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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ALONZO BANUELOS,

Defendant and Appellant.

B282740

(Los Angeles County
Super. Ct. No. MA067781)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daviann L. Mitchell, Judge. Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven E. Mercer, Acting Supervising Deputy Attorney General, and Eric J. Kohm, Deputy Attorney General, for Plaintiff and Respondent.

Alonzo Banuelos appeals from a judgment sentencing him to five years in county jail following his conviction for possession of a billy club (Pen. Code, § 22210), and subsequent revocation of probation for that offense. The trial court found Banuelos had violated the conditions of his probation by failing to report to his probation officer; failing to enroll in drug treatment; failing to enroll in community work service; and being in possession of methamphetamine.

Banuelos argues we must reverse the court's revocation order and imposition of sentence because there was insufficient evidence to support one of its probation violation findings: that he possessed methamphetamine. We affirm.

FACTUAL BACKGROUND

A. The Underlying Offense and Sentencing

In February 2016, the District Attorney of the County of Los Angeles filed an information charging defendant Alonzo Banuelos with a single count of possessing “an instrument of the kind commonly known as a blackjack” or “billy.” (See Pen. Code, § 22210¹). The information also alleged Banuelos had served five prior prison terms within the meaning of section 667.5, subdivision (b). Banuelos pleaded no contest to the offense, and admitted two of the prior prison term allegations; the remaining three prior prison terms allegations were dismissed pursuant to a plea deal.

Banuelos's probation report stated that he had been arrested after attempting to flee from officers responding to a trespass call. The officers searched Banuelos's vehicle, and found

¹ Unless otherwise noted, all further statutory citations are to the Penal code.

a billy club underneath the driver's seat. The report noted that Banuelos had suffered numerous prior felony convictions, and recommended against probation: "His involvement with the 'billy club' suggests he refuses to remove himself from illegal behavior. . . . Previous grants of probation and incarceration i[n] state prison has not served as a deterrent. His ongoing behavior makes him a threat to the community. . . . He is presumptive ineligible for probation pursuant to [Penal Code section] 1203(e)(4)."

The court sentenced Banuelos to an aggregate term of five years in county jail. Despite the probation report's negative recommendation, the court suspended execution of the sentence, and placed Banuelos on probation for a three-year period. The conditions of his probation required (among other things) that he report to his probation officer; enroll in and complete community work service; enroll in and complete a drug rehabilitation program; and not possess any narcotic substances except with a valid prescription. At the sentencing hearing, the court warned Banuelos he would be "sentenced to five years" if he "violate[d] any terms and conditions of the probation."

B. Revocation of Probation

1. Reports of probation violations

In September 2016, the Probation Department notified the court that Banuelos had failed to report to his probation officer in July and August, and recommended that probation be revoked. The court provisionally revoked his probation, and issued a bench warrant for his arrest.

In January 2017, a police officer conducted a traffic stop on Banuelos, and arrested him on the bench warrant. During a search of Banuelos's vehicle, the officer found two baggies

underneath the driver's seat that contained a white substance resembling methamphetamine.

At the hearing on the bench warrant arrest, the court scheduled a contested probation violation hearing, and ordered the Probation Department to prepare a supplemental report regarding Banuelos's progress. The Department's report stated that Banuelos had not reported to his probation officer since June of 2016, and had failed to enroll in community work service or drug treatment. The report also stated that Banuelos's arrest on January 10, 2017 had resulted in a citation for possession of a controlled substance. The Department recommended that the court revoke probation, explaining that Banuelos had repeatedly demonstrated he had "no desire to remove himself from illegal activity."

2. Probation revocation hearing

Deputy Sherriff Clint Francisco was the only witness who testified at the probation hearing. Francisco stated that on January 10, 2017, he conducted a traffic stop on Banuelos's vehicle, and placed him under arrest after discovering an open bench warrant. Francisco then searched Banuelos's vehicle, and found two plastic baggies underneath the driver's seat containing "a white crystalline substance resembling methamphetamine." Francisco explained that methamphetamine is odorless, and has a distinctive crystalline appearance that looks like small "shards . . . of glass."

Francisco further testified that he had received training on how to identify methamphetamine, and the manner in which the drug is packaged and transported. Francisco also testified that during his career, he had made approximately five arrests for sale of methamphetamine and 50 arrests for simple possession of

the drug. Francisco explained that in several of those cases, the recovered substance was later confirmed to be methamphetamine through chemical testing.

The defense declined to present any affirmative defenses, but argued that the prosecution had presented no evidence that the substance found in the vehicle had ever been tested to confirm it was methamphetamine.

Based on the information in the probation reports and Francisco's testimony, the court found Banuelos had violated the conditions of his probation in four different ways: he "fail[ed] to report to probation as ordered"; he "failed to enroll and complete the community labor"; he "failed to enroll and complete his drug treatment program;" and he "was in possession of a controlled substance on January 10th 2017." Regarding the fourth violation, the court explained that it had "accepted" Francisco's "statements and opinions" regarding the nature of the substance, and found that Francisco's testimony proved by a preponderance of the evidence that Banuelos possessed methamphetamine.

After the court announced its findings, defense counsel requested that the court "allow [probation] to be reinstated and to complete a drug rehabilitation program." Counsel argued that Banuelos's "recent arrest[] [showed] . . . he . . . suffers from drug addiction and would be served better by a treatment program rather than jail or state prison."

The court rejected the request, explaining that Banuelos had been provided "exactly" the "opportunity" he was now seeking when he was placed on probation. The court further explained that rather than taking advantage of the opportunity, Banuelos "did nothing. He blew off probation, blew off the drug program and blew off the community labor. . . . We gave him an

opportunity to redeem himself and be successful, and he didn't even bother going to probation never mind enrolling in a program, and I have no basis to believe he would be able to complete a program. He's already been given the opportunity, he didn't even show up."

The court also emphasized that the Probation Department had initially recommended denying probation based on Banuelos's criminal history and his numerous prior periods of incarceration. The court explained that "in spite of that negative recommendation, we gave him an opportunity on an [execution of suspended sentence]," and he "miserably failed." The court ordered Banuelos's probation revoked, and imposed his "original sentence" of five years in county jail.

DISCUSSION

Banuelos argues we should reverse the revocation order and the judgment imposing sentence because there was insufficient evidence to support the court's finding that the substance found in his vehicle was methamphetamine.

A. Summary of Applicable Law and Standard of Review

A trial court may revoke a defendant's probation if it has "reason to believe" that the defendant has violated any condition of his probation and the interests of justice warrant such a revocation. (§ 1203.2, subd. (a).) The trial court is "granted great discretion in determining whether to revoke probation," and its decision will not be disturbed unless an abuse of discretion is demonstrated. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 445.) The facts warranting revocation of probation need only be established by a preponderance of the evidence. (*Id.* at pp. 446-

447.) We review the trial court’s factual findings with regard to the probation revocation decision under the substantial evidence standard of review. (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681.)

Because a probation violation need only be proved by a preponderance of the evidence, “probation may be revoked despite the fact that the evidence of the probationer’s guilt may be insufficient to convict him of the new offense.” [Citation.]” (*Rodriguez, supra*, 51 Cal.3d at p. 442.) “Many times circumstances not warranting a conviction may fully justify a court in revoking probation granted on a prior offense.” (*People v. Urke* (2011) 197 Cal.App.4th 766, 773; see also *In re Coughlin* (1976) 16 Cal.3d 52, 59; [“the fact of an acquittal establishes only that the trier of fact entertained a reasonable doubt of defendant’s guilt. On the other hand, such a doubt, of itself, would not preclude revocation of probation”].)

B. Banuelos Has Failed to Establish Error or Prejudice

Banuelos asserts that Francisco’s opinion testimony regarding the nature of the substance found in his vehicle was purely speculative, and therefore does not qualify as “substantial evidence.”

It is well-established that “the nature of a substance, like any other fact in a criminal case, may be proved by circumstantial evidence. [Citations.] It may be proved, for example, by evidence that the substance was a part of a larger quantity which was chemically analyzed [citations], by the expert opinion of the arresting officer [citation], and by the conduct of the defendant indicating consciousness of guilt.” (*People v. Sonleitner* (1986) 183 Cal.App.3d 364, 369; *People v. Marinos*

(1968) 260 Cal.App.2d 735, 738-739 [officer's testimony that substance looked and smelled like marijuana sufficient to support conviction for marijuana possession]; cf. *People v. Mooring* (2017) 15 Cal.App.5th 928, 943 ["chemical analysis is not . . . required to establish the identity of a controlled substance"] [citing and quoting *People v. Palaschak* (1995) 9 Cal.4th 1236, 1242]; *People v. Wesley* (1990) 224 Cal.App.3d 1130, 1146-1147 [officer's testimony at a preliminary hearing that a substance was rock cocaine without a corresponding chemical analysis was sufficient to support an information charging the defendant with possession of cocaine].)

In this case, Francisco testified that he believed the substance in Banuelos's possession was methamphetamine based on special training he had received on drug identification, and numerous prior cases he had participated in involving the sale or possession of methamphetamine. During the probation hearing, defense counsel never challenged Francisco's qualifications to identify methamphetamine. Indeed, counsel specifically declined to question the witness regarding that issue, and instead chose to submit on the matter.

The packaging and location of the substance provided additional circumstantial evidence that it was in fact methamphetamine. Francisco testified that he had extensive training and experience related to how drugs are packaged. He further testified that the manner in which the substance at issue had been packaged—in two small plastic baggies— was a factor he considered in formulating his opinion that it was an illicit substance. Moreover, the baggies were found underneath the driver's seat, suggesting that Banuelos had taken steps to conceal the substance. (See *Sonleitner, supra*, 183 Cal.App.3d at p. 369

[“conduct “indicating consciousness of guilt” is a form of circumstantial evidence that may be used to prove nature of substance].)

We conclude that Francisco’s opinion regarding the nature of the substance, informed by his specialized training and experience in the field, considered together with the packaging and location of the substance, constitutes substantial evidence supporting the court’s finding that the substance was methamphetamine.

Moreover, even if we were to find that Francisco’s testimony was insufficient to sustain the court’s finding that Banuelos possessed methamphetamine, any such error would be harmless because there is no reasonable probability the court would have reinstated probation in the absence of that error. (See *People v. Dobbins* (2005) 127 Cal.App.4th 176, 182 [error in revocation of probation judged by prejudice standard of *People v. Watson* (1956) 46 Cal.2d 818, 836].) As Banuelos acknowledges in his brief, the court found that he had committed three additional probation violations that were unrelated to his possession of methamphetamine: he stopped reporting to his probation officer shortly after his period of probation began; he failed to enroll in drug treatment; and he failed to enroll in community work service. Banuelos does not dispute that substantial evidence supports each of these three findings.

When explaining the basis for its revocation decision, the court emphasized that the record showed Banuelos “didn’t even bother going to probation,” and described his compliance efforts as a “miserabl[e]” failure.” The court also noted that despite Banuelos’s extensive criminal history and the Probation Department’s negative recommendation, it had elected to give

him another opportunity to redeem himself, but the defendant chose not to “show up.”

Given Banuelos’s failure to participate in the most basic aspects of probation, his extensive prior criminal history and the court’s statements at the hearing, we find no reasonable probability that the court would have reinstated probation even if it had found there was insufficient evidence to establish the substance in Banuelos’s vehicle was methamphetamine. (See *People v. Hawkins* (1975) 44 Cal.App.3d 958, 968 [“There is no abuse of discretion in revoking probation if the record shows that the accused violated the terms and conditions of probation”]; cf. *People v. Price* (1991) 1 Cal.4th 324, 492 [“[w]hen a trial court has given both proper and improper reasons for a sentence choice, a reviewing court will set aside the sentence only if it is reasonably probable that the trial court would have chosen a lesser sentence had it known that some of its reasons were improper”].)

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

FEUER, J.