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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GRACE ANNE SANDOVAL,

Defendant and Appellant.

A133341

(Mendocino County Super. Ct.
No. SCUK-CRCR-1015894)

Grace Anne Sandoval (appellant) appeals from a judgment entered after a jury convicted her of possession of methamphetamine (Health & Saf. Code, § 11377¹) and transportation of methamphetamine (§ 11379, subd. (a)) and the trial court sentenced her to three years of probation. She contends: (1) there was insufficient evidence she knew the seized substance was methamphetamine; and (2) a longer sentence for transportation of methamphetamine than for possession of methamphetamine violates her constitutional right to equal protection. We reject the contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

An information was filed February 15, 2011, charging appellant with possession of methamphetamine for sale (§ 11378, count 1) and transportation of methamphetamine (§ 11379, subd. (a), count 2). At trial, Mendocino County Deputy Sheriff Jonathan Martin testified that at about 12:30 a.m. on December 13, 2010, he and another deputy, Deputy Penn, were on patrol in a marked car when they noticed a car parked in the

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

parking lot of a store that had been vandalized six days earlier. The area was not lit and the car was “parked perpendicular to . . . the [parking] spots, as in it was not in [any] spot.” Martin and Penn pulled into the parking lot and saw a gold Subaru Legacy car (the Subaru) with which they were familiar from prior law enforcement contacts.

Appellant, who was sitting by herself in the driver’s seat of the Subaru, said she was lost and trying to program her GPS device. Penn assisted appellant with the GPS device while Martin walked around the Subaru and looked inside with a flashlight to determine whether there were weapons or anyone hiding inside. On the floorboard behind the front passenger seat was a small black container with black electrical tape wrapped around it. Martin, who had experience investigating crimes related to methamphetamine, was familiar with these types of containers, which were used to transport methamphetamine “in the engine compartment or underneath, attached to the frame” “with a magnet.” There was no lid on the container found in the Subaru, and Martin could see a plastic bag inside the container with a crystalline substance that appeared to be methamphetamine. A set of keys, which appellant said belonged to her, was attached to a magnet that was taped to the container. The lid to the container was later found on the front passenger seat.

Appellant denied she knew about the methamphetamine and said she had just bought the Subaru at a Denny’s restaurant about three miles away. Martin retrieved the container and its contents, and he and Penn arrested appellant for possession of methamphetamine. Penn searched appellant and removed from her left front pants pocket another plastic bag of methamphetamine. Later, Martin performed a test on the substances in the plastic bags; they tested presumptively for methamphetamine. A criminalist determined the substances were methamphetamine. He testified that the methamphetamine found in the container weighed 28.10 grams and that the methamphetamine found in appellant’s pocket weighed 13.95 grams.

Robert Nishiyama, special agent supervisor with the Department of Justice, Bureau of Narcotic Enforcement, testified as an expert on the subject of commercial transportation and possession for sale of methamphetamine. He testified that a dose of

methamphetamine was a tenth of a gram. Based on the amount of methamphetamine found in the Subaru and in appellant's pocket (a total of 42.05 grams) and its value (up to \$3,000), Nishiyama opined that appellant's possession of methamphetamine was for sale. Nishiyama testified that in all of his years dealing with narcotics enforcement, he had never encountered anyone who carried so much methamphetamine for personal use. He also explained that the type of magnetic container found in the Subaru was used by commercial drug traffickers to conceal drugs in their cars. He testified that "the methamphetamine world is filled with violence" and that he was aware of people who were threatened and forced to transport methamphetamine for traffickers. There were also individuals known as "mules" who were not owners of the drugs but were compensated for transporting the drugs. The use of mules to transport drugs was a "fairly common thing" that he had seen throughout his career.

Appellant testified that on December 13, 2010, she was at an apartment or motel in Fort Bragg with a friend named Jimmy when she overheard a Mexican woman say in Spanish, "get the guns, they're here." Fearing for her safety, she told Jimmy to give her the keys to her car. Rather than doing so, Jimmy gave her the keys to the Subaru. Appellant had never driven the Subaru and did not know whose it was, but because she "just wanted to get out of there," she grabbed her GPS device, purse, phone, and phone charger from her car, then sped off in the Subaru. Appellant denied she knew there was methamphetamine in the Subaru and testified she had never seen the black container that was in the Subaru. She also did not notice that the lid to the container was on the front passenger seat. When asked by defense counsel, "some methamphetamine was discovered in your pocket?", appellant explained that as she tried to leave in the Subaru, a woman named Rita, who was the owner of the Subaru and Jimmy's friend, came up to her and said, "here's some money for gas." Rita gave appellant what appellant thought was \$20, but "I guess [the methamphetamine] was wrapped in there." Appellant denied telling the deputies that she had purchased the Subaru. When asked how her keys became attached to the container, appellant explained that she normally wears her keys

around her arm and that the keys must have come off and stuck to the container's magnet when she took her jacket off.

As to count 1, the jury found appellant guilty of the lesser included offense of possession of methamphetamine (§ 11377, subd. (a)). The jury found appellant guilty of count 2, transportation of methamphetamine (§ 11379, subd. (a)). The trial court sentenced appellant to three years of probation with various conditions, including a requirement that she serve 210 days in county jail.

DISCUSSION

Sufficiency of the Evidence

Appellant contends her “convictions for possession and transportation of methamphetamine deprived [her] of due process of law guaranteed under the Fourteenth Amendment of the United States Constitution” because there was insufficient evidence she knew the seized substance was methamphetamine. We disagree.

“In a prosecution for possession of a controlled substance, knowledge of the character of the substance possessed is an essential element of the crime. [Citations.] The requirement that the accused be aware of the character of the substance also applies to crimes of selling or transporting a controlled substance [citations]” (*People v. Coria* (1999) 21 Cal.4th 868, 874-875; *see also, e.g., People v. Romero* (1997) 55 Cal.App.4th 147, 151-154; *People v. Winston* (1956) 46 Cal.2d 151, 158.) Knowledge of the drug's character as a controlled substance can be established by circumstantial evidence. (*E.g., People v. Schreiber* (1971) 21 Cal.App.3d 812, 814.)

Applying the standard for federal constitutional error, “the relevant question is 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.” (*Jackson v. Virginia* (1979) 443 U.S. 307, 319.) Accordingly, we review the record “in the light most favorable to the judgment below to determine whether it discloses substantial evidence” supporting each element of the crime. (*People v. Johnson* (1980) 26 Cal.3d 557, 562.) Substantial evidence is “evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the

defendant guilty beyond a reasonable doubt.” (*Id.* at p. 578; *People v. Abilez* (2007) 41 Cal.4th 472, 504.) “Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ ” (*People v. Bolin* (1998) 18 Cal.4th 297, 331, quoting *People v. Redmond* (1969) 71 Cal.2d 745, 755; *People v. Majors* (2004) 33 Cal.4th 321, 331 [the reviewing court does not resolve evidentiary conflicts, but views the evidence in a light most favorable to the People, and presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence].)

Here, over hundreds of doses of methamphetamine were found,² valued at up to \$3,000. In all of his years of dealing with narcotics enforcement, Nishiyama had never encountered anyone who carried this much methamphetamine for personal use. Nishiyama testified that the magnetic container in which some of the methamphetamine was found was “not something that the average person has in [his or her] car. It’s a device that’s deliberately made to secrete something. It’s a device that’s very common in the world of drugs for secreting evidence in a location where law enforcement’s not going to look. This is not a device that you purchase in a store. It’s a device that you manufacture. It’s a device which is indicative of someone who’s transporting controlled substances.” He further testified that people were often threatened into transporting methamphetamine for traffickers and that the use of “mules” to transport drugs was a “fairly common thing.” Although appellant denied knowing about the methamphetamine, approximately one ounce of it was in plain view in an open container inside a car in which she was the sole occupant and driver, her keys were attached to a magnet on the container, and the lid to the container was sitting next to her on the front passenger seat.

Moreover, there was evidence that a significant amount of methamphetamine—13.95 grams—was found on appellant’s person, in her pocket. “Ordinarily the fact that a

² As noted, there was evidence that one dose of methamphetamine is 0.10 grams and that a total of over 40 grams of methamphetamine was found in the Subaru and in appellant’s pocket.

narcotic is found in the personal effects of the defendant is compelling proof that defendant knew what he possessed and its nature. [Citations.]” (*People v. Anderson* (1970) 6 Cal.App.3d 364, 371 [“It would be most extraordinary that the defendant in this case would attempt to deny that she knew the nature of the green leafy substance which was wrapped in a cellophane bag within a box which she was carrying in her purse”].) Appellant testified she was unaware the methamphetamine was in her pocket and provided an explanation as to how it might have gotten there, but the jury apparently did not believe her, and we will not disturb that credibility determination on appeal. (*People v. Booker* (2011) 51 Cal.4th 141, 172 [a reviewing court does not reevaluate a witness’s credibility].) We conclude there was sufficient evidence from which a jury could reasonably infer that appellant was aware of the nature of the substance found in the Subaru and in her pocket.

Equal Protection

Appellant contends that a longer sentence for transportation of methamphetamine than for possession of methamphetamine violates her right to equal protection because simply possessing drugs while in motion, rather than at rest, does not justify a longer sentence. Assuming appellant did not forfeit the issue by not raising it below,³ we conclude the contention is without merit.

“The federal and state equal protection clauses (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7) prohibit the state from arbitrarily discriminating among people subject to its jurisdiction. The guarantee has been defined to mean that all persons under similar circumstances are entitled to and given equal protection and security in the enjoyment of personal and civil rights and the prevention and redress of wrongs. (*People v. Rhodes* (2005) 126 Cal.App.4th 1374, 1383.) Those who are similarly situated with respect to the purpose of the law shall receive similar treatment. (*Ibid.*) ‘ ‘ ‘Under the equal

³ Appellant asserts that if defense counsel was required to raise the equal protection argument below, he was ineffective in failing to do so. Because we address and deny the contention on its merits, we need not, and will not, address appellant’s ineffective assistance of counsel claim.

protection clause, “[a] classification ‘must be reasonable, not arbitrary, and must rest upon some grounds of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.’ ”

[Citations.]” [Citation.]” (*Ibid.*) The equal protection guarantee, “however, does not prevent the state from drawing distinctions between different groups of individuals but requires the classifications created bear a rational relationship to a legitimate public purpose.” [Citation.]” (*People v. Chavez* (2004) 116 Cal.App.4th 1, 4.)” (*People v. Ward* (2008) 167 Cal.App.4th 252, 257.)

People v. Cortez (1985) 166 Cal.App.3d 994 (*Cortez*) and *People v. Rogers* (1971) 5 Cal.3d 129 (*Rogers*), on which *Cortez* relied, are on point. In *Cortez*, the defendant argued “ ‘it constitutes a violation of equal protection to punish him (and countless others) by four years in State Prison for possession of heroin for personal use, simply because his possession was not ‘stationary,’ while punishing others who possess heroin for personal use by, at most, three year sentences.’ ” (166 Cal.App.3d at p. 999, fn. omitted.) “Specifically, [the defendant argued] that because one who possesses heroin for personal use, but is not in motion when arrested, may only be sent to prison for sixteen months, two years or three years (§ 11350; Pen. Code, § 18), while one who transports heroin, even a small amount intended for personal use, can receive a punishment of three, four or five years, the statutory scheme represents a discriminatory classification against similarly situated individuals and should be struck down as violating his equal protection rights.” (*Cortez, supra*, 166 Cal.App.3d at p. 999.)

The *Cortez* Court rejected the argument, stating it “fail[ed] at the threshold” because “[p]ersons convicted of *different* crimes are not similarly situated for equal protection purposes. [Citations.] [Citation.]” (166 Cal.App.3d at pp. 999, 1000.) The Court further concluded, “even assuming arguendo that persons convicted of different crimes under some circumstances can be similarly situated for equal protection purposes, we are of the opinion persons convicted of possessing heroin for personal use and persons convicted of transporting heroin are not similarly situated.” (*Id.* at p. 1000.) “[A]lthough both statutes share the general purpose of deterring the presence of heroin in our society,

the specific purpose of section 11350 appears to be directed at deterring the individual who personally possesses and uses heroin. The pertinent part of section 11352, on the other hand, appears to be directed at attempting to prevent or deter the movement of drugs from one location to another, thereby inhibiting trafficking in narcotics and their proliferation in our society. [Citation.] Anything that is related to trafficking is more serious than possessing. [Citation.]” (*Ibid.*)

The *Cortez* Court relied on *Rogers, supra*, 5 Cal.3d 129, stating, “In *People v. Rogers, supra*, 5 Cal.3d 129, the Supreme Court emphasized the purpose of the transportation prohibition and the greater seriousness of that offense.” (*People v. Cortez, supra*, 166 Cal.App.3d at p. 1000.) The *Cortez* Court pointed out that the Supreme Court stated in *Rogers*: “[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, without regard to the particular purpose for which the transportation was provided, a matter often difficult or impossible to prove. Moreover, a more severe penalty for those who transport drugs may have been deemed appropriate to inhibit the frequency of their own personal use and to restrict their access to sources of supply, or to deter the use of drugs in vehicles in order to reduce traffic hazards and accidents, as well as to deter occurrences of sales or distributions to others. The relative privacy and increased mobility afforded by the automobile offers expanded opportunities for the personal use and acquisition of drugs; greater penalties may legitimately be imposed to curtail those opportunities.” (*Ibid.*, quoting *Rogers, supra*, 5 Cal.3d at pp. 136-137, fns. omitted.)

Appellant argues *Rogers* and *Cortez* are distinguishable because the jury, which found she did not possess the methamphetamine for sale, essentially found she was not involved in the trafficking of drugs, and thus, “the rationale that transportation implies trafficking that was used to uphold the transportation conviction in [*Cortez* and *Rogers*] does not apply.” As noted, however, the defendant in *Cortez* was also only guilty of the

crime of possession, not possession for sale. (166 Cal.App.3d at p. 999.) Also as noted, *Rogers* made a distinction between “mere possession *or possession for sale*,” (emphasis added) on the one hand, and “transportation” on the other, in concluding that a more severe penalty for transportation of drugs than for the other two offenses was justified. (5 Cal.3d at p. 136.) Thus, appellant’s attempt to distinguish *Rogers* and *Cortez* fails. Because the statutes prohibiting possession or possession for sale and statutes prohibiting transportation are “aimed at distinct and separate aspects of the ‘war on drugs,’ ” the “statutes serve different purposes [and] persons convicted under their provisions should not be considered to be similarly situated for equal protection purposes.” (*Cortez, supra*, 116 Cal.App.3d at p. 1001.) Accordingly, there was no violation of the equal protection clause.

DISPOSITION

The judgment is affirmed.

McGuinness, P.J.

We concur:

Pollak, J.

Siggins, J.