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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. CURTIS LEE WILLIAMS et al., Defendants and Appellants.	D060619 (Super. Ct. No. SCD233770)

APPEALS from orders of the Superior Court of San Diego County, Amalia Meza, Judge. Affirmed.

I.

INTRODUCTION

A jury found Curtis Lee Williams and Theresa Ann Lowery guilty of selling a controlled substance (Health and Saf. Code, § 11352, subd. (a))[1] (count 1), transporting a controlled substance (§ 11352, subd. (a)) (count 2), possessing a controlled substance for

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1 Unless otherwise specified, all subsequent statutory references are to the Health and Safety Code.

sale (§ 11351) (count 3), and two counts of furnishing a drug without a prescription (Bus. and Prof. Code, § 4059) (counts 4 and 5). The jury also found Lowery guilty of obtaining controlled substances by fraud or deceit (§ 11173, subd. (a)) (count 6). At sentencing, the trial court stayed imposition of sentence and placed each defendant on formal probation for a period of three years, subject to various conditions.

On appeal, Williams contends that there is insufficient evidence to support the jury's verdicts finding him guilty of counts 1, 2, 3, and 5. Lowery contends that there is insufficient evidence to support the jury's verdict finding her guilty of count 6. We reject these claims and affirm the orders placing Williams and Lowery on probation.

II.

FACTUAL BACKGROUND

A. *The People's evidence*

On March 28, 2011, San Diego Police Detective Joseph Harper called Lowery and asked her if she would sell him some "V's," which, according to Detective Harper, is street slang for Vicodin. Lowery said that she had 15 pills to sell for $2.00 each. Harper and Lowery agreed to meet at a liquor store 30 minutes later. A few minutes after this telephone call, Lowery called Harper back and asked him if he wanted to buy some Ultram[2] and some Trazodone. During this second conversation, Lowery also told Harper that she would arrive at the liquor store in a white Taurus.

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[2] Detective Harper testified that Ultram and Tramadol are "one and the same." We use the name Ultram throughout this opinion for purposes of clarity.

Williams drove Lowery to the liquor store in his white Taurus. Lowery's son, Casey Parker, was in the front passenger seat and Lowery was in the back seat. Harper approached the Taurus and Lowery opened the back door. Lowery handed Harper a pill bottle that contained 15 Vicodin pills. Harper gave Lowery $30 in prerecorded money, wrapped in a t-shirt.

Lowery asked Harper if he wanted to buy some Trazodone. Harper bought one pill for $2.00, giving Lowery two prerecorded $1 bills. Lowery then asked Harper if he wanted to buy some Ultram. Williams told Harper that Ultram was "good stuff" and said that "it would make [Harper] feel really good." Harper gave Lowery $2.00 in prerecorded money for one Ultram pill. Williams handed Lowery a pill bottle and Lowery gave Harper one pill.

After the completion of the sales, Williams drove Parker and Lowery from the scene. Police officers stopped Williams's Taurus two blocks from the scene and searched the vehicle and its occupants. Williams had two prerecorded $1 bills in his pocket, Parker had $32 of prerecorded money in his pocket, and Lowery had a medicine bottle that contained 29 Trazodone pills in her jacket pocket. Police found another prescription bottle of 119 Ultram pills in or on the center console.

In a police interview, Lowery admitted that she had sold the Vicodin and Trazodone to Harper. Lowery stated in the interview that she obtained the Vicodin from her doctor and from Parker, and that the Ultram belonged to Williams. During a separate police interview, Williams stated that he knew he was driving Lowery and Parker to to a location where one or both of them planned to sell Vicodin. Williams indicated that he

agreed to drive Lowery and Parker to the sales because he was hoping to sell his Ultram and to be paid gas money for driving.

The People also presented evidence that Lowery and Parker had fraudulently obtained prescriptions for controlled substances from various doctors over a period of several months prior to the March 28, 2011 drug sales. (See part III.B., *post*.)

B. *The defense*

Lowery testified that a person who referred to himself as "Mike" called her on the telephone on the day in question. Lowery agreed to meet "Mike" at a liquor store parking lot. Outside the liquor store, "Mike" reached into the white Taurus in which Lowery was riding and removed Vicodin, Ultram, and Trazadone from the car. According to Lowery, Mike also threw a t-shirt into the Taurus. Lowery later recognized Detective Harper as "Mike." Lowery denied having admitted to Detective Harper that she sold him Vicodin.

Williams presented no testimony or evidence.

III.

DISCUSSION

A. *There is sufficient evidence to support the jury's verdicts finding Williams guilty of counts 1, 2, 3, and 5*

Williams contends that there is insufficient evidence to support the jury's verdicts finding him guilty of selling a controlled substance (§ 11352, subd. (a)) (count 1), transporting a controlled substance (§ 11352, subd. (a)) (count 2), possessing a controlled substance for sale (§ 11351) (count 3), and furnishing a drug without a prescription (Bus. and Prof. Code, § 4059) (count 5). Specifically, Williams maintains that there is

insufficient evidence that he aided and abetted Lowery in her commission of counts 1, 2, and 3, which relate to Lowery's sale of Vicodin, and count 5, which relates to Lowery's sale of Trazadone.

1. *Governing law*

a. *The law applicable to appellate claims of insufficient evidence*

"A state court conviction that is not supported by sufficient evidence violates the due process clause of the Fourteenth Amendment and is invalid for that reason." (*People v. Rowland* (1992) 4 Cal.4th 238, 269, citing *Jackson v. Virginia* (1979) 443 U.S. 307, 313–324.) In determining the sufficiency of the evidence, "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, supra,* at p. 319.) "[T]he court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that 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." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

b. *Applicable substantive law*

Section 11352, subdivision (a) provides in relevant part: "Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any

controlled substance specified in [various statutes][3] . . . shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years."

Section 11351 provides in relevant part: "Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale . . . any controlled substance specified in [various statutes] shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years."

Business and Professions Code section 4059 provides in relevant part: "(a) A person may not furnish any dangerous drug,[4] except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

c. *Aiding and abetting*

A person may be guilty of a crime either as a direct perpetrator or as an aider and abettor. (See Pen. Code, § 31; *People v. McCoy* (2001) 25 Cal.4th 1111, 1117 ["a person who aids and abets a crime is guilty of that crime even if someone else committed some or all of the criminal acts"].) " 'A person aids and abets the commission of a crime when he . . . (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the

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3 The active ingredient in Vicodin is hydrocodone. Hydrocodone is a controlled substance that is subject to the restrictions on sale, transportation, and possession for sale contained in sections 11352 and 11351.

4 Williams does not dispute that Trazadone is a "dangerous drug" for purposes of Business and Professions Code section 4059.

intent or purpose of committing, facilitating, or encouraging commission of the crime, (iii) by act or advice, aids, promotes, encourages or instigates the commission of the crime.' [Citation.]" (*People v. Hill* (1998) 17 Cal.4th 800, 851.)

"Factors relevant to a determination of whether defendant [is] guilty of aiding and abetting include: presence at the scene of the crime, companionship, and conduct before and after the offense." (*People v. Singleton* (1987) 196 Cal.App.3d 488, 492; accord *People v. Medina* (2009) 46 Cal.4th 913, 924.)

2. *Relevant evidence*

The People presented evidence that Detective Harper telephoned Lowery and arranged a drug transaction. (See pt. II.A., *ante*.) Williams then drove Lowery in a white Taurus to the site of the drug sales, "ma[de] it his business" to observe the sales by "look[ing] back over his shoulder" into the back seat of the vehicle where the transactions were taking place, attempted to persuade Detective Harper to purchase Ultram while Lowery was selling Harper the Vicodin and Trazadone, and drove Lowery away from the sales. In addition, Williams acknowledged to Detective Harper both that he knew that he was driving Lowery and Parker to a location where one of them intended to sell Vicodin, and that he did so in the hopes of selling Ultram to get gas money for driving.

3. *Application*

Applying the factors for determining aider and abettor liability to this evidence (see *People v. Singleton*, *supra*, 196 Cal.App.3d at p. 492), a jury could reasonably find that Williams was present at the scene of the offenses, that he had a relationship with Lowery and knew about her plan to sell Vicodin and Trazadone, and that he facilitated

the sales by driving Lowery to the site of the transactions, permitting her to conduct the transactions in his vehicle, and driving her away from the site. Based on this evidence, the jury could reasonably find that Williams aided and abetted Lowery in the commission of counts 1, 2, 3, and 5. (See *ibid*.; see also *In re Z.A.* (2011) 207 Cal.App.4th 1401, 1426 [concluding that the People presented sufficient evidence to support transportation and possession for sale convictions premised on aiding and abetting theory of criminal liability through presentation of evidence that defendant was "a full participant in the transportation of the drugs on the day in question"]; *People v. Meza* (1995) 38 Cal.App.4th 1741, 1746 [concluding record contained sufficient evidence of defendant's guilt for transporting cocaine for sale and possessing cocaine for sale where trier of fact could infer that passenger in vehicle containing drugs "went along to assist [driver]"].)

With respect to counts 1, 2, and 3, Williams concedes that there was evidence that he "was aware of Lowery's plan to sell controlled substances and he drove her to the location where there was a buyer in order to 'get in on it' by selling a few of his own . . . prescription [Ultram] tablets[5] to that buyer." However, Williams contends that although he was *aware* of Lowery's plan to sell Vicodin and he *assisted* her in the commission of the sale by driving her to the location where the drug sale was to take place, the jury could not find the third necessary element to establish aider and abettor liability, namely, that he *intended* to aid her commission of counts 1, 2, and 3. Williams maintains that in taking these actions he acted solely for the purpose of "mak[ing] some

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5 This sale formed the basis of count 4.

money for himself." We are not persuaded. From the evidence discussed above, the jury could find that Williams intended both to facilitate the sale of his Ultram and to assist Lowery in the sale of the Vicodin. (Cf. *People v. Jaska* (2011) 194 Cal.App.4th 971, 984 [" 'intent . . . is rarely susceptible of direct proof and generally must be established by circumstantial evidence and the reasonable inferences to which it gives rise' [citation]"].)

With respect to count 5, pertaining to Lowery's sale of Trazadone, Williams contends that there is no evidence that he had knowledge of Lowery's plan to sell Trazadone. We disagree. After his arrest, Williams told Detective Harper that the Ultram belonged to him and that he drove Lowery and Parker to the site of the drug deal in part so that he could sell Ultram. Detective Harper also testified that Williams participated in the sale of the Ultram.[6] In addition, Detective Harper testified that prior to the sale, Lowery telephoned him and asked if he was interested in purchasing *Trazadone and Ultram*, and also informed Detective Harper that she would be arriving at the site of the proposed transaction in a white Taurus, which is Williams's car. The jury could reasonably infer from this evidence that Williams had knowledge of Lowery's plan to sell Trazadone.[7]

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[6] Williams's defense counsel conceded in closing argument that the evidence was sufficient to establish that Williams sold Ultram to Detective Harper as alleged in count 4.

[7] Williams also contends that there is no evidence that he intended to facilitate the sale of Trazadone, "for the same reasons [the People] failed to establish [Williams's] intent with respect to the Vicodin counts." We reject this argument for the same reasons that we rejected Williams's argument as to intent with respect to the Vicodin-related counts.

Accordingly, we conclude that there is sufficient evidence to support the jury's verdicts finding Williams guilty of selling a controlled substance (§ 11352, subd. (a)) (count 1), transporting a controlled substance (§ 11352, subd. (a)) (count 2), possessing a controlled substance for sale (§ 11351) (count 3), and furnishing a drug without a prescription (Bus. and Prof. Code, § 4059) (count 5).

B. *There is sufficient evidence to support the jury's verdict finding Lowery guilty of obtaining prescription drugs by fraud or deceit*

Lowery contends that there is insufficient evidence to support the jury's verdict finding her guilty of obtaining controlled substances by fraud or deceit (§ 11173, subd. (a)) (count 6). We apply the law governing sufficiency claims discussed in part III.A.1, *ante*.

Section 11173, subdivision (a) provides:

> "No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

At trial, the People presented evidence that Lowery obtained 10 prescriptions for controlled substances from nine different doctors over a period of approximately four months, beginning on December 13, 2010.[8] For example, during one 10-day period in

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[8] The People offered in evidence a Controlled Substance Utilization Review and Evaluation System report ("CURES report") that detailed the controlled substances that Lowery had obtained between December 13, 2010 and April 4, 2011. Although Lowery did not transmit the CURES report that was offered in evidence at trial to this court as part of the record on appeal, the clerk's transcript contains an apparently identical report that was offered in evidence at the preliminary hearing. We assume for purposes of this decision that the reports are identical.

March 2011, Lowery filled five prescriptions from four different doctors. In addition, Lowery filled the prescriptions that she received over this four-month period at five different pharmacies.

On several occasions Lowery and Parker each obtained prescriptions for controlled substances during joint visits to various emergency rooms. Parker was with Lowery at the time of her commission of the controlled substance offenses charged in counts 1 through 5, and Lowery sold some of the controlled substances that she and Parker had obtained to an undercover officer.[9]

California Department of Justice Special Agent John Wilde reviewed Lowery's medical records and her CURES report, as well as information gained from Detective Harper's investigation. Wilde testified that in his opinion, the evidence demonstrated that Lowery had obtained prescription medication by fraud. Wilde explained the basis for his opinion as follows:

> "[B]ased on the CURES report, the doctor-shopping, the going in between different hospitals, the using different pharmacies—and even in one instance, she was in an emergency room . . . one day, discharged early in the morning, and the very next . . . day she was back with a similar complaint. [¶] So based on the number of visits, the type of medication that she was getting, the different pharmacies, the complaints, talking with the doctors, the prescribing physicians, and the fact that she sold some of these controlled substances to an undercover police detective—that leads me to believe the substances were gotten solely for the purpose of sales."

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9 Specifically, Lowery filled a Vicodin prescription on March 21, 2011 and Parker filled a Vicodin prescription on March 28, 2011. Parker sold Vicodin to Detective Harper approximately one week later. During a postarrest interview, Lowery admitted selling Vicodin that she had obtained from both a doctor and from Parker to Detective Harper.

Special Agent Wilde also stated that Lowery's medical records indicated that she had never informed any of the prescribing physicians that she was taking any controlled substances. Wilde stated that this was significant because "if [a patient] is already taking Vicodin," a doctor would not "prescribe [the patient] more Vicodin . . . because [the patient is] already taking it."

We reject Lowery's contention that the evidence presented at trial is insufficient to support the verdict because the prosecution presented no evidence that she did not suffer from a legitimate medical condition that required medication at the time she obtained the various controlled substances. The evidence cited above is plainly sufficient for the jury to have inferred that Lowery obtained the controlled substances by fraud for the purpose of selling them, and not for personal consumption for the treatment of any medical condition.

IV.

DISPOSITION

The orders granting probation are affirmed.

AARON, J.

WE CONCUR:

O'ROURKE, Acting P. J.

IRION, J.