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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

STEFAN BOGDAN OPRESCU,

Defendant and Appellant.

G046334

(Super. Ct. No. 11WF1255)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Frank F. Fasel and Richard W. Stanford, Jr., Judges. Affirmed.

Patrick E. DuNah, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

We appointed counsel to represent Stefan Bogdan Oprescu on appeal. Counsel filed a brief that set forth the facts of the case. Counsel did not argue against his client, but advised the court no issues were found to argue on his behalf. Oprescu was given 30 days to file written argument on his own behalf. That period has passed, and we have received no communication from him.

Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), to assist the court in conducting its independent review counsel provided the court with information as to issues that might arguably support an appeal. Counsel listed as possible but not arguable issues: (1) whether the trial court erred in determining the extent of the discoverable materials to be produced for the defense; (2) whether there was sufficient evidence to support Oprescu's conviction for possession for sale of a controlled substance for sale; and (3) whether Oprescu is entitled to additional pre-sentence conduct credits.

We have reviewed the information provided by counsel and have independently examined the record. We found no arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) We affirm the judgment.

FACTS

In May 2011, Detective Pat Estes conducted a lawful search of Oprescu's apartment pursuant to a search warrant. (The affiant on the search warrant was Detective Robert Cortes of the Fountain Valley Police Department.) Oprescu was sleeping in his bed when officers arrived. A glass pipe was found on Oprescu's bed and 10 additional pipes were found in a pull-out drawer in the bathroom. Officers also found four digital scales, only one of which was working, and packaging material and ziplock baggies, consistent with that used by people who sell controlled substances.

Officers found four baggies of methamphetamine in an "Altoid" container. One of the baggies weighed 6.5 grams, one weighed 3.0 grams, one weighed 1.5 grams, and one weighed .3 grams. Each of these baggies was found to contain a usable quantity

of methamphetamine. Estes opined the methamphetamine was possessed for the purpose of sales based on the amount of methamphetamine found, the scales, and the packaging.

At trial on one count of possession for sale, Opreescu testified the methamphetamine found at his apartment was not his. Opreescu was not sure who had left the methamphetamine at his apartment, but thought it might have been “Stephanie,” a friend with whom he had been romantically involved. Stephanie had spent the night before the search at Opreescu’s apartment. Opreescu explained the scales found at his apartment were to weigh parts for remote control helicopters he owned, and the baggies were to hold parts for these remote control helicopters.

A jury convicted Opreescu of one count of possession for sale of a controlled substance in violation of Health and Safety Code section 11378. On December 29, 2011, the court imposed a sentence of three years’ probation with various terms and conditions, including that he serve one year in county jail. He was given presentence credit of 19 actual days and 8 days of conduct credit for a total of 27 days presentence credit.

Prior to trial, Opreescu filed a discovery motion pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). Opreescu sought to discover Cortes’s personnel records. The court conducted an in camera review of Cortes’s personnel file. The court found two citizen complaints to be material and discoverable. Those names and the dates of the complaints were given to Opreescu in open court and the City Attorney was ordered to provide the telephone numbers to Opreescu. The court advised Opreescu the file also contained an audiotape related to one of the complaints but did not order that be provided to Opreescu. The court indicated a further showing by the defense would be required.

DISCUSSION

Pursuant to *Anders*, appellate counsel invited this court’s attention to three issues to assist this court in its independent review. We will address each issue in turn.

Discoverable Materials

Counsel requests this court examine the sealed transcript of the in camera *Pitchess* hearing to determine whether the trial court correctly determined what material should be disclosed.¹ A criminal defendant seeking *Pitchess* discovery is required to establish there is good cause for the discovery. “[A] showing of good cause requires a defendant seeking *Pitchess* discovery to establish not only a logical link between the defense proposed and the pending charge, but also to articulate how the discovery being sought would support such a defense or how it would impeach the officer’s version of events.” (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021-1022.) A motion for discovery of peace officer personnel records is addressed to the sound discretion of the trial court, reviewable for an abuse of discretion. (*Pitchess, supra*, 11 Cal.3d at p. 535.) We independently review the transcript of the trial court’s in camera *Pitchess* hearing to determine whether the trial court abused its discretion in refusing to disclose an officer’s personnel records. (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 992.) We have reviewed the record of the hearing and conclude the trial court did not abuse its discretion.

Sufficiency of the Evidence

Counsel inquires whether there was sufficient evidence to support Oprescu’s conviction for possession for sale of a controlled substance. “To determine the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is

¹ In *People v. Myles* (2012) 53 Cal.4th 1181, the California Supreme Court reaffirmed its ruling in *Mooc* that the trial court is not required to include the documents it examined, but need only describe each document for the record. Without the documents, or copies of the documents, appellate review is seriously limited. But we realize despite our concern, we are bound by Supreme Court authority. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

reasonable, credible and of solid value, from which a rational trier of fact could find that the elements of the crime were established beyond a reasonable doubt. [Citations.] We need not be convinced of the defendant's guilt beyond a reasonable doubt; we merely ask whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." [Citation.] [Citation.] We must draw all reasonable inferences in support of the judgment. [Citation.] It is not our function to reweigh the evidence, reappraise the credibility of witnesses, or resolve factual conflicts, as these are functions reserved for the trier of fact. We may not reverse a conviction for insufficiency of the evidence unless it appears that upon no hypothesis whatever is there sufficient substantial evidence to support the conviction. [Citation.] [¶] This standard of review also applies to circumstantial evidence. [Citation.]" (*People v. Tripp* (2007) 151 Cal.App.4th 951, 955.)

"Unlawful possession of a controlled substance for sale requires proof the defendant possessed the contraband with the intent of selling it and with knowledge of both its presence and illegal character. [Citation.] Transportation of a controlled substance is established by carrying or conveying a usable quantity of a controlled substance with knowledge of its presence and illegal character. [Citations.] The crimes can be established by circumstantial evidence and any reasonable inferences drawn from that evidence. [Citations.]" (*People v. Meza* (1995) 38 Cal.App.4th 1741, 1745-1746.)

The record establishes there was sufficient evidence to support Oprescu's conviction for possession for sale of a controlled substance.

Pre-sentence Custody Credits

Counsel claims that under the recently amended provisions of Penal Code section 4019 Oprescu may be entitled to 17 days conduct credit rather than the eight days that the trial court awarded. We begin by noting that all Oprescu's pre-sentence time was served in 2011. As we explain in greater detail in *People v. Rajanayagam* (2012) 211 Cal.App.4th 42, Oprescu is not entitled to the benefit of enhanced conduct credits. In

Rajanayagam, we explained principles of statutory construction compel the conclusion only those defendants who commit an offense on or after October 1, 2011, are eligible for enhanced conduct credits. (*Id.* at pp. 48-52.) Additionally, although we concluded the two groups are similarly situated, we found there was a rational basis for treating the two groups differently. (*Id.* at pp. 53-56.)

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

FYBEL, J.