Filed 9/28/15 P. v. Beylin CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARTIN BEYLIN,

Defendant and Appellant.

2d Crim. No. B257532
(Super. Ct. No. 2010020117)
(Ventura County)

Martin Beylin appeals after a jury convicted him of transportation of marijuana (Health & Saf. Code,[1] § 11360, subd. (a)). Another count charging appellant with possession of marijuana for sale (§ 11359) was dismissed after the jury was unable to reach a verdict. The court suspended imposition of sentence and placed appellant on three years formal probation with terms and conditions including that her serve 90 days in county jail. Appellant contends the court erred in precluding him from presenting a medical-marijuana defense to the charge of possession of marijuana for sale. We affirm.

STATEMENT OF FACTS

Appellant's SUV was stopped for a traffic violation. Earlier that day, the SUV had been seen leaving a house under surveillance for suspected drug activity.

[1] All statutory references are to the Health and Safety Code unless stated otherwise.

Someone else was driving the SUV and appellant was sitting in the front passenger seat. The officer smelled marijuana and appellant admitted he had smoked marijuana the previous day.

The officer searched appellant and found $1,900 in bills of various denominations. A police dog subsequently alerted to the smell of narcotics on the money. The officer also searched a backpack he found in the back seat of appellant's SUV. Inside the backpack were two Mason jars and two plastic bags containing a total of 4.6 ounces of marijuana, a digital scale, and paperwork with appellant's name on it. A police detective subsequently searched appellant's cell phone and found several text messages indicative of marijuana sales. Based on a hypothetical tracking the facts of the case, the detective opined that the marijuana was possessed for sale and was being unlawfully transported.

Appellant did not testify or present any evidence on his behalf.

DISCUSSION

Appellant contends the court erred in refusing to allow him to defend against the charge of possessing marijuana for sale as charged in count 1 on the ground that the possession was lawful under the Compassionate Use Act (CUA) (§ 11362.5) and the Medical Marijuana Program Act (MMPA) (§§ 11362.7-11362.83). He claims the court erroneously precluded him presenting evidence as that he possessed the marijuana as a "qualified patient" and "primary caregiver," and in refusing to instruct the jury on these defenses.

We agree with the People that appellant's claim is moot because the court dismissed the possession for sale charge after the jury was unable to reach a verdict. In arguing otherwise, appellant asserts that the court's evidentiary ruling on the possession for sale count effectively prevented him from defending against the transportation count. Appellant acknowledges, however, that the court expressly allowed him to defend against the transportation charge on the ground he was a qualified patient under the CUA and the MMPA. He also acknowledges that he failed to offer any evidence in support of that

defense. He thus cannot be heard to complain that the challenged ruling rendered him unable to defend against the sole charge of which he was convicted.

Crane v. Kentucky (1986) 476 U.S. 683, which appellant cites in support of his claim, is inapposite. The trial court in that case precluded the defendant from introducing evidence regarding the circumstances of his confession after having ruled that the confession was involuntary. The court rejected the defendant's claim that the evidence was not an attempt to "relitigat[e] the issue of voluntariness," but rather to otherwise cast doubt on the reliability and credibility of the confession. In reversing, the Supreme Court reasoned "that an essential component of procedural fairness is an opportunity to be heard" and that this opportunity "would be an empty one if the State were permitted to exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant's claim of innocence." (*Id.* at p. 690.) The court went on to note that "evidence about the manner in which a confession was obtained is often highly relevant to its reliability and credibility" and that "[s]uch evidence was especially relevant in the rather peculiar circumstances of this case." (*Id.* at p. 691.) This ruling has no bearing on the claim at issue here.

To the extent appellant contends the court erred in precluding him from defending against the transportation charge on the ground he was a primary caregiver under the CUA and the MMPA, the claim fails. Even if he had offered admissible evidence that Matthew Flores was a qualified patient and that appellant was his primary caregiver, appellant effectively conceded at the Evidence Code section 402 hearing that the quarter-pound of marijuana in his car was not intended for Flores. According to appellant, Flores lived with him and the marijuana appellant provided to him came solely from plants that appellant had in his house. In light of the evidence at trial, it is also clear beyond a reasonable doubt that the result would have been no different had appellant been allowed to defend against the transportation charge on the ground he was a primary caregiver under the CUA and MMPA. Accordingly, any error would be harmless under both *Chapman v. California* (1967) 386 U.S. 18 (harmless beyond a reasonable doubt)

and *People v. Watson* (1956) 46 Cal.2d 818, 836) (reasonable probability of a more favorable outcome).[2]

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

[2] In light of our conclusion, we need not address the People's claim that appellant forfeited his right to assert that the court's ruling amounted to a violation of his constitutional right to present a defense.

George C. Eskin, Judge

Superior Court County of Ventura

Linda L. Currey, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael R. Johnsen, Supervising Deputy Attorney General, Kathy S. Pomerantz, Deputy Attorney General, for Plaintiff and Respondent.