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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN MOORE,

Defendant and Appellant.

2d Crim. No. B281530  
(Super. Ct. No. NA102340-01)  
(Los Angeles County)

Stephen Moore pled no contest to three counts of sale or transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a)<sup>1</sup>) and one count of possession for sale of a controlled substance (§ 11378).

The trial court offered Moore two sentencing choices: incarceration for two years or formal probation for five years with one year in a residential treatment program with a six year eight month suspended sentence. Moore chose the probation option.

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<sup>1</sup> All statutory references are to the Health and Safety Code.

Thereafter, the trial court revoked Moore's probation and ordered execution of the suspended sentence upon finding Moore possessed hydrocodone for sale. We affirm.

#### FACTS

As part of his probation, Moore was in a residential drug treatment program. On January 9, 2017, he obtained an overnight pass from the program.

On January 10, 2017, Police Officer Gary Hodgson received a call that two men and a woman were trying to break into a car. When Hodgson arrived, Moore told him that he had locked his keys in his car. Hodgson asked Moore if he was on probation or parole. Moore admitted that he was.

Hodgson searched Moore and discovered a resealable plastic bag containing 92 white pills from the lower left pocket of Moore's cargo pants. Moore admitted that he did not have a prescription for the pills. He told Hodgson that the pills belonged to Pam and that she had left them in his car. The parties stipulated that the pills contained 10 milligrams of hydrocodone.

Moore was arrested and brought to the Long Beach Police Station. He waived his rights and agreed to talk. He said the pills belonged to his roommate Pam; he gave her a ride and she left the pills in his car; the prescription bottle was broken so he put the pills in a plastic bag; he was on his way to return the pills when he locked his keys in his car. The police did not find a prescription bottle in Moore's car or on his person.

After Moore's arrest, he placed a telephone call to Lori. He requested that Lori call Pattie and ask her to tell the investigating officer that the pills belonged to her. If Pattie does not want to do it, Lori should call Leon Bobrofsky and ask Bobrofsky to say the pills belonged to him.

Long Beach Police Department Detective David Strohman testified as an expert on hydrocodone for sale. He opined that the hydrocodone pills were possessed for sale. His opinion was based on the lack of a prescription, the quantity of the pills and their street value, and that they were carried in a plastic baggie. Strohman opined that 92 pills was a large quantity for Moore to be carrying on his person in a baggie.

*Defense*

Moore testified that he had been in a residential drug treatment program since April 2016. He was drug tested and had no positive tests. He received permission for an overnight visit on January 9, 2017. He gave rides to his friends Lori, Pattie and Bobrofsky. After his friends left the car, Moore found a broken pill bottle and the pills. He threw away the broken bottle and put the pills in a plastic baggie. He knew the pills belonged to Pattie or Bobrofsky because they were the only ones who were in his car who took the pills. He told the officer that the pills belonged to them. He does not know how the officer “came up with” the name “Pam.”

Moore’s case manager at the rehabilitation program testified that clients are randomly tested for drugs. He knew of no positive drug tests for Moore.

Bobrofsky testified that the pills belonged to him. He produced a prescription for 150 pills in his name. He said he dropped them in Moore’s car when Moore gave him a ride. He said he called Moore over the next two days, but Moore did not answer.

## *DISCUSSION*

### *I*

Moore contends substantial evidence does not support the trial court's finding that he possessed a controlled substance for sale.

The prosecution must prove a violation of probation by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 447.) In determining whether the trial court's decision is supported by substantial evidence, we view the evidence in a light most favorable to the judgment. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849.)

Here Moore was in possession of 92 pills containing a controlled substance for which he did not have a prescription. The pills were in a plastic baggie, not a prescription bottle. The parties stipulated that Detective Strohman is an expert on hydrocodone for sale. Strohman testified that the pills were possessed for sale. He said hydrocodone pills are commonly possessed for sale. He pointed to the quantity, packaging and lack of a prescription as indicating possession for sale. That is sufficient evidence to support the trial court's findings.

Moore attacks the reasons Strohman gave for his opinion that the pills were held for sale. Even assuming each reason by itself is insufficient, an expert may conclude that all of the circumstances together show the pills were possessed for sale. Strohman's testimony constitutes substantial evidence that the pills were possessed for sale.

Moore's reliance on *People v. Hunt* (1971) 4 Cal.3d 231 is misplaced. A jury convicted Hunt of possession of methedrine for sale. Hunt had a prescription for the drug and had obtained the drug lawfully. A police officer testified that based on his

experience it was his opinion that the methedrine was possessed for sale. In reversing, our Supreme Court stated: “In the absence of evidence of some circumstances not to be expected in connection with a patient lawfully using the drugs as medicine, an officer’s opinion that possession of lawfully prescribed drugs is for purposes of sale is worthy of little or no weight and should not constitute substantial evidence sufficient to sustain the conviction. No such special circumstances were shown here as to the methedrine in the blue and white travel case.” (*Id.* at p. 238.)

Here Moore was not in lawful possession of the pills under a prescription. In addition, the circumstances were not those that would be expected in connection with a patient lawfully using the drugs as medicine. The pills were in a baggie and the alleged broken pill bottle was nowhere to be found.

## II

Moore contends revoking his probation and executing his suspended sentence were not in the interest of justice.

Moore argues he was doing well on his drug treatment program. But the trial court could reasonably conclude that his possession of hydrocodone shows the program was not working for him.

Moore argues that he substantially completed his debt to society because he completed more than half of the days required by the trial court’s original offer of two years. But Moore rejected that offer. Instead, Moore agreed that if he violated probation his debt to society would be six years eight months incarceration. Having accepted the benefit of the bargain, Moore cannot now complain about the burden.

Moore argues his crimes were not violent. He points to legislative reforms to reduce sentences for nonviolent offenders.

He claims that such reforms show that extensive incarceration for nonviolent, low-level offenders is not beneficial.

But Moore does not show that his offenses qualify under any of the legislative reforms. Nor does he cite any authority for the proposition that revoking his probation for a nonviolent offense constitutes an injustice.

The judgment (order) is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Richard R. Romero, Judge  
Superior Court County of Los Angeles

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