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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.

JESSE LEE STILES,

Defendant and Appellant.

B285564

(Los Angeles County
Super. Ct. No. NA105729)

APPEAL from a judgment of the Superior Court of Los Angeles County. Gary J. Ferrari, Judge. Affirmed.

Adrian K. Panton, 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, Colleen M. Tiedemann and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Jesse Lee Stiles appeals the judgment following his convictions for possession of methamphetamine for sale and transportation of methamphetamine for sale. He contends insufficient evidence demonstrated the “transportation” element of transportation for sale in Health and Safety Code section 11379, subdivision (a) because there was no evidence of either his origin or destination. We find nothing in the statute or case law to require such evidence and we find the evidence sufficient to sustain his conviction. He also challenges the jury instruction on transportation for sale. We find that contention forfeited. We affirm.

PROCEDURAL BACKGROUND

After trial, a jury found Stiles guilty of transportation of methamphetamine for sale (Health & Saf. Code, § 11379, subd. (a))¹; and possession of methamphetamine for sale (§ 11378). After Stiles admitted one prior strike conviction (Pen. Code, §§ 667, subds. (b)–(j), 1170.12) and seven prior prison terms (Pen. Code, § 667.5, subd. (b)), he was sentenced to seven years in state prison.

FACTUAL BACKGROUND

On January 21, 2017, Stiles was driving his car when officers conducted a traffic stop.² An officer conducted a search and found a baggie of methamphetamine in Stiles’ center waistband, \$111 in his right front pants pocket, and \$392 in cash in his wallet. He did not appear to be under the influence of

¹ All undesignated statutory references are to the Health and Safety Code unless otherwise noted.

² He was driving with a co-defendant who was also charged, but he is not party to this appeal.

drugs. He told the officer he had a “personal sack” on him, meaning he was carrying drugs, which he said was about an ounce and a half of methamphetamine. A criminalist quantified the amount as 47.121 grams. The officer who searched Stiles did not believe that amount of methamphetamine was for personal use.

An expert testified that the average methamphetamine dose is between 0.05 and 0.10 grams, so 47 grams can supply close to 1,000 hits, and it constituted an excessive amount for personal use. A methamphetamine user typically smokes between 0.20 and 0.40 grams per day, and heavy users can smoke up to a gram. The expert doubted Stiles’ claim that he used about a quarter ounce a day, which amounts to approximately seven grams.

The expert further testified that methamphetamine sellers often hide methamphetamine in their waistbands. In response to a hypothetical question tracking the facts of the case, the expert opined that having 47 grams hidden in a waistband, having over \$500 in cash, and having no smoking paraphernalia indicate that an individual is in possession of the drug for the purpose of selling it.

DISCUSSION

I. Sufficient Evidence Supported Transportation of Methamphetamine for Sale

Section 11379, subdivision (a) imposes imprisonment of two, three, or four years on “every person who transports . . . any controlled substance,” including methamphetamine.³ (*People v.*

³ Section 11379, subdivision (a) states in full: “Except as otherwise provided in subdivision (b) and Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and

Martinez (2018) 4 Cal.5th 647, 650 (*Martinez*.) The statute originally prohibited transporting controlled substances for any reason, but the Legislature amended it in 2013 to define “transports” to mean “to transport for sale.” (§ 11379, subd. (c); *Martinez, supra*, at pp. 650–651.) The statute does not otherwise define the term.

Courts have given the term “transports” its “‘plain, non-technical meaning,’ ” defining it as simply the “‘movement of the contraband from one place to another.’ ” (*People v. LaCross* (2001) 91 Cal.App.4th 182, 185 (*LaCross*); see *People v. Ormiston* (2003) 105 Cal.App.4th 676, 682 (*Ormiston*); *People v. Kilborn* (1970) 7 Cal.App.3d 998, 1003.) Stiles argues the prosecution offered no evidence that he moved the methamphetamine found on him “‘from one place to another’ ” because the prosecution failed to identify either a specific origin or a specific destination.

Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of two, three, or four years.”

We find no such requirement in order to prove the “transports” element in section 11379, subdivision (a).

Courts have been reluctant to engraft limitations on the meaning of “transports” in section 11379 beyond requiring “ ‘movement from one place to another.’ ” For example, the term “transports” is not limited to movement by vehicle, and it can include transport by bicycle (*LaCross, supra*, 91 Cal.App.4th at p. 186) or by walking (*Ormiston, supra*, 105 Cal.App.4th at p. 683). Also, a defendant need only knowingly move the substance “a minimal distance.” (*Martinez, supra*, 4 Cal.5th at p. 650; *People v. Emmal* (1998) 68 Cal.App.4th 1313 (*Emmal*) [driving vehicle 20 feet sufficient].) In rejecting limits, these cases rely on the purposes behind prohibiting transportation of controlled substances. As our high court explained, “[t]he Legislature was entitled to assume that the potential for harm to others is generally greater when narcotics are being transported from place to place, rather than merely held at one location. The Legislature may have concluded that the potential for increased traffic in narcotics justified more severe penalties for transportation than for mere possession or possession for sale.” (*People v. Rogers* (1971) 5 Cal.3d 129, 136–137, fn. omitted (*Rogers*); see *Ormiston, supra*, 105 Cal.App.4th at p. 683; *LaCross, supra*, 91 Cal.App.4th at p. 186; *Emmal, supra*, 68 Cal.App.4th at pp. 1316–1317.)⁴

⁴ *Rogers, Ormiston, LaCross, and Emmal* were all decided before the 2013 amendment limiting section 11379 to transportation of controlled substances for sale. But even after the amendment, the California Supreme Court cited this language from *Rogers* to reiterate that “it is reasonable to treat

Just as cases have found nothing in section 11379 to limit the distance or method of transporting controlled substances, we can identify nothing in the statute to require identifying a specific origin or destination in order for a defendant to “transport[]” methamphetamine in violation of section 11379. Imposing the limitation Stiles seeks would severely undermine the Legislature’s effort to impose stricter penalties on those who transport controlled substances in order to reduce the increased harm associated with transporting narcotics. (See *Emmal*, *supra*, 68 Cal.App.4th at pp. 1317–1318 [“In order to discourage *any* illicit transportation of controlled substances, a rule which refuses to set up an artificial threshold for distance is more likely to effectuate the legislative purpose.”].)

Though *Ormiston*, *LaCross*, and *Emmal* rejected limits on the meaning of “transports,” Stiles relies on the *facts* in those cases to argue that the prosecution must offer evidence of either a specific origin or a specific destination. Yet, none of these cases addressed—let alone held—that identifying either the origin or destination of a defendant’s transportation was *necessary* to a conviction. He also cites a comment in *Ormiston* that “the requirement of volitional transport of methamphetamine from *one location to another* avoids any unwarranted extension of the statute to restrained minimal movement within a residence or other confined area that does not facilitate trafficking.” (*Ormiston*, *supra*, 105 Cal.App.4th at pp. 684–685.) While true, that reasoning does not suggest that a specific, identified origin or destination is additionally required.

drug transportation as a more serious crime than drug possession.” (*Martinez*, *supra*, 4 Cal.5th at p. 654.)

Having concluded that evidence of a specific origin or destination is not required to support Stiles' conviction, we must determine whether sufficient evidence showed he transported the methamphetamine on him "from one place to another" for sale. (*LaCross, supra*, 91 Cal.App.4th at p. 185.) " '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.] We determine 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.] In so doing, a reviewing court 'presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' " (*People v. Maciel* (2013) 57 Cal.4th 482, 514–515.)

The evidence demonstrated that Stiles was driving his vehicle with methamphetamine on his person, which itself strongly (if not conclusively) showed he was transporting the methamphetamine from one place to another. He admitted he was carrying the drugs, and officers found 47.121 grams of methamphetamine in his waistband and over \$500 in cash on his person. An expert testified that the quantity of methamphetamine exceeded the amount for personal use and the circumstances indicated Stiles was in possession of the methamphetamine for the purpose of selling it. From this evidence, a jury could reasonably infer that appellant was transporting the methamphetamine in order to sell it, satisfying

the “transports” element of section 11379. The evidence was sufficient to sustain his conviction.

II. Stiles Forfeited His Challenge to the Transportation for Sale Jury Instruction

The jury was instructed on the elements of section 11379 with CALJIC No. 12.02, which defined “transports” as “to transport for sale.”⁵ Stiles contends the court erred by not instructing the jury with CALCRIM No. 2300, which further instructs that “[a] person *transports* for sale if he or she carries or moves something from one location to another for sale, even if the distance is short.” (CALCRIM No. 2300.)

Stiles did not request CALCRIM No. 2300 in the trial court or object to the instruction actually given. He argues no request or objection was necessary because the definition of “transports” in CALCRIM No. 2300 was an element of the offense and the trial court had a sua sponte duty to give it. (*People v. Merritt* (2017) 2 Cal.5th 819, 824 [“The trial court has a sua sponte duty to instruct the jury on the essential elements of the charged offense.”].) At most, however, the court was required to sua sponte instruct that the term “transports” means transports *for sale*, which it did. (See *People v. McCloud* (2017) 15 Cal.App.5th 948, 956 [parties agreed instruction for transportation of cocaine

⁵ The jury was instructed in full: “For purposes of this section, ‘transports means to transport for sale. [¶] In order to prove this crime, each of the following elements must be proved: [¶] 1. A person transported methamphetamine, a controlled substance; and [¶] 2. That person knew of its presence and nature as a controlled substance; [¶] 3. That person transported the methamphetamine with the specific intent to sell it; and [¶] 4. That the substance was in an amount sufficient to be used or sold as a controlled substance.”

base under section 11352 incorrectly omitted “for sale” element and no objection was necessary[.]) Beyond that, Stiles was required to request any clarification of “transports” under section 11379, including the language contained in CALCRIM No. 2300.

“The trial court has no duty, in the absence of a request . . . to instruct on words in common usage.” (*People v. Eastman* (1993) 13 Cal.App.4th 668, 673.) Except for the recent statutory qualification that the transportation must be for sale, the term “transports” in section 11379 has been given its “‘plain, nontechnical meaning.’” (*LaCross, supra*, 91 Cal.App.4th at p. 185.) Thus, “the term ‘transports’ is a term commonly understood by jurors and . . . the word has not acquired a technical legal definition which would require the trial court to instruct the jury *sua sponte* as to its meaning.” (*People v. Cortez* (1985) 166 Cal.App.3d 994, 999 [interpreting transportation of heroin under section 11352].) Thus, Stiles has forfeited his claim.⁶

⁶ We encourage the trial court to use the CALCRIM instructions approved by the Judicial Council in future cases unless the court “finds that a different instruction would more accurately state the law and be understood by jurors.” (Cal. Rules of Court, rule 2.1050(e) [“Use of the Judicial Council instructions is strongly encouraged. If the latest edition of the jury instructions approved by the Judicial Council contains an instruction applicable to a case and the trial judge determines that the jury should be instructed on the subject, it is recommended that the judge use the Judicial Council instruction unless he or she finds that a different instruction would more accurately state the law and be understood by jurors. Whenever the latest edition of the Judicial Council jury instructions does not contain an instruction on a subject on which the trial judge determines that the jury should be instructed, or when a Judicial

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

DUNNING, J.*

Council instruction cannot be modified to submit the issue properly, the instruction given on that subject should be accurate, brief, understandable, impartial, and free from argument.”].)

* Judge of Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.