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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT WINSTON PRECOBB,

Defendant and Appellant.

C069337

(Super. Ct. No. 10F01865)

A jury convicted defendant Robert Winston Precobb of annoying and molesting a minor child with prior convictions for lewd acts (Pen. Code, § 647.6, subd. (c)(2); count one) and four counts of furnishing or offering to furnish marijuana to a minor (Health &

Saf. Code, § 11361, subd. (b); counts two through five). The jury found three strike prior allegations to be true. (Pen. Code, §§ 667, subds. (b)-(i), 1170.12.)

Sentenced to state prison, defendant appeals. He contends (1) insufficient evidence supports his conviction on count two (furnishing marijuana to minor I.B.) and (2) the trial court erroneously failed to award conduct credit. We conclude that sufficient evidence supports defendant's conviction on count two. We will modify the judgment to provide for conduct credit and otherwise affirm the judgment.

FACTS¹

On February 26, 2010, the 55-year-old defendant checked into a motel with the financial assistance of his former attorney, who also gave him cash for living expenses. Defendant used a shuttle bus to travel to downtown and Old Sacramento. Defendant lived at the motel until his arrest on March 16.

On March 5 defendant, pretending to be a tourist named Richard, approached a group of young people at the east end of the Downtown Plaza shopping mall and asked for someone to show him around town. After 14-year-old I.B. told defendant about some nightclubs and stores on K Street, defendant departed alone.

About 10:00 p.m., I.B. and his friends returned to the area and smoked some marijuana. Defendant sat down next to them. After I.B.'s friends boarded the light rail, I.B. and defendant walked around downtown. Defendant asked I.B., "[D]o you know where we can get some weed?" I.B. thought they could ask around but explained he did not have any money. Defendant gave I.B. some money and I.B. obtained a small amount of marijuana from an unidentified man. Defendant bought some beer.

Defendant and I.B. walked to Old Sacramento and then along the river to defendant's motel. Along the way, defendant shared a beer with I.B. Upon arrival at the

¹ We recount those facts relevant to count two only, since defendant does not challenge the sufficiency of the evidence to support his other convictions.

motel, defendant invited I.B. into his room, but upon defendant's suggestion in order to avoid suspicion, they entered separately.

In the room, I.B. lied and said his name was Jonathan and that he was either 16 or 18 years old; he gave the correct name but not the address of his school. Using all the marijuana I.B. had obtained with defendant's money, defendant "rolled a joint" and they smoked it together in the bathroom.

I.B. spent the rest of the night in defendant's motel room, sitting in a chair and watching television. Defendant made some advances but I.B. declined.

In the morning, defendant left to run some errands. Before he left, he gave I.B. \$40 or \$45 to buy some more marijuana and something for himself. I.B. did not return to defendant's motel room.

Officers searched defendant's motel room and found some Zig Zag brand rolling papers and matches. Inside defendant's wallet, officers found \$500 and some papers with the name "Jonathan" and the name and phone number for I.B.'s school.

DISCUSSION

I

Defendant contends insufficient evidence supports his conviction for furnishing marijuana to I.B. (count two). He argues the evidence shows, at most, that he "induced I.B. to use marijuana," which does not violate Health and Safety Code section 11361, subdivision (b). We reject defendant's contention.

" 'To determine sufficiency of the evidence, we must inquire whether a rational trier of fact could find defendant guilty beyond a reasonable doubt. In this process we must view the evidence in the light most favorable to the judgment and presume in favor of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. To be sufficient, evidence of each of the essential elements of the crime must be substantial and we must resolve the question of sufficiency in light of the record as a whole.' [Citation.]" (*People v. Carpenter* (1997) 15 Cal.4th 312, 387.)

Health & Safety Code section 11361, subdivision (b) provides: “Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.”

The jury was instructed that defendant was charged in count two with “furnishing, administering or giving, or offering to furnish, administer or give, marijuana” to a minor. In pertinent part, the court instructed in the language of CALCRIM No. 2391 that to find defendant guilty, it must find that he “unlawfully offered to sell, furnish, administer or give marijuana, a controlled substance, to [I.B., . . .]” The prosecutor argued that defendant offered to furnish marijuana to I.B.

Health and Safety Code section 11361 is part of the California Uniform Controlled Substances Act. (Health & Saf. Code, § 11000 et seq.) Health and Safety Code section 11016 provides: “ ‘Furnish’ has the same meaning as provided in [former] Section 4048.5 of the Business and Professions Code.” Business and Professions Code section 4048.5 was repealed and replaced by Business and Professions Code section 4026 (Stats. 1996, ch. 890, §§ 2, 3, pp. 4859-4860), which provides: “ ‘Furnish’ means to supply by any means, by sale or otherwise” (*id.* at p. 4865).²

Health and Safety Code section 11361, subdivision (b)’s use of the word “furnish” covers defendant’s conduct. Defendant offered to furnish marijuana by asking I.B. where “we” could get some marijuana, providing the money to I.B. when he said he did not have any money, rolling the joint with the marijuana purchased, smoking the joint with I.B. in the bathroom of defendant’s motel room, and giving I.B. money the next morning to buy more marijuana and return to the motel room. Defendant offered to furnish marijuana by taking affirmative action to supply it to I.B. (See *Sagadin v. Ripper* (1985)

² Health and Safety Code section 11016 has not been amended by the Legislature to reflect the change in the Business and Professions Code section.

175 Cal.App.3d 1141, 1149, 1157-1158 [an adult social host who controlled the alcohol in his home furnished alcohol to minors in that he authorized its use by telling “his son that if parental beer was used, it would have to be replaced”].) Defendant does not challenge any of the other elements of the offense. Sufficient evidence supports defendant’s conviction on count two.

II

Defendant contends he is entitled to 278 days of conduct credit that the trial court erroneously failed to award on the 557 actual days awarded as presentence custody credit. The People concede. We agree.

The probation officer recommended 557 actual days but no conduct days, reporting that defendant was not eligible because he was sentenced to an indeterminate term. At sentencing on September 23, 2011, the trial court followed the recommendation, awarding 557 actual days and no conduct days for a total of 557 days of presentence custody credit.

Defendant’s life term was based on the three strikes law. He was entitled to presentence conduct credit. (*People v. Thomas* (1999) 21 Cal.4th 1122, 1125, 1127-1130; *People v. Brewer* (2011) 192 Cal.App.4th 457, 462-464; *People v. Philpot* (2004) 122 Cal.App.4th 893, 907-908.) Defendant has prior convictions for violent and serious felonies and is subject to registration as a sex offender. He was entitled to accrue work and conduct credits at the rate of two days for every six days served (Pen. Code, § 4019, former subs. (b)(2) & (c)(2)); thus, a period of six days is deemed served for every four-day period of actual custody (§ 4019, former subd. (f)). (Stats. 2009, 3rd Ex. Sess., ch. 28, § 50.) Defendant was entitled to 278 conduct days for a total of 835 days of presentence custody credit. We will modify the judgment accordingly.

DISPOSITION

The judgment is modified to provide for 278 conduct days for a total of 835 days of presentence custody credit. The trial court is directed to prepare an amended abstract

of judgment accordingly and to forward a certified copy thereof to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

_____ RAYE _____, P. J.

We concur:

_____ BLEASE _____, J.

_____ ROBIE _____, J.