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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. MYONG SU WILLIAMS, Defendant and Appellant.	E055588 (Super.Ct.No. FBA800455) OPINION

APPEAL from the Superior Court of San Bernardino County. John B. Gibson, Judge. Affirmed.

John E. Edwards, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION

On March 30, 2009, an information charged defendant and appellant Myong Su Williams with unlawfully transporting a controlled substance, methamphetamine, in

violation of Health and Safety Code section 11379, subdivision (a) (count 1); possession of a controlled substance, methamphetamine, for sale in violation of Health and Safety Code section 11378 (count 2); and possession of a controlled substance, methamphetamine, in violation of Health and Safety Code section 11377, subdivision (a) (count 3). Prior to trial, the People dismissed count 3 and elected to pursue that charge as a lesser included offense under count 2.

Prior to trial, defendant filed a motion to suppress evidence under Penal Code section 1538.5. Defendant argued that the methamphetamine was discovered based upon an illegal detention and improper questioning under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). The People opposed the motion and argued that the traffic stop during which the drugs were discovered was of limited duration, and that defendant voluntarily informed the officer that he had drugs in his possession.

The court conducted a hearing on the motion to suppress. During the hearing, the arresting officer testified. The officer stated that he had stopped defendant for making an illegal right turn on red. The officer was driving an unmarked vehicle at the time. Defendant pulled over in the parking lot along Main Street in the City of Barstow. Defendant appeared to be excessively nervous and the officer asked him to step out of the vehicle. The officer then asked defendant if he had any weapons or anything illegal on his person. At that point, defendant indicated that he had drugs on his person. During the course of the stop, two other police vehicles arrived. Approximately five minutes elapsed during the time of the stop and the officer questioning defendant regarding the drugs. Based on the officer's testimony, the trial court held that warnings under *Miranda* were

not required during the limited traffic stop. Therefore, the court did not find any basis upon which the evidence uncovered during that stop should be suppressed.

Moreover, the People sought to limit the testimony of the defense expert. The court, however, indicated that the defense expert could properly rely on hearsay and denied the People's motion.

Furthermore, the trial court also held a hearing under Evidence Code section 402 regarding testimony by the arresting officer regarding post-*Miranda* statements made by defendant. The trial court found that warnings given under *Miranda* had been proper and that defendant spoke freely and voluntarily to the officer.

The People also indicated its intent to introduce various statements made by defendant while in custody and awaiting trial. Those statements related to defendant's efforts to secure more favorable treatment by setting up a drug buy so that the police could arrest his supplier. The court indicated that defendant's knowledge about sales was highly relevant to the possession for sale count and declined to block introduction of that testimony.

After trial, the jury returned a guilty verdict on count 1, transportation of a controlled substance in violation of Health and Safety Code section 11379, subdivision (a). As to count 2, the jury returned a guilty verdict on the lesser included offense of possession of a controlled substance in violation of Health and Safety Code section 11377, subdivision (a).

Defense counsel then argued that defendant could not be convicted of both transportation and possession, and asked the trial court to set aside the verdict on count 2. The court suspended the execution of sentence on count 1 under Penal Code section 654.

At sentencing, defendant argued that he was eligible for probation under Proposition 36 based on the jury's finding of simple possession, as opposed to possession for sale. The court stated that although the jury had found defendant guilty of possession as opposed to sale, the burden was different at sentencing. Based on a preponderance of the evidence, the court found that defendant possessed the drug for sale and was not eligible for probation under Proposition 36. The court, however, granted defendant probation conditioned on him serving 365 days in county jail. The court then indicated that the balance of the jail time would be stayed pending defendant's completion of 180 days of uninterrupted weekend custody. The court granted four days of custody credit plus conduct credit under Penal Code section 4019. The court found that defendant did not have the ability to pay the cost of a presentence report or probation supervisory fees. The court imposed a $240 restitution fine under Penal Code section 1202.4, and imposed and stayed a $240 probation revocation restitution fine under Penal Code section 1202.44.

Defendant timely filed his notice of appeal on February 1, 2012.

II

STATEMENT OF FACTS

Adam Cortinas is an officer with the Barstow Police Department. On April 11, 2008, he was working in a quasi-undercover assignment and driving an unmarked

vehicle. He observed a vehicle making an illegal right-hand turn on red. Officer Cortinas made a traffic stop and pulled over into a parking lot behind defendant's car. The officer approached the driver's side door, explained why he was stopping defendant, and asked for his registration, license, and insurance.

Defendant was seated in the driver's side of the vehicle. He produced his driver's license. He appeared to be very nervous; his hands were shaking and his voice was cracking. The officer asked defendant why he was so nervous and indicated that this was a traffic stop and not a huge deal. Defendant stated that he was not nervous. The officer became suspicious and asked defendant to exit the vehicle.

After defendant got out of the vehicle, the officer asked defendant whether he had any weapons, drugs, or anything like that on his person. Defendant nodded his head and then indicated that he had drugs in his pocket. The officer retrieved a baggie from defendant's pocket that contained a half-ounce of methamphetamine. Based on the officer's training, this was a quantity that was not typical of personal use but was for sale.

After the arrest, the officer interviewed defendant in a holding cell. In that interview, defendant told the officer the drugs were for sale and that he did not personally use drugs. Defendant stated that he had purchased the drugs just prior to the traffic stop for $800.

Defendant offered to provide additional information about the supplier above him; the officer made no promises or guarantees of leniency. The officer took defendant to a location, but the officer already knew about the location. After defendant was released from custody, on a couple of occasions, he contacted the officer indicating that he had set

up a buy to help the officer arrest a supplier. Defendant was told not to proceed with the purchase because any controlled buy would have to be monitored by the police department and the district attorney's office.

The large quantify of methamphetamine found on defendant led the officer to believe that the methamphetamine was for sale. The officer did not observe any sign of defendant being under the influence. The officer did not believe under any circumstance that the possession of one-half ounce of methamphetamine can be consistent with possession for personal use. The parties stipulated that the substance obtained from defendant was 13.99 grams of methamphetamine.

Charles Hill testified as an expert on behalf of defendant. Based on the lack of other evidence of scales, drug paraphernalia, pay-owe sheets or other materials, there was no indication that the drugs were for sale. Moreover, Hill testified that the quantity of drugs was not inconsistent with drugs being possessed for personal use.

III

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

IV

DISPOSITION

The judgment is affirmed.

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MCKINSTER
J.

We concur:

RAMIREZ
P. J.

MILLER
J.