digital scales, the surveillance system, and the presence of firearms in the office. Defendant does not contend that the factual bases Detective Mazzei relied on to give an opinion were not supported by substantial evidence. Instead he suggests that the opinion was invalid because the detective acknowledged that the presence of pipes could indicate possession for personal use, and that the search did not turn up additional evidence upon which he might have relied, such as pay-owe sheets or records, cash or cash in different denominations, or small bags containing measured doses. Defendant has cited no authority holding that an intent to sell may not be inferred without pay-owe sheets or records, cash, or small bags containing measured doses. Neither Detective Mazzei nor any other witness testified that the absence of such evidence precluded an inference of intent to sell; nor was he asked to give any such opinion.

“It is within the province of the jury to determine both the truth of a hypothetical’s assumed facts, and the evidentiary weight to be given to an expert’s opinion that is based on the assumed facts. [Citations.]” (*People v. Frye* (1998) 18 Cal.4th 894, 960, disapproved on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) The jury was instructed with CALCRIM No. 332, in relevant part as follows: “You must consider the [expert’s] opinion[s], but you’re not required to accept them as true and correct. The meaning and importance of any opinion are for you to decide. . . . In addition, consider the expert’s knowledge, skill, experience, training and education and the reasons the expert gave for any opinion and the facts or information on which the expert relied in reaching that opinion. You must decide whether information on which the expert relied was true and accurate. You may disregard any opinion that you

find unbelievable, unreasonable, or unsupported by the evidence. . . . A hypothetical question asks the witness to assume certain facts are true and to give an opinion based on the assumed facts. It is up to you to decide whether an assumed fact has been proved. If you conclude that an assumed fact is not true, consider the effect of the expert's reliance on that fact in evaluating the expert's opinion."

Defendant does not contend that Detective Mazzei's opinion was given pursuant to an improper or incomplete hypothetical question, or that the hypothetical was not based upon facts proven at trial. Therefore we have no basis to reject the weight the jury gave to the opinion, and we thus accept the jury's finding that defendant intended to sell the methamphetamine he possessed.

DISPOSITION

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST