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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW BRITT,

Defendant and Appellant.

B238091

(Los Angeles County
Super. Ct. No. BA385709)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Schuit, Judge. Affirmed as modified.

Law Offices of Pamela J. Voich, Pamela J. Voich, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, David A. Wildman, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant and appellant Matthew Britt of possession for sale of a controlled substance, methylenedioxymethamphetamine (ecstasy). (Health & Saf. Code, § 11378.) The trial court sentenced defendant to 16 months in county jail and awarded him 344 days of presentence credit consisting of 172 days of actual custody credit and 172 days of conduct credit. On appeal, defendant contends that there is insufficient evidence to support his conviction and that the trial court erred in its award of presentence credit. We affirm defendant's conviction and order the abstract of judgment modified to reflect 346 days of presentence credit consisting of 173 of actual custody credit and 173 days of conduct credit.

BACKGROUND

On June 17, 2011, Los Angeles Police Department Officers Annabelle Padilla and Ericka Martinez were on patrol when they saw defendant standing on the corner of Wilcox and Yucca. Defendant crossed the street against the red light causing traffic to stop. The officers conducted a pedestrian stop of defendant.

Officer Padilla asked defendant if he had anything illegal on him such as weapons or drugs. Defendant responded, "No." Officer Padilla then conducted a pat-down search of defendant. During the search, Officer Padilla was able to see straight down into defendant's pants pocket and saw a clear plastic bag that contained capsules. She asked defendant about the capsules. Defendant initially said the capsules were vitamins, but later admitted that the capsules contained ecstasy. Officer Padilla removed two baggies from defendant's pocket that contained a total of 60 clear capsules. Inside the capsules was a white powder-like substance.¹ Defendant was arrested. A Los Angeles Police Department criminalist tested random samples of the capsules from each bag. The capsules tested positive for ecstasy. Neither Officer Padilla nor Officer Martinez saw defendant sell drugs to anyone.

¹ Officer Martinez testified that the bags contained pills.

Los Angeles Police Department Detective Mike Rippe testified as an expert for the prosecution. Detective Rippe had extensive controlled substance training, including training about ecstasy. Detective Rippe had spoken with thousands of persons who used, sold, or furnished drugs, including over three hundred persons who used, sold, or furnished ecstasy. In the Hollywood area, one pill of ecstasy generally sold for \$15 to \$25. Capsules generally were a little more expensive. In nightclubs, ecstasy was almost always sold in individual pill doses. The effects of one pill of ecstasy lasted for about four to six hours. Two pills extended the length of the effects to about six to 10 hours.

The prosecutor asked Detective Rippe his opinion of whether a person who was found in possession of two plastic bags containing 60 capsules of ecstasy possessed the ecstasy for purposes of sales. Detective Rippe opined that any person who possessed 60 ecstasy pills or capsules possessed them with the intent to sell. Detective Rippe explained that an ecstasy user typically ingested three to four pills in a night. The largest number of pills he had heard of someone taking in one night was seven. Detective Rippe believed that a person who possessed as few as 15 ecstasy pills possessed the pills for purposes of sales. Ecstasy could not be used daily, hour after hour, like other drugs. Persons who wanted to experience ecstasy to its fullest used ecstasy one night and waited approximately two to three weeks before using it again. Detective Rippe estimated that 60 ecstasy pills would last one person six months. An ecstasy user would not buy the drug in bulk because it was easy to obtain. In the area around Wilcox and Yucca, the street value of 60 ecstasy capsules was about \$1,200.

Defendant testified in his own behalf. Defendant testified that he was a musician who also sold tours on Hollywood Boulevard. On an average day, he made \$25 or \$35 from selling tours and a little extra income as a musician. He denied that he sold drugs or ecstasy. Defendant explained that he came into possession of the 60 ecstasy pills the night before he was arrested. He was walking around Hollywood and Vine, being loud and obnoxious, when a drunk man approached him and asked if he wanted to buy some ecstasy. The man produced about 70 pills, and defendant offered to buy them all for \$200. Because the man was intoxicated, defendant pretended to give him \$200, but only

gave him \$100. Defendant considered it the luckiest day of his life. Defendant used ecstasy every three or four days and planned to take the pills himself. Defendant did not intend to sell the pills. Defendant took a total of five of the capsules that night and the following morning, and had 65 or 66 pills in his possession when he was arrested. Defendant was convicted in 2010 of felony unlawful taking or driving a vehicle.

DISCUSSION

I. Sufficient Evidence Supports Defendant’s Conviction For Possession For Sale Of A Controlled Substance

Defendant contends that insufficient evidence supports his conviction for possession for sale of a controlled substance. Sufficient evidence supports the conviction.

“‘When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citation.]” (*People v. Avila* (2009) 46 Cal.4th 680, 701.) “We must presume in support of the judgment the existence of every fact that the trier of fact could reasonably deduce from the evidence. [Citation.]” (*People v. Medina* (2009) 46 Cal.4th 913, 919.) “A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support”’ the jury’s verdict. [Citation.]” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) “Substantial evidence includes circumstantial evidence and the reasonable inferences flowing therefrom.” (*People v. Ugalino* (2009) 174 Cal.App.4th 1060, 1064.) “We ‘must accept logical inferences that the jury might have drawn from the circumstantial evidence. [Citation.]’ [Citation.]” (*People v. Zamudio, supra*, 43 Cal.4th at p. 357.)

“Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless 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 on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]” (*People v. Jones* (1990) 51 Cal.3d 294, 314.) An appellate court does not resolve credibility issues or evidentiary conflicts; it looks for substantial evidence. (*People v. Maury* (2003) 30 Cal.4th 342, 403.)

“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.) “[T]he quality and value of the contraband held, particularly when viewed in the light of expert testimony, are factors which may indicate that the contraband was held for the purpose of sale rather than individual use. [Citations.]”² (*People v. Shipstead, supra*, 19 Cal.App.3d at p. 77.)

Substantial evidence supports the jury’s verdict that defendant possessed the ecstasy for the purpose of sales. The prosecution’s expert witness, Detective Rippe, testified that a person in possession of 60 ecstasy pills or capsules possessed them for purposes of sales. Indeed, possession of as few as 15 ecstasy pills also would establish possession for purposes of sales. Defendant was found in possession of 60 ecstasy capsules. According to Detective Rippe, 60 ecstasy pills would last a typical user six months. The street value of the 60 capsules was \$1,200. Defendant earned only \$25 to \$35 a day selling tours. A reasonable juror could draw an inference from such evidence that defendant did not possess 60 ecstasy capsules worth \$1,200 for personal use, but for the purpose of sales. (*People v. Ugalino, supra*, 174 Cal.App.4th at p. 1064; *People v. Zamudio, supra*, 43 Cal.4th at p. 357; *People v. Shipstead, supra*, 19 Cal.App.3d at p. 77.)

² In context, it is plain that the use of the word “quality” in the opinion is a typographical error, and, instead, the opinion’s author intended to use the word “quantity.” (See *People v. Shipstead* (1971) 19 Cal.App.3d 58, 76-77.)

II. Defendant's Presentence Credit

Defendant contends that the trial court erred in calculating his presentence credit. He argues that instead of 172 days of actual custody credit and 172 days of conduct credit for a total of 344 days of presentence credit, the trial court should have awarded him 173 days of actual custody credit and 173 days of conduct credit for a total of 346 days of presentence credit. Respondent agrees, as do we.

A defendant is entitled to credit for all days in custody commencing with the day of arrest (*People v. Taylor* (2004) 119 Cal.App.4th 628, 645) and including partial days and the day of sentencing (*People v. Browning* (1991) 233 Cal.App.3d 1410, 1412; *People v. Fugate* (1990) 219 Cal.App.3d 1408, 1414). The provisions of sections 2933 and 4019 that became effective on September 28, 2010, govern the calculation of conduct credit for an offense committed between September 28, 2010, and October 1, 2011. (§ 4019, subd. (g), as amended by Stats. 2010, ch. 426, § 2; § 4019, subd. (h), as amended by Stats. 2011, ch. 39, § 53; § 2933, subd. (e)(1), as amended by Stats. 2010, ch. 426, § 1.) At the time of defendant's offense, section 2933, subdivision (e)(1) provided, "Notwithstanding Section 4019 and subject to the limitations of this subdivision, a prisoner sentenced to the state prison under Section 1170 for whom the sentence is executed shall have one day deducted from his or her period of confinement for every day he or she served in a county jail, city jail, industrial farm, or road camp from the date of arrest until state prison credits pursuant to this article are applicable to the prisoner." (Stats. 2010, ch. 426, § 1.)

Defendant was arrested on June 17, 2011, and sentenced on December 6, 2011, a period of 173 days. Thus, he was entitled to 173 days of actual custody credit and, pursuant to section 2933, subdivision (e)(1), 173 days of conduct credit for a total of 346 days of presentence credit. The abstract of judgment is ordered modified accordingly.

DISPOSITION

The judgment is affirmed. The abstract of judgment is ordered modified to reflect 346 days of presentence credit, consisting of 173 days of actual custody credit and 173 days of conduct credit.

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MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.