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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.

SORAYA BENTLEY,

Defendant and Appellant.

2d Crim. No. B252401
(Super. Ct. No. 2012011817)
(Ventura County)

Following a jury trial, Soraya Bentley was found guilty, as charged, of transportation of cocaine for sale (Health & Saf. Code, § 11352, subd. (a) – count 1); transportation of methamphetamine (§ 11379, subd. (a) – count 2); possession of cocaine for sale (§ 11351– count 3); and possession of methamphetamine for sale (§ 11378, subd. (a) – count 4). A special allegation charged Bentley with a prior felony conviction for transportation of cocaine for sale (§ 11370.2, subd. (c)).¹ The trial court imposed a midterm sentence of three years in prison for possession of cocaine for sale that was doubled to six years for the prior conviction. The court also imposed concurrent sentences of three

¹ All statutory references are to the Health & Safety Code.

years in prison for transportation of cocaine and methamphetamine and two years for possession of methamphetamine. The special allegation enhancement was stayed.

Bentley contends 1) the evidence was insufficient to support her conviction for possession of cocaine for sale; 2) the instructions were confusing; and, 3) the transportation convictions must be set aside because of amendments in January 2014 to the Health and Safety Code. Bentley also asked us to review the sealed affidavit of the confidential informant in support of the issuance of a warrant to search Bentley's residence. The People concede Bentley's convictions for transportation of controlled substances must be reversed in light of amendments to sections 11352 and 11379. (Stats. 2013, ch. 504, §§ 1-2.) The amendments limit felony drug transportation charges to persons involved in drug trafficking. A person charged with this felony must be in possession of the drugs with the intent to sell. The People ask that we remand to the trial court for further proceedings including "a limited trial" permitting the People to prove the new elements of the transportation charges. We reverse the convictions for transportation of cocaine and methamphetamine and remand for further proceedings. We affirm the judgment in all other respects.

FACTUAL AND PROCEDURAL HISTORY

The People's Case

Police had Bentley's residence under surveillance and had obtained a search warrant based upon the affidavit of a confidential informant. Bentley was stopped and detained as she drove away from her home. A search of her car yielded a brown purse and a black "fanny pack." The purse contained a Chumash Casino card and a Costco card bearing Bentley's name. Police found small tins and baggies in the purse and fanny pack that held either cocaine or methamphetamine. A can holding about two grams of powdered cocaine was

found in Bentley's purse along with a digital scale and empty baggies. Mail addressed to Bentley was found in the trunk.

Bentley's residence was then subjected to a search. Police found Bentley's passport, mail, photographs and women's clothing in one of the bedrooms. No documents linking any other person to that bedroom were found during the search. Police located a flashlight and another container containing a "white substance," along with a digital scale, a used "meth" pipe and about 200 baggies. Police recovered 79.24 grams of rock cocaine in two baggies that were wrapped in a bandana that was hidden in a decorative basket next to the bed. A man's hat was on top of the basket. Police searched a bathroom connected to the bedroom and found \$3,400 in cash in a can disguised as a cleaning agent as well as a baggie containing a small amount of methamphetamine in a purse hidden in a laundry basket.

As police approached the bedroom to search it, Pedro Dominguez walked out of the room. Police found Dominguez's black duffel bag containing men's clothing and personal effects in the room along with his cell phone. A check of calls on Dominguez's phone did not indicate he was dealing drugs and he did not appear to be under the influence of anything. Dominguez was detained, questioned and released. Dominguez said the drugs and drug paraphernalia belonged to Bentley.

At trial, Detective Miguel Serrato testified as an expert and offered the opinion that the large quantity of rock cocaine and methamphetamine in the bedroom of Bentley's residence and car as well as the digital scales and the large quantity of baggies found in both places showed she possessed the drugs for the purpose of selling them. Serrato said he also relied upon statements made to him by Dominguez that the drugs belonged to Bentley. The court took judicial notice of Bentley's admission in 1993 that "she knows what cocaine is."

Bentley's Defense

Serrato admitted that no one ever reported to him that Bentley was seen in the bedroom where the drugs and paraphernalia were found. He acknowledged that Dominguez was the last person seen in the room. Serrato also said that no one ever reported to him that Bentley was seen in possession of the drug paraphernalia or the 79.124 grams of rock cocaine.

Bentley admitted the bedroom of the house police had under surveillance was her residence but said 14 other persons had also rented rooms there since 2012 when she moved in. She denied ever seeing either the 79.24 grams of rock cocaine found next to her bed or the other drugs found there and in her car. She admitted the car was registered to her but said Dominguez paid for it. She claimed the digital scale found under her bed and the flashlight containing cocaine belonged to Dominguez. Bentley said the hat found on top of the basket that held over two ounces of rock cocaine belonged to Dominguez. She claimed the bandana inside the basket holding the cocaine was not hers, that she had never seen it before and that she had no idea how the cocaine came to be there. Bentley admitted the brown purse belonged to her but denied knowing who owned the fanny pack. Bentley also admitted the plastic baggies were hers but said they were only used for sandwiches. She said she would never have driven the car if she had known there were drugs in the vehicle. Bentley said the \$3,400 in cash found by police was a payment to her for damage caused by a careless driver.

DISCUSSION

Appellant contends the evidence is not sufficient to support her conviction for possession of cocaine for sale. We disagree.

In reviewing an insufficient evidence claim, we consider the entire record in the light most favorable to the judgment to determine whether it discloses substantial evidence such that a reasonable jury could find the

defendant guilty beyond a reasonable doubt. (*People v. Elliott* (2005) 37 Cal.4th 453, 466.) We presume the existence of every fact supporting the judgment that the jury reasonably could have deduced from the evidence, and a judgment will be reversed only if there is no substantial evidence to support the verdict under any hypothesis. (*People v. Crittenden* (1994) 9 Cal.4th 83, 139; *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.) The same standard of review applies when the conviction rests on circumstantial evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) We conclude that there is substantial evidence to support Bentley's conviction for possession of cocaine for sale.

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. (*People v. Eckstrom* (1986) 187 Cal.App.3d 323, 330-331.) Transportation of a controlled substance is established by carrying or conveying a usable quantity of a controlled substance with knowledge of its presence and illegal character. (*People v. Rogers* (1971) 5 Cal.3d 129, 133-134; *People v. Cortez* (1985) 166 Cal.App.3d 994, 998-999; Use Note to CALJIC No. 12.02.) The crimes can be established by circumstantial evidence and any reasonable inferences drawn from that evidence. (*People v. Meza* (1995) 38 Cal.App.4th 1741, 1745-1746.)

Here, police found more than 80 ounces of cocaine hidden in various places in Bentley's bedroom, bathroom, car and purse. Meth pipes, digital scales and hundreds of baggies commonly used in drug sales were found in her possession and among the personal effects in her bedroom and bathroom. Although Bentley denied any knowledge of the presence of these drugs, she claimed she knew nothing about how they found their way there and suggested Dominguez was likely the culprit. The jury was not required to believe her. (CALJIC Nos. 2.13, 2.20.) "Unlawful possession of narcotics is established by proof that the defendant had, among other things, physical or constructive

possession of the contraband. [Citations.]" (*People v. Francis* (1969) 71 Cal.2d 66, 71.) Constructive possession can be found when the defendant maintains control or the right to control the contraband and exclusive access or possession is not required. (*People v. Redrick* (1961) 55 Cal.2d 282; *People v. Maese* (1980) 105 Cal.App.3d 710.)

Similarly, Bentley's possession of the drugs with the intent to sell them is circumstantially shown by the quantity of the rock cocaine found hidden in a basket next to her bed, the digital scales under her bed and in her purse in her car, the hundreds of baggies and the individual doses found separately packaged in her purse. The expert opinion offered by Detective Serrato supporting this inference is amply supported by the evidence.

Claimed Instructional Error

Bentley contends the trial court gave conflicting information about the People's obligation to prove she knew the substances were in her car, bedroom and personal effects and, further, that she knew those substances were cocaine and methamphetamine. She points to the trial court's explanation following its ruling that granted the People's motion to take judicial notice of a statement made by Bentley in 1993 "that she knew what cocaine was." The court explained the meaning of judicial notice and told the jury that the court's finding meant jurors "should accept that fact as proven."

The trial court later followed this remark with a modified version of CALCRIM No. 375, which instructed the jury: "The People presented evidence that defendant made a statement in 1993, acknowledging that she knew what cocaine was. [¶] You may consider this evidence only if the People have proved by a preponderance of the evidence that the defendant did in fact make that statement. [¶] ... [¶] If you decide that the defendant made the statement, you may but are not required to conclude from the evidence that the defendant knew that the substances [were] cocaine. [¶] ... [¶] If you conclude that the

defendant made the statement, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of the charged crimes. The People must still prove every element of each charge beyond a reasonable doubt." We conclude the court's remark and instructions were neither misleading nor inaccurate.

The court's instructions on the elements of the crimes charged were accurate. And neither the court's remark nor the modified version of CALCRIM No. 375 diminished the People's burden. The court's statement that the jury should accept as a fact Bentley's remark that she knew what cocaine was did not affect the People's burden of proving that she knew the illicit substances were in her residence, car and personal effects and knew that they were narcotics.

Section 11352

The People concede that the amendments to sections 11352 and 11379 that took effect on January 1, 2014 when the judgment against Bentley was not yet final should be applied retroactively. The People concede that this requires reversal of counts 1 and 2 but ask that the matter be remanded to the trial court for further proceedings that would allow the People to have a limited trial on the new elements of sections 11352 and 11379.

The Sealed Affidavit

We have reviewed the sealed testimony of the confidential informant and agree with the trial court that disclosure was not required because the informant could not have provided any evidence that, to a reasonable possibility, might have exonerated Bentley. (See *People v. Lawley* (2002) 27 Cal.4th 102, 159-160; *People v. Hobbs* (1994) 7 Cal.4th 948, 977.)

DISPOSITION

The judgment is reversed as to the conviction on counts 1 and 2 and the matter is remanded to the trial court for further proceedings if the People

wish to pursue the transportation of cocaine and methamphetamine counts. The judgment is affirmed in all other respects.

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BURKE, J.*

We concur:

YEGAN, Acting P. J.

PERREN, J.

* (Judge of the Superior Court of San Luis Obispo County, assigned by the Chief Justice pursuant to art. 6, § 6 of the Cal. Const.)

Patricia M. Murphy, Judge
Superior Court County of Ventura

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