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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

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THE PEOPLE,

Plaintiff and Respondent,

v.

QUENTIN JOSEPH REID,

Defendant and Appellant.

C067517

(Super. Ct.  
Nos. CRF100875,  
CRF100002676)

A jury convicted defendant Quentin Joseph Reid of possessing methamphetamine, possessing a pipe for smoking methamphetamine, and impersonating his brother. Defendant admitted allegations he had a prior strike conviction for burglary, and the trial court sentenced him to prison.

On appeal, defendant contends (1) there was insufficient evidence to support his conviction for possessing a methamphetamine pipe, and (2) the trial court abused its

discretion in denying his *Romero*<sup>1</sup> motion to strike his prior strike conviction. Finding no error, we affirm the judgment.

#### **BACKGROUND**

*Case No. 100875*

Police patrolling a high crime area in Woodland approached a parked van in which defendant was sitting. Defendant consented to a search, and Officer Cristobal Lara found a methamphetamine pipe in the left breast pocket of defendant's shirt. Lara had received training in recognizing drug use paraphernalia.

When the officers cited defendant for possession of the pipe, defendant gave his brother's name, James Reid.

*Case No. 100002676*

Three months later, police responded to a report from defendant's roommate that defendant might be manufacturing explosives in his bedroom. Defendant consented to a search of his room, where methamphetamine was found. The arresting officer later testified that defendant admitted the methamphetamine belonged to him and also admitted having given his brother's name to a police officer when cited for possession of paraphernalia.

#### *Trial*

In case No. 100875, defendant was charged with impersonating his brother and misdemeanor possession of paraphernalia (methamphetamine pipe). In case No. 100002676,

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<sup>1</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

defendant was charged with possession of methamphetamine. In both cases it was alleged defendant had one prior strike conviction. The two cases were consolidated for trial.

As relevant to defendant's appeal from his conviction on the paraphernalia charge, Officer Lara testified the pipe he found in defendant's pocket was "a clear, glass pipe with a bulbous end, and it had a brown residue inside of it"; the residue appeared burnt. Defendant told Lara he had "found the pipe earlier" and, when asked at trial whether defendant "indicate[d] . . . that he understood that it was a meth pipe," Lara responded, "I believe so, yes."

The court directed Officer Lara to "retrieve [the pipe] and bring it to court." But the pipe later introduced into evidence was broken and missing "[a]bout half" its former shape: it no longer had a "bulb" on one end. Asked whether he recalled whether the pipe was "fully intact" at some unspecified time, Officer Lara first said he did not recall, but later testified, "I believe it fell off one of the vehicles when we were writing the ticket." Lara admitted he should have documented in the police report that he had dropped the evidence and broken it.

Defendant testified at trial. He admitted having what he knew was a methamphetamine pipe in his pocket when officers searched him, but testified it was already broken when they found it. He admitted using his brother's name when officers cited him for possessing the pipe. As to the methamphetamine possession charge, defendant denied living at the address where officers found methamphetamine and denied the drug belonged to

him, although he admitted telling the responding officer that it did. Finally, defendant admitted having been convicted of burglary in 1994.

The jury found defendant guilty on all charges.

## **DISCUSSION**

### **I**

#### *Substantial Evidence Supports the Paraphernalia Conviction*

Health and Safety Code section 11364, subdivision (a), makes it unlawful to possess "any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking" a controlled substance, including methamphetamine. Defendant contends "the record lack[s] substantial evidence that [he] was arrested with anything other than a broken piece of garbage in his pocket." He is mistaken.

"On appeal, the test of legal sufficiency is whether there is substantial evidence, i.e., evidence from which a reasonable trier of fact could conclude that the prosecution sustained its burden of proof beyond a reasonable doubt. [Citations.] Evidence meeting this standard satisfies constitutional due process and reliability concerns. [Citations.] [¶] While the appellate court must determine that the supporting evidence is reasonable, inherently credible, and of solid value, the court must review the evidence in the light most favorable to the prosecution, and must presume every fact the jury could reasonably have deduced from the evidence. [Citations.] Issues of witness credibility are for the jury. [Citations.]" (*People v. Boyer* (2006) 38 Cal.4th 412, 479-480.)

We disagree that "[t]he prosecution failed to prove that such a pipe existed." Officer Lara testified he found a methamphetamine pipe in defendant's pocket: "a clear, glass pipe with a bulbous end, and . . . a brown residue inside of it" that later "fell off one of the vehicles" and broke while the ticket was being prepared. Reasonable jurors could have relied upon this testimony as substantial evidence that defendant had a methamphetamine pipe in his pocket when Officer Lara searched him.

In so doing, the jury plainly credited Officer Lara's statements over defendant's contrary testimony that the pipe was already broken when officers found it. ""To warrant the rejection of the statements given by a witness who has been believed by the [trier of fact], there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions."" [Citation.]" (*People v. Friend* (2009) 47 Cal.4th 1, 41, quoting *People v. Barnes* (1986) 42 Cal.3d 284, 306.) Defendant has not attempted to show it was "physical[ly] impossibl[e]" for the pipe to have been intact when taken from his pocket. (*People v. Friend, supra*, 47 Cal.4th at p. 41.) Instead, he urges us to reject Officer Lara's testimony he "believed" the pipe was whole when found in defendant's pocket as "clearly a hesitant statement of uncertainty" and argues, "Officer Lara did not . . . have an abiding conviction that the charge was true." That conclusion is not inherent in the words used; it was for

the jury to interpret any inflections, and the witnesses' demeanor to determine whether to believe their testimony.

## II

### *The Trial Court Did Not Abuse its Discretion by Denying Defendant's Romero Motion*

Prior to sentencing, defendant filed a motion pursuant to *Romero, supra*, 13 Cal.4th 497 asking the trial court to dismiss his prior strike conviction. After hearing argument from counsel, the trial court denied defendant's *Romero* motion and sentenced him to five years, four months in prison as follows: a midterm two-year sentence for falsely impersonating his brother to police, doubled by virtue of the prior strike conviction to four years; eight months (one-third the midterm) consecutive for possessing methamphetamine, doubled by virtue of the strike to 16 months in prison; plus a jail term for the misdemeanor conviction for possessing paraphernalia.

On appeal, defendant contends the trial court abused its discretion by not dismissing his prior strike conviction pursuant to *Romero*. We disagree.

A sentencing court has discretion under Penal Code section 1385 to dismiss a prior strike allegation. (*Romero, supra*, 13 Cal.4th 497.) However, dismissal of a strike is a departure from the sentencing norm. "In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, "[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court

is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.”

[Citation.] Second, a “decision will not be reversed merely because reasonable people might disagree. ‘An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’” [Citation.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.”

(*People v. Carmony* (2004) 33 Cal.4th 367, 376-377.)

Here, defendant argued prior to sentencing that his situation is wholly or partially outside the spirit of the three strikes law, in light of his “character and nature” and his limited prior criminal record. Employed primarily to install insulation and build scaffolding, defendant has at times worked two jobs simultaneously. His prior strike conviction for burglary was in 1994, and is thus remote. Except for the single strike conviction, defendant argued, “his criminal behavior is largely petty.” He has one prior felony conviction for possessing alcohol or drugs in jail in 1988. He has two simple battery convictions, in 1990 and 1993. Since 1994, defendant has been convicted only of one misdemeanor in 2002. Defendant began using methamphetamine in his teens when his parents divorced. He urged the trial court to grant him probation and drug treatment.

After acknowledging it had discretion to dismiss defendant's prior strike should it find him outside the spirit of the three strikes law, the trial court declined to exercise that discretion. In doing so, the trial court noted that, since defendant's prior strike conviction, his record has not been unblemished: defendant twice violated his parole and has a "misdemeanor history." The court concluded defendant is a recidivist offender who does not fall outside the spirit of the three strikes law.

Defendant argues on appeal that the trial court abused its discretion by "assuming" defendant committed post-strike misdemeanors and by engaging in inappropriate speculation about defendant's problems on probation and parole. We are not persuaded.

The record does not support defendant's suggestion that the trial court speculated on the reasons for his probation and parole violations; the court merely noted their number and dates. Nor does the record indicate the trial court made any assumption about the timing of defendant's misdemeanor convictions; the court referred to defendant's "misdemeanor history" in determining whether defendant had shown he was outside the scheme of the three strikes law. According to the probation report, defendant's 1994 strike offense was the last in a long list of convictions since 1987, including seven misdemeanors and two felonies. The trial court did not err in concluding from the record that defendant has a misdemeanor history, or that his criminal history does not exclude him from

the three strikes law. "[E]xtraordinary must the circumstance be by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record." (*People v. Strong* (2001) 87 Cal.App.4th 328, 338.)

The trial court's decision not to strike defendant's prior strike conviction was not irrational or arbitrary. (See *People v. Carmony, supra*, 33 Cal.4th at p. 377.) There was no abuse of discretion.

**DISPOSITION**

The judgment is affirmed.

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HOCH, J.

We concur:

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RAYE, P. J.

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MAURO, J.