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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ALAN S. JOSEPH,

Defendant and Appellant.

B267893

(Los Angeles County
Super. Ct. No. LA080644)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Gregory A. Dohi, Judge. Affirmed in part, vacated in part.

John F. Schuck, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Lance E. Winters, Assistant Attorney General, Steven D.
Matthews and Robert C. Schneider, Deputy Attorneys General, for Plaintiff
and Respondent.

Defendant and appellant Alan Joseph was convicted, among other things, of two counts of possession of methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) As both counts arose from the same act of possession, we vacate one conviction.

FACTUAL AND PROCEDURAL BACKGROUND

As relevant to this appeal, the facts are as follows: On September 16, 2014, at 11:00 p.m., defendant was stopped by police while riding his bicycle. He was, at the time, under the influence of methamphetamine. He consented to a search of his backpack. In his backpack, police found an oatmeal container. Hidden in the oatmeal therein, police found a sandwich bag containing: an 11.9-gram rock of methamphetamine; a smaller baggy containing .23 grams of methamphetamine; and four small vials, each containing less than a quarter gram of methamphetamine. The quantity and packaging of the methamphetamine, as well as other circumstances of its possession, gave rise to an inference that it was possessed for sale.

Defendant was charged by information with possession for sale of methamphetamine (Heath & Saf. Code, § 11378) and transportation for sale of the same methamphetamine (Health & Saf. Code, § 11379, subd. (a)). Defendant was also charged with other offenses, based on other drugs he possessed, both at that time and on a later date. Those other charges are not relevant to this appeal.

At trial, defendant admitted possessing the methamphetamine, and testified that it was for his personal use.

The jury acquitted defendant of each of the possession for sale and transportation counts, but found defendant guilty of the lesser included offense of simple possession on each count. Defendant was sentenced to a principal term on another count. He received a concurrent six-month

sentence for the first possession count. A sentence for the second possession count was stayed under Penal Code section 654.

DISCUSSION

“The California Constitution provides that no person may be put in jeopardy twice for the same offense. (Cal. Const. art. I, § 15.) Multiple convictions can be based on a single criminal act, if the charges allege separate offenses. [Citation.]” (*People v. Smith* (2012) 209 Cal.App.4th 910, 915.)

Here, although defendant was initially charged with two different offenses (possession for sale and transportation), he was ultimately convicted of two counts of the same offense (simple possession) arising from the same act of possessing the same methamphetamine. Defendant contends this was error and that one conviction must be vacated. The prosecution concedes the error. We agree. A defendant cannot be convicted of multiple counts of the same offense for a single criminal act. (*People v. Coyle* (2009) 178 Cal.App.4th 209, 217.)

DISPOSITION

The conviction for count two, possession of methamphetamine, is vacated. In all other respects, the judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.