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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIE A. CONDON,

Defendant and Appellant.

F062801

(Super. Ct. No. CRF34625)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tuolumne County. Eleanor Provost, Judge.

Kari E. Hong, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Detjen, J., and Franson, J.

PROCEEDINGS

On February 18, 2011,¹ appellant, Julie A. Condon, was charged in a criminal complaint with possession for sale of heroin (Health & Saf. Code, § 11351, count I),² possession for sale of methamphetamine (§ 11378, count II), possession for sale of hydrocodone, morphine, and codeine (§ 11351, count III), possession for sale of diazepam (§ 11375, subd. (b)(1), count IV), transportation of heroin (§ 11352, subd. (a), count V), and transportation of methamphetamine (§ 11379, subd. (a), count VI). There was a special allegation on count I that Condon possessed 14.25 grams or more of heroin within the meaning of Penal Code section 1203.07, subdivision (a)(1). The information also alleged three prior drug conviction enhancements pursuant to section 11370.2, subdivisions (a) and (c).

On May 5th, at the conclusion of a jury trial, Condon was found guilty of possession of heroin for sale (count I), transportation of heroin (count V), and transportation of methamphetamine (count VI). The jury found true the allegation in count I that Condon possessed 14.25 grams or more of heroin. Condon was found guilty of the lesser included offenses of possession of methamphetamine (count II), possession of hydrocodone, morphine, and codeine (count III), and possession of diazepam (count IV). In a bifurcated proceeding, Condon waived her constitutional rights and admitted the allegations that she had three prior convictions for drug offenses.

On June 29th the trial court sentenced Condon to the upper term of five years on count V, to a consecutive term of eight months on count III, and to a consecutive term of

¹ Hereinafter, all date references are to the year 2011.

² Unless otherwise designated, all statutory citations are to the Health and Safety Code.

one year on count VI. The court stayed Condon's sentence on counts I and II pursuant to Penal Code section 654.³ The court enhanced Condon's sentence by nine consecutive years, comprised of three 3-year enhancements imposed pursuant to section 11370.2. Condon's total prison term is 15 years 8 months. The court imposed a restitution fine of \$3,200. The court granted 147 days of actual custody credits and 147 days of conduct credits for total custody credits of 294 days. Condon's counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

FACTS

Pretrial

The trial court denied defense counsel's motion to unseal the search warrant because there was no exculpatory evidence. On May 4th, just prior to the commencement of the trial, defense counsel raised a discovery issue to the trial court. Defense counsel sent a discovery letter to the prosecutor on February 17th. The prosecutor replied on February 25th, explaining that defense counsel had received everything he was supposed to receive.

On April 14th, the prosecutor sent defense counsel a copy of a police report setting forth law enforcement surveillance activity that occurred on January 27th. The day before trial started, the prosecutor sent a witness list that included Kyna Kulp. In response to defense counsel's query concerning the identity of this witness, the prosecutor explained that Kulp was mentioned in the police report produced on April 14th.

In an exchange of emails just before trial, defense counsel asked the prosecutor whether Kulp had a rap sheet. Defense counsel conceded that he had received information regarding the surveillance of Condon by officers from the police report

³ Count IV was sentenced as a misdemeanor.

produced on April 14th. The prosecutor replied that Kulp had no rap sheet and she agreed to truthfully testify against Condon in exchange for not having charges brought against her.⁴ The first time that defense counsel learned that Kulp had a deal from the prosecution was at the beginning of the trial. The trial court ruled that there had been no withholding by the prosecutor of exculpatory evidence and denied the defense motion to continue the trial for further discovery.

Trial

On January 27th, the Tuolumne County Sheriff's Office Narcotics Team was conducting surveillance of Condon after receiving information that she was selling heroin. Detective Jarrod Pippin was part of the surveillance team. Pippin saw several transactions occur, and later contacted the people who had met with Condon in the parking lot of the post office, which was located directly across the street from Condon's home.

During the January 27th surveillance, a small silver sedan drove into the post office parking lot. Matthew Klunis and Kyna Kulp were seated in the car. Condon exited her home and walked toward the front of the post office. Klunis made the arrangements to meet with Condon to purchase heroin from her. When Condon left her home, Klunis exited his car and walked to the front of the post office, which was out of the view of Pippin and Kulp. After two minutes, Condon returned to her home and Klunis returned to his car. Klunis told Kulp that he had purchased heroin.

Pippin learned from the dispatcher that the license plate to Klunis's car had expired so he initiated a traffic stop. Klunis told Kulp to hide the heroin. Kulp was scared and put the heroin in her pants. After Pippin asked for the heroin several times,

⁴ Kulp testified that on the evening of her arrest on January 27th, she agreed to testify against Condon in exchange for any charges against her being dropped.

Kulp handed it to him. Pippin arrested Kulp and told her that if Kulp testified against Condon the case would be over that night. Kulp did not discuss her agreement with Pippin with anyone in the district attorney's office.

Pippin obtained a search warrant on Condon and her residence. On February 3rd, he saw Condon driving a white Volvo sedan and pulled her over in a parking lot. Pippin told Condon that he was going to search her because he had a search warrant. Condon exited the car and Pippin conducted a search. Pippin asked Condon if she had any needles. She replied that she was not sure if she had needles, but she did have heroin inside her bra. Pippin asked Condon to reach up her shirt, pull her bra away from her person, and let the contents fall out. Condon did so and several items fell from her shirt, including a large chunk of what appeared to be brown to black heroin, several packages of what appeared to be heroin, and a small, coin-sized baggie containing what appeared to be methamphetamine.

Later testing showed that Condon had 18.7 grams of heroin in these packages with a street value of \$1,870. The large chunk of heroin alone weighed 15.2 grams. There was a small baggie that contained 1.9 grams of methamphetamine with a street value of \$340. Both of these drugs were usable quantities. Another baggie contained a number of pills that were later identified as morphine sulfate, codeine, hydrocodone, and diazepam.

After her arrest, Pippin read Condon her *Miranda*⁵ rights. Pippin told Condon that she had a large quantity of drugs and he knew she had been dealing drugs. Pippin invited Condon to tell him about it. Condon replied that she had a history of controlled substance abuse, had been in a Proposition 36 program, and had been selling drugs, including heroine, methamphetamine, and pills. Condon would purchase a "piece," also known in the narcotics trade as a "Mexican piece," which is approximately just less than

⁵ *Miranda v. Arizona* (1966) 384 U.S. 436.

an ounce of heroin (25 grams), worth about \$800. Condon also purchased an eight ball of methamphetamine at a time, or 3.5 grams, for \$100.

Condon justified herself, saying that she was trying to take care of her family and she was a good person. Pippin replied that she was a “no-good piece of trash” who sold drugs to kids. Condon responded that the people she sold drugs to were already addicted to them.

Pippin testified that he believed Condon possessed heroin for sale not just based on the quantity alone, but also because of the packaging that she used. Pippin also believed that Condon possessed methamphetamine for sale based on the quantity in her possession. Pippin explained that drug dealers often maintain businesses to recycle and protect profits from drug trafficking, or maintain bank deposit profits for the storage of profits from drug trafficking. Pippin found no evidence of cash deposit boxes or sales records for her narcotics activity. Condon also did not have packaging materials or scales in her possession. Pippin stated that heavily addicted heroin addicts consume no more than 2.5 grams of heroin a day.

Condon testified that she was using at least six grams of heroin a day and also used methamphetamine. Condon denied selling either drug. She had purchased a piece of heroin the day before her arrest for \$800. Condon’s possession of both drugs was for her personal use. Condon denied selling any drugs to anyone and had no intention to sell drugs to anyone. Condon also denied telling Pippin that she sold heroin, methamphetamine, or pills.

APPELLATE COURT REVIEW

Condon’s appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*Wende, supra*, 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that Condon was advised she could file her

own brief with this court. Appellant's counsel stated in the brief that appellant requests this court to address whether the prosecutor engaged in misconduct by waiting until the eve of trial to disclose to the defense that witness Kyna Kulp had received a promise not to have felony charges brought against her in exchange for her promise to testify against Condon.

By letter on January 11, 2012, we invited Condon to submit additional briefing. On July 11, 2012, this court filed a letter from Condon in which she is seeking information concerning the status of her appeal and stating that her request for a copy of the record led to her appellate counsel being relieved as her attorney. We initially note that Condon's request for a copy of the record did not relieve her appellate counsel, Kari E. Hong, as appellant's counsel of record in this case. Ms. Hong has not formally withdrawn as counsel, and has not been relieved by this court as Condon's appellate counsel.

Penal Code section 1054.1 mandates that the prosecutor shall disclose to the defendant and to the defendant's counsel all: names and addresses of witnesses the prosecution intends to call at trial, statements by defendants, relevant evidence seized as part of the investigation of the charged offenses, felony convictions of witnesses, and exculpatory evidence. With respect to the constitution, the prosecution must disclose evidence that is favorable to the defendant and material on either guilt or punishment. (Pen. Code, § 1054.1; *People v. Superior Court (Meraz)* (2008) 163 Cal.App.4th 28, 47.) Evidence is favorable if it either helps the defendant or hurts the prosecution. (*Id.* at p. 51.)

It appears that the witness in question was known to the defense prior to trial when the prosecutor produced an additional police report. Presumably the information in the police report identified Kulp and the facts surrounding her detention by investigators. Kulp did not provide any exculpatory information for the defense. The defense was

aware that law enforcement had conducted surveillance of Condon and obtained a search warrant prior to her arrest. Even if we presume the witness list was produced later than it should have been, and that the defense did not learn of a deal not to prosecute Kulp in exchange for her testimony until the beginning of the trial, there is nothing in this record to demonstrate that the delay prejudiced Condon or in any way impeded her right to a fair trial.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.