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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.

RONALD ALWIN MOFFETT,

Defendant and Appellant.

2d Crim. No. B277711
(Super. Ct. No. 2016004143)
(Ventura County)

A jury convicted Ronald Alwin Moffett of maintaining a place for selling or using a controlled substance (Health & Saf. Code, § 11366). The trial court granted probation for three years on terms and conditions, including 108 days in county jail.

Moffett contends there was insufficient evidence that he intended to maintain his house for drug use and sale; and that the trial court erred in directing the jury to continue deliberating after the jury sent notes stating that it could not reach a unanimous decision. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Moffett owned a home in the city of Simi Valley. The home was in “uninhabitable” condition. There were many broken cars parked at the home, and the front and back yards contained garbage and broken furniture. The inside of the house was in “disarray” with mattresses “laying [sic] all over the place,” rooms without doors, and missing walls.

The police received numerous phone calls regarding drug use and sales at Moffett’s home. They knew that many of the people living at the home were drug offenders. They visited the home multiple times a week and often saw drug paraphernalia inside the home during these visits.

Officers saw drug transactions, arrested people involved in drug activity, and found drugs at Moffett’s home. In one instance, officers found methamphetamine and a glass pipe inside a car parked at the home, and they arrested a man, who was inside the car. On another occasion, officers saw a hand-to-hand transaction between individuals who were known drug offenders. An officer found a loaded heroin syringe and other drug paraphernalia on one of these individuals. Days later, officers saw a man leave the home five times—each time “meeting up with a subject for a very short period of time and then each subject breaking way and going their separate ways.” The officers believed the man was selling drugs. On another day, police officers found drugs and drug paraphernalia throughout the home when they executed a search warrant. They also found Moffett and 14 other people, all who had prior contacts with the police for drug offenses.

Officers had frequent contact with Moffett and spoke to him several times about the drug activity at his home. They

offered to remove drug users and sellers from his property, but he declined the offer and the drug activity at his home continued. Moffett eventually lost ownership of the home, after which the number of “panhandlers” decreased and the area changed into a “normal neighborhood.”

DISCUSSION

Substantial Evidence of Intent

Moffett argues the evidence was insufficient to support the jury’s finding that he intended to open or maintain his home for drug use and sales.

To support a Health and Safety Code section 11366 conviction, the prosecution must prove Moffett maintained his home with “the intent to sell, or give away, or allow others to use a controlled substance or narcotic drug . . . on a continuous or repeated basis at that place.” (CALCRIM No. 2440; *People v. Hawkins* (2004) 124 Cal.App.4th 675, 680.) We review the jury’s finding for substantial evidence. We review the whole record in the light most favorable to the judgment to determine whether the record discloses evidence which is reasonable, credible and of solid value such that a reasonable jury could find the defendant guilty beyond a reasonable doubt. (*People v. Salazar* (2016) 63 Cal.4th 214, 242 (*Salazar*).)

A reasonable jury could infer Moffett’s intent from the evidence that other individuals used and/or sold drugs on a continuous basis on his property. There were numerous police reports about drug activity at the home, and known drug users and sellers lived on the property, despite its uninhabitable condition. Additionally, officers saw drug transactions at the home, arrested the people involved in such transactions, and

found drugs and/or drug paraphernalia at the home on multiple occasions.

Moffett's failure to stop drug activity at his property, despite his knowledge of it, supports the jury's finding of his intent to open or maintain his home for drug use or sales. Moffett knew the individuals at his home were using and selling drugs. He testified he stayed in the main house with other people who were known drug offenders, and he was inside the home with 14 known drug offenders when the police executed a search warrant. The police spoke to Moffett several times about the drug activities at his home and offered assistance. But he did not accept their offer to help stop the drug activity on his property.

Moffett's reliance on *People v. Shoals* (1992) 8 Cal.App.4th 475, is misplaced. In *Shoals*, the appellate court found insufficient evidence to prove the element of "opening or maintaining" a place for drug use and sale. (*Id.* at pp. 491-492.) The court noted that the presence of large quantities of narcotics in a motel room was alone insufficient to prove that element. But here, Moffett concedes that the "opening and maintaining" element is not at issue. Moreover, there is substantial evidence in addition to the presence of large quantities of narcotics at his home that supports the jury's conclusion that he intended to open and maintain his home for drug use and sales.

Moffett argues that substantial evidence supports the conclusion that he did not use or possess narcotics, that he lacked control over his home, and that he maintained the home in order to rehabilitate it. But that is not the test. The substantial evidence standard requires that we construe evidence in the light most favorable to the prevailing party—not the other way

around. (*Salazar, supra*, 63 Cal.4th at p. 242.) Here, substantial evidence supports the jury’s finding that Moffett intended to open or maintain his house for the use or sale of drugs on a continuous or repeated basis.

Trial Court’s Order to Continue Deliberations

Moffett contends the trial court abused its discretion when it directed the jury to continue deliberating after the jury sent notes stating that it could not reach an agreement. There was no abuse of discretion.

A trial court may ask a jury to continue deliberating when it finds a “reasonable probability” the jury will be able to reach an agreement. (Pen. Code, § 1140; *People v. Howard* (2008) 42 Cal.4th 1000, 1029.) The court’s decision is reviewed for abuse of discretion. (*Id.* at p. 1030.) Such a decision will not be disturbed on appeal unless there is a showing that the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a miscarriage of justice. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124 (*Rodrigues*).)

Here, the jury sent four notes during deliberation. In the first note, which was sent less than two hours into deliberation, the jury asked about the definition of intent. The court referred the jury to the instructions. About an hour later, the jury sent the second note indicating that it was “not clear” on intent and that based on a preliminary vote, it was “at an impass[e].” The court referred the jury to the instructional packet, specifically CALCRIM No. 200. About two hours later (including a lunch recess), the jury sent a third note stating that it could not reach a “unanimous decision” despite looking at the instruction and “thoroughly discuss[ing]” intent. The court directed the jury to continue deliberating. Approximately an

hour later, the jury sent its final note stating that it “can[not] come to a decision,” and it asked to hear Moffett’s testimony again. The court provided a readback of the testimony. About 30 minutes later, the jury reached its verdict.

“Any claim that the jury was pressured into reaching a verdict depends on the particular circumstances of the case.” (*People v. Pride* (1992) 3 Cal.4th 195, 265.) The circumstances show the court acted within its discretion when it asked the jury to continue deliberating. The jury deliberated for only about five hours before rendering a guilty verdict. (*People v. Medina* (1980) 107 Cal.App.3d 364, 369 [length of deliberation is a relevant factor].) The court was not unreasonable in asking the jury to continue to deliberate after it sent notes within the first few hours, especially since the presentation of evidence spanned over the course of three days. (See *People v. Valdez* (2012) 55 Cal.4th 82, 159 (*Valdez*) [after 16 hours of deliberations, there was no abuse of discretion in asking the jury to continue deliberating given that the trial took two months].)

Moreover, the timing of the jury’s notes is relevant. The jury sent the first note less than two hours into deliberation and sent the second note an hour later. In the second note, the jury indicated it took a preliminary vote and requested additional instructions, but it did not deliberate long (approximately two hours including a lunch break) before sending the third note stating that it could not reach a unanimous decision. The jury deliberated for about one more hour before sending a fourth note. Given the short periods of time between each note, the court was not unreasonable in ordering the jury to continue deliberating.

The fourth note, in which the jury requested a readback of Moffett’s testimony, shows that the jury believed that

additional deliberation would assist in reaching a verdict. Further deliberation after hearing the testimony apparently assisted the jury, as it rendered its verdict about 30 minutes later.

We reject Moffett's contention that the statement of a jury deadlock required the trial court to declare a mistrial. (*People v. Halvorsen* (2007) 42 Cal.4th 379, 425 (*Halvorsen*); *In re Chapman* (1976) 64 Cal.App.3d 806, 814 (*Chapman*). Although the jury indicated it could not reach a unanimous decision, the court is not required to accept as final a jury's statement that it cannot agree upon a verdict. (*Valdez, supra*, 55 Cal.4th at p. 159.) The cases Moffett cites are inapposite. *Halvorsen*, at page 425 and *Chapman*, at page 814, examined whether the trial court abused its discretion in declaring a mistrial. That question is not presented here. Rather, the question here is whether the court abused its discretion in ordering the jury to continue deliberations. Additionally, the jury in those cases explicitly stated that further deliberation would not assist in reaching a unanimous decision. (*Halvorsen*, at p. 425 [no reasonable probability of an agreement where the jury stated that rereading of testimony or further instruction would not assist in reaching a verdict]; *Chapman*, at p. 817 [jury made statements that further deliberation would not be of any assistance].) That did not happen here. Because Moffett fails to show the trial court acted in an arbitrary, capricious, or patently absurd manner, we will not disturb the jury's verdict. (*Rodrigues, supra*, 8 Cal.4th at p. 1124.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

David M. Hirsch, Judge

Superior Court County of Ventura

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