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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.

ABRAHAM ENRIQUE MARTINEZ, JR.,

Defendant and Appellant.

2d Crim. No. B232241
(Super. Ct. No. F434213)
(San Luis Obispo County)

Abraham Enrique Martinez, Jr. appeals a judgment following conviction of conspiracy to possess methamphetamine, possession of methamphetamine for sale, and sale or transportation of methamphetamine. (Pen. Code, § 182, subd. (a)(1); Health & Saf. Code, §§ 11377, subd. (a), 11378, 11379, subd. (a).)¹ We affirm.

FACTS AND PROCEDURAL HISTORY

Luciano Arano, a correctional officer at the California Men's Colony, was the focus of a criminal investigation in San Luis Obispo that was code-named "Broken Badge." Authorities suspected Arano was trafficking in methamphetamine.

In March 2009, San Luis Obispo County Sheriff's Detective Nicholas Fontecchio obtained a court order authorizing a wire tap of Arano's cellular telephone to intercept incoming and outgoing text and voice transmissions. The court later extended the wiretap order through June 2009.

Through the wiretap and police investigation, law enforcement learned the identity of Arano's methamphetamine suppliers as well as his customers. Federico Solorio Pineda and Martinez were suppliers who sold Arano methamphetamine weighing between a quarter-pound and

¹ All further statutory references are to the Penal Code unless stated otherwise.

a half-pound. The price was \$2,500 for a quarter-pound and between \$5,000 and \$6,000 for a half-pound.

On March 27, 2009, Sheriff's Detective David Marquez was monitoring text messages between Arano and Martinez. Arano texted Martinez that he had "6,500" but Monday was "payday" and he would "collect the rest of it." Martinez responded, "Okay, homey, I'm text with him now so I'm telling him I'll roll on Tuesday." Arano responded, "Let me see what I'll do tonight. Yeah, I'll have the rest on Monday." Martinez replied, "Okay, homey, all good."

On Monday, March 30, 2009, Sheriff's Detective Sean Harvey monitored the communications between Arano and Martinez. Arano texted Martinez, "When you leaving?" Martinez responded, "Tomorrow night. Need the queso today, homey." Based upon his monitoring of communications between Arano and Martinez, Harvey opined that "queso" was a code-word for "money."

That same day, Harvey monitored a telephone conversation between Arano and "Joe Farley" wherein Arano stated that he had "nothing" at the moment but he expected his "guy" to come by later, "pick up the cash" and "make the runs and be back tomorrow." Farley then asked if Arano could locate "[j]ust a hundred . . . dollar pinch." Arano replied that he could come up with a "Teener," and he and Farley then made arrangements to meet.

On April 1, 2009, Harvey monitored text messages between Martinez and Arano, wherein Arano complained that "[t]hey've been bugging all fucking day. When I got the shit, nobody calls. As soon I'm out, they all call and bug." Martinez responded, "[D]on't trip, homey, I'll be there today."

In a later text message, Arano explained that he "counted 10 fucking 25 Benjis in each stack." Martinez disputed the number and said "[i]t was 7300 I covered it. Don't trip." Martinez explained that "[o]ne stack had 24, the other had 25 and the other another 24." Arano replied, "Gracias." The two then made arrangements to meet at Walmart that evening.

Sheriff's Deputy Jonathan Franklin observed Martinez and Arano meet at the Chevron gasoline station near Walmart in an illuminated area near the gasoline pumps. Franklin saw Martinez hand Arano a "pretty full" brown paper lunch bag that was sufficient to contain one-fourth or one-half pound of methamphetamine. The meeting between the two men was brief and Arano took the paper bag with him. The following day, Arano sold methamphetamine to another user.

On April 9, 2009, Arano sent Martinez a text message asking, "You want what I got in queso?" Martinez responded, "How much queso you got?" Arano replied, "Two thousand." Martinez responded, "Whoa, need more, homey, at least six or seven."

On April 22, 2009, Harvey again monitored text messages between Martinez and Arano. Martinez sent a message to Arano asking, "Any queso for the quesadillas?" Arano responded, "Nah, I've been sick. I've got some coming in today."

On May 13, 2009, Sheriff's Detective James Moxley photographed Arano and Martinez entering Martinez's residence. Arano carried a large amount of currency, folded in half, as depicted in photographs presented in evidence at trial. Based upon the intercepted text messages, it appeared to Moxley that the money was payment for methamphetamine previously supplied to Arano.

On May 13, 2009, deputies intercepted a telephone call between Arano and "Jon Jonsin" in which Arano stated he needed to "get rid of as much as I can." Jonsin stated that he had enough money "for a quarter." Arano then stated, "I had to get my guy some cash today so I'm over at his house right now." The record of the intercepted communications indicates that the telephone call was placed from Martinez's residence.

On June 15, 2009, sheriff's deputies searched Martinez's home in Paso Robles. They did not find methamphetamine or other illegal drugs, but found \$861 in a closet and \$140 inside a pants' pocket.

On February 24, 2010, Arano pleaded nolo contendere to conspiracy to sell or transport methamphetamine and to sale or transportation of methamphetamine.

The jury convicted Martinez of conspiracy to possess methamphetamine, possession of methamphetamine for sale, and sale or transportation of methamphetamine. (§ 182, subd. (a)(1); Health & Saf. Code, §§ 11377, subd. (a), 11378, 11379, subd. (a).) The jury also found that Martinez committed the alleged overt act of meeting with Arano on April 1, 2009.

The trial court sentenced Martinez to a three-year prison term, imposed a \$600 restitution fine and a \$600 parole revocation restitution fine (stayed), and awarded Martinez one day of presentence custody credit. (§§ 1202.4, subd. (b), 1202.45.) The court stayed execution of sentence pending appeal.

Martinez appeals and contends that: 1) there is insufficient evidence that he had the specific intent to sell methamphetamine; 2) there is insufficient evidence that he committed the

alleged overt act; and 3) the trial court erred by permitting the sheriff's deputies to testify regarding the meaning of words in the intercepted communications.

DISCUSSION

I.

Martinez argues there is insufficient evidence that he intended to sell methamphetamine to anyone but Arano. He relies upon federal decisions and asserts that he had no concern with the methamphetamine after he sold it to Arano. (E.g., *U. S. v. Peoni* (2nd Cir. 1938) 100 F.2d 401, 403 ["Nobody is liable in conspiracy except for the fair import of the concerted purpose or agreement as he understands it; if later comers change that, he is not liable for the change; his liability is limited to the common purpose while he remains in it"].)

In reviewing the sufficiency of evidence to support a conviction, we examine the entire record and draw all reasonable inferences therefrom in favor of the judgment to determine whether there is reasonable and credible evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Solomon* (2010) 49 Cal.4th 792, 811.) We do not redetermine the weight of the evidence or the credibility of witnesses. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129, overruled on other grounds by *People v. Rundle* (2008) 43 Cal.4th 76, 151.)

Circumstantial evidence may be sufficient to connect a defendant to a crime and may prove his guilt beyond a reasonable doubt. (*People v. Abilez* (2007) 41 Cal.4th 472, 504.) If the factual findings are reasonably supported by the evidence and all reasonable inferences therefrom, the opinion of the reviewing court that the circumstances might support a contrary finding does not warrant reversal of the judgment. (*Ibid.*)

"A conviction of conspiracy requires proof that the defendant and another person had the specific intent to agree or conspire to commit an offense, as well as the specific intent to commit the elements of that offense, together with proof of the commission of an overt act "by one or more of the parties to such agreement" in furtherance of the conspiracy." (*People v. Jurado* (2006) 38 Cal.4th 72, 120.) It is well settled that persons can be prosecuted as conspirators if, by buying, selling, or doing some other act, they "knowingly participated in a general plan to place narcotics in the hands of ultimate users." (*People v. Van Eyk* (1961) 56 Cal.2d 471, 479.)

Sufficient evidence supports Martinez's conviction for criminal conspiracy. In his April 1, 2009 text message, Arano complained that he was "out" of methamphetamine and that his customers were "bugging" him. Martinez responded: "[D]on't trip, homey, I'll be there today."

Martinez met Arano that evening at the Chevron gasoline station and handed him a paper bag sufficient to contain a substantial amount of methamphetamine. The wiretap interceptions revealed that Arano sold methamphetamine the following day. Arano later pleaded nolo contendere to conspiracy to sell or transport methamphetamine between March 24, 2009, and June 15, 2009. A reasonable inference from this evidence is that Martinez knew that Arano was selling the methamphetamine to users and that Martinez was cooperating and furthering Arano's plan by reassuring him not to "trip," the drugs would be available soon. There is sufficient evidence that by Martinez's actions, he "knowingly participated in a general plan to place narcotics in the hands of ultimate users." (*People v. Van Eyk, supra*, 56 Cal.2d 471, 479; *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [subordinate courts must follow decisions of Supreme Court].)

Moreover, there is sufficient evidence to establish that Martinez conspired with Arano to commit the remaining two target crimes, possession of methamphetamine and transportation of methamphetamine. The prosecution was required to prove only one of the alleged target crimes.

II.

Martinez contends that the evidence is insufficient to establish beyond a reasonable doubt that he committed the requisite overt act. He asserts that the content of the text messages was speculative and without "clear meaning." Martinez adds that the deputies did not follow and stop Arano to check the contents of the paper bag that was passed to him at the Chevron gasoline station.

In charging a conspiracy, at least one overt act must be alleged and proved. (§§ 182, subd. (a), 184.) It is well established, however, that the overt act need not be a criminal act in itself. (*People v. Marquez* (1994) 28 Cal.App.4th 1315, 1325-1326; *People v. Saugstad* (1962) 203 Cal.App.2d 536, 549.) "It is sufficient if the overt act represents any step in furtherance of the conspiracy. It may be an otherwise lawful act and it may be merely a part of the preliminary arrangement for the commission of the ultimate offense." (*Saugstad*, at p. 549.)

There is sufficient evidence that Martinez committed the alleged overt act by meeting with Arano on April 1, 2009, and transferring to him a paper bag large enough to contain a significant quantity of methamphetamine. In earlier text messages that day, Arano complained that he had no "shit" to sell to users who had called "all fucking day." Martinez responded that he would be there "today." The two men then agreed to meet at Walmart, and then specifically, the Chevron gasoline station in the Walmart parking lot. Deputy Franklin observed the brief meeting between the two men and saw Martinez hand a full paper bag to Arano, who then left with it. Based on the

wiretap interceptions, Arano later sold methamphetamine to a user. Moreover, he pleaded nolo contendere to selling methamphetamine between March 24, 2009, and June 15, 2009. Martinez's meeting with Arano was a step in furtherance of the conspiracy to possess and sell methamphetamine.

III.

Martinez contends that the trial court erred by permitting the deputies to testify regarding the meaning of code words in the intercepted communications. He asserts that the interpretation was beyond the deputies' expertise because the code words were not the usual jargon for contraband. Martinez points to the deputies' interpretation of "queso" for "money," and "Benji" for a \$100 bill. He claims the error is prejudicial because the deputies' opinions usurped the jury's fact-finding.

The trial court did not abuse its discretion in permitting the deputies to testify regarding the meaning of queso and Benji. (*People v. Singleton* (2010) 182 Cal.App.4th 1, 21 ["Whether an expert should be permitted to opine on a particular subject is consigned to the trial court's discretion"].) The deputies had reviewed the text and telephone communications between Arano and Martinez, among others, and testified that drug dealers sometimes used code words. In any event, it is not reasonably probable that Martinez would have obtained a better result had the court excluded the deputies' opinion. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) In the exercise of common sense, the jury would have arrived at the same opinion as the deputies in the jurors' review of the intercepted communications. In the statements regarding Benji's, for example, it is obvious the speakers were discussing \$100 bills. It is also obvious that Martinez and Arano were not discussing the sale of cheese (queso) for \$6,000 for one-half pound.

The judgment is affirmed. The trial court shall vacate the sentence stay.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Teresa Estrada-Mullaney, Judge
Superior Court County of San Luis Obispo

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