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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.

CHARLES JAMES ANDERSON,

Defendant and Appellant.

E060964

(Super.Ct.No. BLF1200226)

OPINION

APPEAL from the Superior Court of Riverside County. Dale R. Wells, Judge.

Affirmed.

Cynthia Grimm, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On December 27, 2012, an information charged defendant and appellant Charles James Anderson with one count of unlawful possession of marijuana for sale in violation of Health and Safety Code section 11359. Defendant was arraigned on December 28, 2012; he pled not guilty.

On July 25, 2013, defense counsel filed a motion to suppress evidence under Penal Code section 1538.5. The prosecutor filed an opposition on August 6, 2013. On August 20, 2013, after a hearing on the motion, the trial court denied defendant's motion to suppress.

On October 29, 2013, defense counsel filed a notice of invitation to the court to dismiss the case, as authorized under Penal Code section 1385, subdivision (a). Defendant contended that his actions did "not constitute a public offense pursuant to the California Supreme Court's unanimous opinion in" *People v. Mower* (2002) 28 Cal.4th 457, and Health and Safety code sections 11362.5 and 11362.775, because defendant's "status as a qualified patient and a member of a Medical Marijuana Collective" on the date the offense was committed, prohibited criminal prosecution under Health and Safety Code section 11359. A copy of defendant's medical marijuana recommendation was attached to the motion as Exhibit A. The prosecution filed its opposition on November 6, 2013. On February 11, 2014, the trial court denied defendant's motion and the case proceeded to trial.

On February 11, 2014, defendant's jury trial commenced. On February 21, 2014, the jury found defendant guilty on count 1, unlawful possession of marijuana for sale.

On April 4, 2014, the trial court sentenced defendant to the low term of one year, four months, and suspended execution of the sentence. The court placed defendant on felony probation for three years with various terms and conditions, and ordered him to serve 90 days in custody.

On April 9, 2014, defendant filed his timely notice of appeal.

FACTUAL AND PROCEDURAL HISTORY

A. PROSECUTION EVIDENCE

On August 6, 2012, around 11:00 p.m., Deputy Sheriff Jesse Deacon was on routine patrol when he observed defendant driving his vehicle at a high rate of speed on Hobson Way in the City of Blythe. The deputy conducted a traffic stop. While speaking with defendant and his passenger, Edward Washington, Deputy Deacon detected the odor of burnt and fresh marijuana coming from the interior of defendant's vehicle. The deputy asked defendant whether he had smoked marijuana; defendant replied that he had smoked several hours earlier. Deputy Deacon observed several objective symptoms of defendant being under the influence of marijuana. The deputy asked defendant to exit the vehicle to determine whether he was driving while impaired. The deputy ultimately decided that defendant was not impaired and he could safely drive home.

Upon exiting the vehicle, defendant consented to a pat down search, during which Deputy Deacon felt a large amount of money in defendant's left pocket. When asked whether it was money and if defendant would show it to the deputy, defendant pulled the money out so that Deputy Deacon could see it. Defendant told the deputy the money totaled \$1,000. The deputy noticed that there were a lot of small denominations, mostly \$20 bills and under.

Defendant consented to a search of his vehicle. While looking inside, Deputy Deacon noticed two medium-sized mason jars on the rear floorboard containing "a green leafy" substance, which appeared to be marijuana residue. When asked, defendant

denied selling marijuana but stated that he provided medical marijuana to his family members in exchange for donations.

Deputy Deacon asked defendant if he had marijuana at his house. Defendant stated that he “had about a pound of marijuana.” The deputy noticed that defendant was acting extremely nervous and visibly shaking when asked about the money in his pocket. Because the deputy found defendant’s behavior so unusual, he decided to make further inquiries about the marijuana at defendant’s house. Defendant’s responses were vague, and he repeated the deputy’s questions as if searching for the right answer. Defendant told the deputy he had a physician’s recommendation to use medical marijuana and showed the deputy the recommendation.¹ Defendant told Deputy Deacon that his recommendation was limited to eight ounces of medical marijuana, and that he used marijuana to treat his anorexia and help him sleep.

Defendant consented to a search of his residence and the deputy followed defendant, who drove his vehicle to his house. Upon arrival, Deputy Deacon asked defendant’s girlfriend to exit the residence, and the deputy followed defendant into his bedroom where he removed a black backpack from the bedroom closet floor. Inside the backpack were a large glass jar and two mason jars containing marijuana, which appeared to be in excess of the eight ounces defendant said he was allowed to possess pursuant to his doctor’s recommendation. The deputy opined that mason jars are routinely used to conceal the strong odor of marijuana and to keep it fresh and protected. Deputy Deacon

¹ The parties stipulated that defense Exhibit A was a copy of defendant’s medical marijuana recommendation, which authorized him to use marijuana for medical purposes.

asked whether there was additional marijuana in the house, and defendant showed him another mason jar underneath a dresser or TV stand, two small brown jars, and a bag of marijuana. Deputy Deacon asked defendant if he had money in the house, and defendant removed two socks from a shelf in the bedroom closet and told the deputy there was approximately \$4,000. Combined with the money found in defendant's pocket, defendant possessed a total of \$5,045. Defendant told the deputy that the money "was the proceeds from selling marijuana."

Defendant showed Deputy Deacon 10 large plastics bags in his bedroom closet, which had written markers or bar codes on them showing different strains of marijuana, like "Sour D" or "OG Cush." Each of the bags could hold a pound or two of marijuana. There was staining on the bags and the deputy opined the bags were used to purchase large amounts of medical marijuana from the dispensary. Defendant's packaging was different than a typical medical marijuana user because the dispensaries normally place the marijuana in a prescription bottle and sell it in smaller quantities. Defendant had a digital scale underneath the TV stand that had marijuana residue on top of it, some smoking paraphernalia, and two boxes of sandwich baggies located in the kitchen, which the deputy opined were used to package marijuana for sale. Deputy Deacon admitted that medical marijuana patients use a scale to weigh their marijuana dosages and that the scale was consistent with legal marijuana use.

Defendant told Deputy Deacon that he purchased 16 ounces of marijuana earlier that day from a dispensary in the Palm Desert area. Washington (the passenger), who also had a medical marijuana recommendation, went with defendant and they each bought

eight ounces. Defendant gave Washington the money to purchase his marijuana. Defendant admitted that all of the marijuana and money belonged to him. The deputy determined that Washington and defendant's girlfriend were not involved in the sale of marijuana.

After searching defendant's home, the deputy, accompanied by defendant, took the evidence to the police station. Deputy Deacon removed the marijuana from the mason jars and placed it into four plastic bags to weigh the marijuana. The total weight of the marijuana, including the four plastic bags, was approximately 14 ounces. The deputy did not know how much the bags weighed, but believed that the weight was negligible. Deputy Deacon tested two samples of the marijuana using the NarcoPouch No. 909 test; both samples tested positive for marijuana.

After testing the marijuana, Deputy Deacon interviewed defendant, who waived his rights under *Miranda v. Arizona* (1966) 384 U.S. 436.² When asked whether defendant sold marijuana for profit, he stated that he sold "about a pound of marijuana a week." Defendant told the deputy he made \$500 to \$600 "in smoke," and that he sold between a gram and a quarter pound at a time. Defendant had been assisting his father in selling marijuana. That ended when his father went to prison approximately nine months prior. After that, defendant started to sell marijuana on his own.

Initially, defendant stated that he only provided medical marijuana to his family members in return for donations. Later, defendant stated that he distributed medical

² The prosecutor introduced the recorded interview into evidence.

marijuana to his family friends who have medical marijuana cards. Eventually, defendant admitted that he sold marijuana to family members, friends, and people who approached him and wanted marijuana. Some of defendant's customers may not have had medical marijuana recommendations since he never checked.

Defendant sold marijuana to pay his rent and utilities, and to support his own marijuana use, which was approximately \$200 per week. The price defendant paid for the marijuana varied on the quality. Defendant initially told the deputy that he paid \$3,000 for a pound of marijuana but later increased it to \$3,600, which the deputy believed was reasonable.

The deputy asked defendant if he had any paperwork authorizing him to operate a dispensary or proving that he worked for a dispensary; defendant did not provide any documentation.

Moreover, during the interview, Deputy Deacon asked for permission to look at defendant's cell phone; defendant unlocked his phone for the deputy. Although defendant denied it, the deputy observed defendant deleting a text message and thought defendant was trying to conceal something. The deputy saw one text message which read "G for 15," and told defendant the quality was good and wanted another gram. Deputy Deacon opined the message suggested that a marijuana sale had occurred.

During the traffic stop, defendant told the deputy that defendant was the designated caregiver for his uncle, Rick Anderson (Anderson). While the deputy was at defendant's house, defendant showed the deputy Anderson's medical marijuana recommendation, which was similar to defendant's recommendation. Anderson's

recommendation did not designate defendant as his caregiver and defendant did not provide any other documentation to prove he was Anderson's caregiver. Moreover, although defendant told the deputy he obtained Anderson's medical marijuana and provided it to him, defendant did not live with Anderson, and defendant did not tell the deputy whether he cooked for Anderson, did his laundry, drove him to medical appointments, or assisted Anderson with medications other than marijuana. Instead, defendant stated that he occasionally helped Anderson.

Deputy Deacon defined a designated caregiver as someone responsible for the care of another, including measuring out and administering medicine. Moreover, the caregiver, who usually lived in the same residence, was involved in helping with housing, medical treatment, and the general welfare of the patient. And, the additional care provided was separate from the mere dispensing of marijuana to the patient. There was nothing at defendant's residence to suggest that he was providing care or housing for Anderson. The deputy did not believe that defendant was Anderson's designated caregiver pursuant to the Medical Marijuana Program Act (MMP). During the interview, Deputy Deacon informed defendant what being a caregiver entails, and that a caregiver was responsible for another person's life. Defendant agreed that he was not Anderson's designated caregiver.

Based on his investigation, the deputy opined that defendant was actively engaged in the illegal sale of marijuana, and that his conduct was not protected by the Compassionate Use Act or the MMP because defendant was not operating as a dispensary, cooperative, collective or any other legal entity. Rather, defendant was

purchasing large amounts of marijuana from a legal source and distributing it illegally for profit. The deputy acknowledged that an individual or organization that distributes medical marijuana can be reimbursed for the cost of supplies and time spent growing marijuana; and a buyer can make donations to the organization in an amount that includes those expenses. The organization, however, must have documentation to prove it is a legal business and register with the city council and the chamber of commerce. Defendant did not have any such documentation.

Deputy Deacon's opinion that defendant was illegally selling marijuana was based on the following: (1) defendant's statements; (2) the amount of marijuana in defendant's possession; (3) money in defendant's possession included a large number of bills \$20 and less; (4) the number of plastic bags in defendant's home, including the 10 large bags suggesting defendant had been selling marijuana for some time; and (5) the text message the deputy saw on defendant's cell phone stating, "Hey, this is good marijuana" and "Can I get some more for \$15?"

The deputy believed that defendant used his status as a medical marijuana patient to purchase marijuana and sell it illegally. Defendant told the deputy he sold marijuana for \$20 a gram, and the text message suggested that defendant sometimes sold it for \$15 a gram. Defendant also stated that he occasionally sold a quarter pound. Assuming that defendant sold the marijuana for \$20 a gram, defendant's estimated revenue on the 14 ounces of marijuana found at his house would be \$7,980. The cost of defendant's marijuana depended on the quality. The highest price the deputy had seen was \$3,000 to \$3,200 per pound. The deputy was unable to classify the marijuana possessed by

defendant. The large 10 plastic bags found, however, were labeled “Sour D,” which costs approximately \$2,400 to \$2,500 per pound. Thus, defendant’s profit on the amount of marijuana he possessed would be approximately \$5,000.

Furthermore, defendant told the deputy that he purchased a pound of marijuana at the dispensary on the day he was arrested. Defendant was already two ounces short of that amount because he only had 14 ounces left. Therefore, the deputy concluded that defendant had already sold some of the marijuana. The amount of money defendant possessed when stopped by the deputy, the denominations of the money, and the empty jars in the back seat of defendant’s vehicle supported the conclusion that defendant had recently sold marijuana.

Casey Hughes, a criminalist for the Department of Justice Crime Lab, tested a small sample of the substance found in defendant’s house and confirmed that it was marijuana.

B. DEFENSE EVIDENCE

Defendant testified that he had a valid medical marijuana recommendation on August 6, 2012, and had been using medical marijuana since 2005 or 2006, to treat anorexia, insomnia, and severe anxiety. Defendant believed his marijuana use was necessary to stabilize his medical conditions. He only used marijuana when needed, and did not smoke it recreationally. Defendant ensured that Anderson’s medical marijuana recommendation was valid, and he had driven Anderson to his doctor’s appointment to obtain the recommendation that he had shown to the deputy. During the appointment, Anderson designated defendant to be his caregiver.

Defendant lived with Anderson and Anderson's wife, Theresa; he served as Anderson's live-in caretaker until defendant moved "down the road" so Theresa's handicapped son could move in, approximately two months prior to defendant's arrest. Anderson required daily assistance because he had diabetes and was born with deformed feet, which caused him severe pain. Anderson could not walk across the living room and rarely left the house because he could not walk in public. After defendant moved out, he provided daily assistance to Anderson by taking him to medical appointments, going to the store, doing yard work, laundry, cleaning, cooking, providing transportation, and whatever else Anderson needed.

Theresa had mental issues resulting from a serious head trauma she suffered from getting kicked in the head by a horse. Therefore, Anderson preferred to have defendant clean because he did a better job. Moreover, Theresa could not do much physical labor and required care herself. If not married to Anderson, Theresa would be on disability. The son was disabled and had the mental capacity of a child; while he was capable of taking care of himself, he was sloppy and unable to assist with the household chores. If defendant did not provide daily assistance, Anderson would "get along," but it would not be good because of the disabilities of Theresa and her son.

Since 2005 or 2006, defendant and seven family members, including Anderson, had carpooled to Los Angeles to obtain their medical marijuana recommendations. Except for Anderson, defendant did not attend the doctor appointments of his other family members. Defendant accompanied Anderson because he wanted to discuss Anderson's needs and to determine whether he could be Anderson's caregiver.

Defendant understood the requirements for a designated caregiver. Defendant's family had a verbal agreement that defendant was the only designated caregiver for Anderson; no formal form was signed by the family. Defendant was not a designated caregiver for his other family members, but provided assistance to them when needed.

Defendant's father taught him how to provide medical marijuana to his family members; defendant worked with his father for about one year, and without his father for about another year. Defendant provided medical marijuana for the seven family members that went with him to obtain their recommendations. Although defendant would not describe it as "selling," he did tell the deputy that he sold medical marijuana to close friends of the family. Defendant admitted that he provided marijuana to those close friends in return for a donation if they desperately needed it and could not make it out of town. Defendant had known those friends for over 10 years and defendant knew they had medical marijuana recommendations because he referred them to the doctor; when defendant referred 10 or more people, he received a free recommendation. Including the seven family members, defendant had three or four close friends with medical marijuana recommendations. Thus, defendant knew approximately 10 people that had medical marijuana recommendations. When defendant told the deputy during the interview that he provided medical marijuana to a small group of people, he was not referring to his close friends. Instead, defendant mainly provided marijuana to his family members because it was very difficult for them to travel out of town to obtain their medical marijuana. Defendant did not sell to other friends or strangers. If someone did not have

a recommendation, defendant did not sell them marijuana and told them to get a recommendation.

Defendant knew it was illegal to sell marijuana for a profit, and he never did so. In 2010, defendant took a class on how to grow medical marijuana and the instructors offered assistance if defendant wanted to start a dispensary or delivery service. Defendant, however, was not interested because he only wanted to provide medical marijuana to his family and did not want to sell to the public. The instructors told defendant that he could provide medical marijuana to his family, and to anyone else that designated him as a caregiver. Defendant believed that he could be reimbursed for his expenses and reasonable compensation for his time. The money defendant received, in return for the medical marijuana, was donations to cover his expenses and time. Defendant did not document his expenses because the instructors told him it was unnecessary. Based on his research and the information provided at the class, defendant did not believe he was required to have a formal business before he could legally provide medical marijuana to his family and close friends.

The medical marijuana would cost between \$3,000 and \$3,600 per pound. Defendant's expenses included gasoline, depreciation, repairs and oil changes for his vehicle. Whenever the family needed marijuana, they would meet and combine their money. Defendant then would take Anderson's recommendation to the dispensary and purchase a pound of marijuana, which included eight ounces for defendant's recommendation and eight ounces for Anderson's recommendation. Upon return, defendant distributed the marijuana to the family members that needed it. Defendant's

family did not always have the money to purchase the marijuana. In that situation, defendant used his own money. Occasionally, defendant was not reimbursed when he distributed the marijuana. Defendant denied buying a pound of marijuana every week. Rather, it varied depending on the demand. If someone was unable to smoke marijuana, defendant had to purchase additional marijuana to make edibles because it takes more to make edibles.

Defendant always traveled out of town to obtain the medical marijuana. In 2012, he went to a dispensary in Corona, but occasionally to one in Palm Springs. Defendant estimated it was 230 to 240 miles each way to Corona, and the gasoline cost was at least \$250 per trip. Defendant did not provide the mileage to the dispensary in Palm Springs but estimated it cost \$150 in gas per trip. Occasionally, defendant's family gave him a "[c]ouple hundred dollars" a week, which did not always include reimbursement for the time defendant spent going to the dispensary and barely covered the cost of gas. Defendant estimated he spent no more than 15 to 20 hours a week distributing medical marijuana to his family.

The donations were not defendant's only income. In August 2012, he worked in the lemon orchards as a seasonal laborer/farmer and as a handyman for a motel. He did not have a bank account or credit cards. Because his Cadillac was old and unreliable, defendant estimated it would cost \$1,000 to tow the Cadillac from Riverside. He stated that he had \$1,000 in his pocket when stopped by Deputy Deacon in case he needed a tow. The \$5,045 found was money defendant saved to buy a more reliable and gas-efficient vehicle. Defendant had worked in the fields since he was 18 and made \$700 a

week at his first job. Defendant knew how to save money. That money did not include any donation received from his family members for the distribution of medical marijuana.

On August 6, 2012, defendant purchased a small amount of marijuana from a dispensary in Palm Desert before continuing to a dispensary in Corona. He only had 14 ounces of marijuana when arrested because he had stopped by Anderson's house on his way home from Corona and gave Anderson some marijuana. When defendant got home, he placed the backpack containing the marijuana he purchased in his bedroom closet. When the deputy stopped him, defendant was on his way home from the store where he had gone to get something to drink. Defendant was nervous and having a severe anxiety attack when contacted by the deputy because it had been a long time since defendant was stopped by the police. The marijuana jars in his vehicle were empty because they had not been recycled or placed in storage.

DISCUSSION

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.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.