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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.

ROBERT L. STEVENS,

Defendant and Appellant.

2d Crim. No. B234084
(Super. Ct. No. PA068763)
(Los Angeles County)

Robert L. Stevens appeals from the judgment entered after a jury convicted him of possession of methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) The trial court suspended imposition of sentence and granted probation pursuant to Penal Code section 1210.1 (Proposition 36). Appellant contends that the trial court erred in permitting the arresting officer to opine that .09 grams of methamphetamine found on appellant's person is a usable amount. We affirm.

Facts

On the evening of September 19, 2010, Los Angeles Police Officers Mark Seston and Briscoe were in Tujunga conducting a narcotics investigation. Appellant saw the police car in front of his house, asked the officers what was going on, and consented to a search of his person. Officer Seston recovered a clear plastic baggie containing .09 grams of crystal methamphetamine in appellant's rear jeans pocket.

Appellant defended on the theory that the jeans may not have been his. Appellant stated that he was getting ready to go to bed when someone told him a police car was parked outside. Appellant grabbed a pair of jeans from the clothes hamper, put them on, and went outside. Six other people lived in the house including his grandson and daughter's boyfriend who wore the same size pants.

Useable Quantity

Appellant argues that the trial court abused its discretion in permitting Officer Seston to opine that .09 grams of methamphetamine is a useable amount. One element of the crime of possession of methamphetamine is that the quantity is sufficient to be " 'usable for consumption or sale. . . .' [Citation.]" (*People v. Palaschak* (1995) 9 Cal.5th 1236, 1242.) A mere trace residue is not a usable quantity. (*People v. Leal* (1966) 64 Cal.2d 504, 512.) A useable amount may be established by expert opinion testimony. (See e.g., *People v. Marquez* (1986) 188 Cal.App.3d 363, 369.) Experienced officers may render opinions based on their knowledge, training, and experience in the sale or use of narcotics. (*People v. Newman* (1971) 5 Cal.3d 48, 53; *People Carter* (1997) 55 Cal.App.4th 1376, 1378.)

Appellant complains that Officer Seston had only three years experience and lacked the training to testify that .09 grams of methamphetamine is a usable amount. "Error regarding a witness's qualifications as an expert will be found only if the evidence shows that the witness ' " 'clearly lacks qualification as an expert.' " ' [Citation.]" (*People v. Farnam* (2002) 28 Cal.4th 107, 162.)

Officer Seston testified that he had participated in more than 55 narcotics-related arrests and received police academy training in narcotics consumption, sales, possession, and the common indications of being under the influence. Officer Seston recovered the methamphetamine, weighed it, and booked it into evidence. Based on his background, training, experience, and discussions with narcotics detectives, he opined that .09 grams of methamphetamine was a useable amount. On cross-examination,

Officer Seston explained: "A usable amount would be any quantity of a narcotic that has an effect on a person." "There's no golden number, if that's what you're looking for."¹

We cannot say that Officer Seston "clearly lacked" the experience and training to opine that .09 grams is a usable amount. Where a witness has disclosed sufficient knowledge to entitle his opinion to go to the jury, the question of the degree of his knowledge goes more to the weight of the evidence than to its admissibility. (*People v. Bolin* (1998) 18 Cal.4th 297, 322.) The jury was instructed that it was the sole judge of the weight to be given to any witness' testimony, that it could consider the qualifications and credibility of an expert, and that it could disregard any expert opinion. (CALCRIM 105, 332.) It is presumed that the jury understood and followed the instructions. (*People v. Holt* (1997) 15 Cal.4th 619, 662.)

Assuming, arguendo, that the trial court erred in permitting Officer Seston to opine that it was a usable amount, appellant suffered no prejudice. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) Whether the quantity of drugs seized is a usable amount may be inferred from circumstantial evidence. (*People v. Palaschak, supra*, 9 Cal.4th at p. 1242.) In *People v. Rubacalba* (1993) 6 Cal.4th 62, 66, our Supreme Court held that "[t]he *Leal* useable-quantity rule [*People v. Leal, supra*, 64 Cal.2d 504] prohibits conviction only when the substance possessed simply cannot be used, such as when it is a blackened residue or a useless trace." A substance weighing .09 grams containing methamphetamine is not, as a matter of law, "residue" or a "useless trace"

Here a chemist with 17 years experience who had qualified as narcotics analysis expert 200 times examined the methamphetamine, conducted five confirmatory tests, and testified that the methamphetamine weighed .09 net grams without the

¹ During deliberations, the jury asked the trial court to "provide clarification of 'useable' as opposed [to] 'useless traces' and 'debris.'" The court referred the jury back to CALCRIM 2304 which stated in pertinent part: "A *useable amount* is a quantity that is enough to be used by someone as a controlled substance. Useless traces or debris are not useable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user."

packaging. A photo of the methamphetamine was received into evidence. Based on the photo and the chemist's testimony, the jury reasonably inferred that the quantity of methamphetamine on appellant's person was more than a useless trace or bag residue. (*People v. Rubacalba, supra*, 6 Cal.4th at p. 66; see e.g., *People v. Stafford* (1972) 28 Cal.App.3d 405, 413-414.) There is no requirement that the prosecution "show that the quantity possessed is capable of producing a narcotic effect on the user. [Citation.]" (*People v. Mardian* (1975) 47 Cal.App.3d 16, 45 [expert testimony that 10 micrograms of PCP is a useable amount].)

Pitchess Motion

Pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, appellant sought discovery of Officer Sesto's and Officer Briscoe's personnel records. The trial court conducted an in camera review of the records and found no responsive complaints. At appellant's request, we have reviewed the sealed transcript of the proceeding and conclude that trial court did not abuse its discretion in denying discovery. (*People v. Hughes* (2002) 27 Cal.4th 287, 330; *People v. Mooc* (2001) 26 Cal.4th 1216, 1232.)

The conviction is affirmed

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Dalila C. Lyons, Judge

Superior Court County of Los Angeles

Heather L. Beugen , under appointment by the Court of Appeal, for
Defendant and Appellant.

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