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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.

GERRY D. McCANN,

Defendant and Appellant.

B238980

(Los Angeles County
Super. Ct. No. BA388759-01)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Barbara R. Johnson, Judge. Affirmed.

Kevin Smith for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Thomas C. Hsieh, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Gerry D. McCann appeals from his conviction of sale of cocaine base.¹ He contends the conviction is not supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Viewed in accordance with the usual rules of appeal (*People v. Zamudio* (2008) 43 Cal.4th 327, 357), the evidence established that on Sunday, September 11, 2011, Officers Debra Leabres and Ernesto Munoz were members of the Los Angeles Police Department's Central Narcotics Detail, a unit specializing in drug-related crimes occurring in the area known as Skid Row. That morning, Leabres and Munoz were at an observation post located about 30 feet above ground on Julian Street. From that location, they used binoculars to monitor Julian Street between Sixth and Seventh Streets. Leabres testified that at about 9:15 a.m., she saw about 30 to 40 people on the street – some were milling around and others were sleeping. Defendant was one of five men sitting on five gallon buckets with their backs against the wall, about 60 feet away. The fact that Escobar was rapidly walking down the street drew Leabres's attention to him and she alerted Munoz to the possibility that a narcotics transaction was about to transpire. Leabres watched Escobar stop in front of defendant and hand him what appeared to be paper currency. As defendant took the money with the thumb and forefinger of his left hand, he opened his other fingers and dropped something into Escobar's palm. When Escobar brought the item towards him for a closer look, Leabres could see that it was a lump of an off-white solid substance about the size of a half pea, which looked like rock cocaine. Escobar closed his fist around the item and continued walking south on Julian. Leabres continued to focus on Escobar as he walked away and she radioed the chase officers – Detectives James Miller and Sera – to take Escobar into custody. Once

¹ Defendant was charged with sale of rock cocaine. (Health & Saf. Code, § 11352, subd. (a).) Two prior convictions were alleged pursuant to the Three Strikes law (Pen. Code, § 1170.12, subds. (a)-(d), § 667, subds. (b)-(i)). A jury convicted him of the substantive offense. Defendant admitted the prior conviction allegations and was sentenced to eight years in prison (the four year high term doubled pursuant to the Three Strikes law). He timely appealed.

Leabres received confirmation from Miller and Sera that they found the rock cocaine in Escobar's possession, Leabres turned her attention back to defendant and directed the second chase team – Officers Marshall, Paterson and Cho – to take defendant into custody. As the second chase team was driving towards defendant, Leabres saw defendant stand up, walk toward the curb and squat down. When Marshall, Paterson and Cho took defendant into custody, they stood him up. Leabres saw Cho pick up something from the ground, but she could not see what it was. Later, she saw Cho holding a small, green canister. After Leabres received word that defendant was found in possession of cocaine, she and Munoz returned to the police station. At the station, Miller gave Leabres the following items, which Leabres booked into evidence: (1) a small green container which contained a relatively large piece of what looked like rock cocaine, (2) two pieces of a broken glass pipe, and (3) a second glass pipe in the bowl of which was a piece of what appeared to be rock cocaine which was the same size as the piece Leabres had seen in Escobar's hand. The rock in the green canister could be purchased for \$70 and typically would be broken up into about 15 smaller rocks which would sell for about \$5 each. Miller also gave Leabres \$54, comprised of seven \$5 bills and nineteen \$1 bills. In Leabres's experience, having currency in small denominations was consistent with selling rock cocaine in small amounts on Skid Row.

Munoz testified that after Leabres alerted him to a possible narcotics transaction and described defendant sitting near a wrought iron fence, Munoz saw defendant standing near the fence. As Paterson and Cho approached, defendant moved toward the curb and squatted down. Defendant was still squatting when Paterson and Cho took him into custody. Munoz did not see anything in defendant's hands and never saw Escobar.

Officer David Cho recalled that as he, Patterson and Marshall approached, defendant was crouched down near a metal gate. When defendant stood up, Cho saw a green pill container on the ground beneath where defendant's thigh had been when he was squatting. Cho picked up the container, which had something inside of it, and gave it to Detective Miller.

Officer David Paterson testified that he and Marshall approached defendant together. Paterson watched as Marshall searched defendant, recovering what appeared to be two crack pipes and some money from defendant's right front pants pocket.

Detective James Miller was supervising the operation that day and also acting as a chase officer. Miller testified that as he and Sera approached Escobar, Escobar put a glass cocaine pipe into a shopping cart. Miller saw Sera recover that pipe from the shopping cart. The pipe had a solid off-white substance in the tip. Miller obtained the pipe from Sera, a green pill container from Cho and another glass pipe and about \$54 dollars in small bills from Marshall. Miller gave all of these items to Leabres to book into evidence. A criminalist confirmed that the off-white substances in the green container and the bowl of the pipe were, in fact, rock cocaine.

DISCUSSION

Defendant's sole contention on appeal is that the evidence was insufficient to support the conviction for sale of cocaine base in violation of Health and Safety Code section 11352, subdivision (a). He argues that there was no evidence that defendant sold cocaine to Escobar because the only reasonable inference from the evidence was that the cocaine in the pipe Escobar discarded was residue from cocaine Escobar had already smoked and not anything he obtained from defendant. We disagree.

The standard of review for a challenge to the sufficiency of the evidence is well established. "[W]e review the whole record to determine whether any rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] 'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a

judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.] [Citation.] A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” ’ the jury’s verdict. [Citation.] [¶] The same standard governs in cases where the prosecution relies primarily on circumstantial evidence. [Citation.] We ‘must accept logical inferences that the jury might have drawn from the circumstantial evidence. [Citation.]’ [Citation.] ‘Although it is the jury’s duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant’s guilt beyond a reasonable doubt. [Citation.]’ [Citation.] Where the circumstances reasonably justify the trier of fact’s findings, a reviewing court’s conclusion the circumstances might also reasonably be reconciled with a contrary finding does not warrant the judgment’s reversal. [Citation.]’ (*Zamudio, supra*, 43 Cal.4th at pp. 357-358.)

Here, Leabres testified that defendant handed Escobar an item that was half the size of a pea and which appeared to be rock cocaine. Moments later, police recovered a cocaine pipe that Escobar was seen discarding. There was a piece of cocaine in the bowl of that pipe. Leabres booked that pipe into evidence as item No. 3. At trial, Leabres testified that the piece of cocaine in the bowl of item No. 3 was the same size as the piece of cocaine Leabres had seen in Escobar’s hand.

Criminalist Marie Chance tested the substance in the bowl of item No. 3. To do so, she removed most of what was adhered to the glass, but a “tiny bit” remained in the pipe’s mesh screen. Weighing prior to testing, and then testing, established that the substance was 0.01 grams net weight of “cocaine in the form of cocaine base.” Chance testified that the substance “kind of looks like” “maybe 15 to 20 grains of sand.” She explained that heating a piece of rock cocaine could reduce its size.

From Leabres's testimony that she saw defendant hand Escobar a half-pea-sized substance that looked like rock cocaine and that the substance in the glass bowl of item No. 3 was the same size as the substance she saw defendant hand Escobar, and Chance's testimony that the substance in the glass bowl of item No. 3 was cocaine base, a reasonable trier of fact could conclude that the cocaine in the bowl of item No. 3 was the substance Leabres saw defendant hand Escobar in exchange for currency. That Leabres described the substance as the size of a half pea and Chance described the substance she flicked off the glass bowl as "15 to 20 grains of sand" does not compel a different result. The evidence is not necessarily conflicting. After all, Leabres was describing the cocaine when it was still a solid lump whereas Chance was describing that portion of the cocaine which she flicked off the glass bowl of the pipe. In any case, such conflicts in the evidence were for the trier of fact to resolve.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.