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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.

GABRIEL WILLIAMS ALDAVE,

Defendant and Appellant.

G049668

(Super. Ct. No. 13WF1701)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sheila F. Hanson, Judge. Affirmed.

Susan S. Bauguess, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Gabriel Williams Aldave (defendant) of possessing methamphetamine for sale. The trial court denied defendant's motion for a new trial based on ineffective assistance of counsel and sentenced him to three years probation under various terms and conditions, including that defendant serve one year in jail.

Defendant challenges the court's denial of his new trial motion and he claims there is no substantial evidence he had the specific intent to sell the methamphetamine he admittedly possessed. We conclude the court properly exercised its discretion in denying defendant's new trial motion, and substantial evidence supports the jury's conclusion defendant possessed methamphetamine with the intent to sell it. Consequently, we affirm the judgment.

### **FACTS**

In the early morning hours of June 6, 2013, two Cypress police officers entered a room registered to defendant in the Cypress Suites Motel, an establishment in a high-crime area of Cypress. Defendant was the motel's registered guest. When the officers entered defendant's room, they found him lying on the bed holding a handful of money. Marisela Lizarraga was seated in a chair next to the bed, and Angel Rose Gline was sitting on the floor. One of the officers knew Gline from prior drug-related police contacts.

Gline had a small amount of methamphetamine on her person. Lizarraga removed a cloth pouch from her coat pocket and tried to conceal it in her chair when she saw the officers. The pouch contained two small, plastic baggies, each of which contained approximately .2 grams of methamphetamine. Defendant had \$522 in his hand, and another \$901 in his pants pocket. Most of the \$1,423 cash was in \$20 bills.

In the closet, the officers found a man's black jacket and a woman's brown coat. In the man's black jacket, officers found five small, plastic baggies each containing .2 grams of methamphetamine, two empty plastic baggies with no drug residue, and a replica BB handgun similar in appearance to a Glock. The BB handgun had black paint

and black electrical tape placed over the orange markings that are standard for replica guns. Cypress Police Officer Andrew Sanchez said it appeared that someone had tried to make a fake gun look real. In the woman's coat, the officers found another small baggie of methamphetamine. On the bathroom counter, they found two parallel lines of methamphetamine.

Sanchez testified as the prosecution's drug expert. He opined defendant possessed methamphetamine for sale based on the totality of the circumstances he found in the motel room and his experience. According to Sanchez, .2 grams of methamphetamine is a commonly packaged amount referred to as a "20 sack." A 20 sack has a street value of \$20. Thus, Sanchez testified the fact defendant possessed a lot of cash, most of it in \$20 bills was significant evidence of sales of 20 sacks. He also testified that he is used to seeing real firearms involved in drug transactions. Consequently, a fake firearm made to look real could also be indicative of drug sales. Sanchez believed the two empty baggies were probably kept for future packaging. He admitted drug users will buy in quantity, but Sanchez also testified most larger quantities are sold in bulk, and not prepackaged for sale.

Defendant did not testify or introduce evidence in his defense. In closing, defense counsel admitted his client was a methamphetamine addict, and that defendant possessed methamphetamine for his own use. However, counsel asserted nothing proved defendant possessed methamphetamine for sale. In keeping with his argument, counsel pointed the jury to the fact police found only a very small amount of methamphetamine on defendant's person, and counsel asserted the prosecution never proved the man's black jacket in the motel room closet belonged to him.

Furthermore, counsel argued the prosecution failed to prove defendant had any possessory interest in the methamphetamine found in the women's coat or the bathroom, pointing to the fact there were two women in the room with him. Counsel conceded defendant possessed over \$1,000 in cash. However, he explained the amount

he had in his hand was barely enough to cover two weeks of rent. Counsel further explained that defendant's motel lifestyle frequently involved other cash transactions. Counsel also emphasized that the prosecution failed to introduce other evidence of sales like cell phones, scales, pay-owe sheets, and additional packaging materials.

Counsel summarized his defense in this way: "Ladies and gentlemen, I argue to you that, you know, whatever happened that night they were not there to sell drugs. I think it's pretty clear they were there to party. It was their drugs. They were going to use them. They were ready to use them until their party got interrupted."

#### *New Trial Motion*

After entry of the verdict, defendant obtained a new attorney and filed a motion for new trial based on ineffective assistance of counsel. Defendant's motion alleged his former attorney, Jose Hernandez, "was in possession of information that defendant's daughter had, prior to the defendant's arrest, cashed a significantly large settlement check for the defendant and given him the money." Defendant asserted this evidence should have been introduced at trial because evidence of the settlement check "would have had the effect of challenging the rationale behind the opinion that the methamphetamine was possessed for sale." He also argued counsel's failure to secure this witness's testimony "under mined [*sic*] the confidence in the jury's verdict . . . ."

The court conducted an Evidence Code section 402 hearing. Defendant's new attorney, Frederick McBride, questioned defendant's daughter, Brianna. Brianna testified that in May 2013 she deposited her father's \$8,000 insurance settlement check into her account and gave her father cash in the amount of the check. She said she had not had much contact with Hernandez before trial, but he did call her at school on the first day of the trial. Unfortunately, she could not appear that day. However, she did fax a copy of her father's insurance settlement check to someone associated with Hernandez, and this person told her she did not need to testify.

Hernandez testified he had talked to defendant and Brianna about her testifying before trial, and that he had intended to call her as a witness. Hernandez talked to his investigator a couple of days before trial. The investigator told him Brianna would voluntarily appear and she was prepared to testify. Hernandez said he believed Brianna would voluntarily appear, but she failed to appear on the morning of her planned testimony. At 10:30 a.m., the court allowed Hernandez to try and contact Brianna. Hernandez reached Brianna, and she said she would appear at 11:30 a.m. She did not. The court gave counsel the lunch recess to locate Brianna, and Hernandez made another call. This time, Brianna's limited availability made Hernandez believe the court would be unable to accommodate her, and he decided to proceed without her.

Hernandez said defendant was upset by this turn of events, but he told defendant he could introduce evidence of the check through his own testimony. Later, defendant decided not to testify, so the evidence was not admitted. When asked why he did not seek a continuance, Hernandez explained he believed he had a good jury and an unprepared prosecutor so he decided to go forward without Brianna's testimony about the check.

The court did not find Brianna to be a particularly credible witness. As the court stated, "It's the court's recollection that the witness was set to arrive at a particular time. Was not here. Th[ere] was a request for additional time is my recollection of the events and the court was able to accommodate that. Then, ultimately, the witness never arrived." The court noted that while subpoenaing witnesses is generally preferred, Hernandez reasonably relied on Brianna's promise to appear at her father's trial. The court denied defendant's motion for a new trial and imposed sentence. This appeal followed.

## DISCUSSION

### *1. New Trial Motion*

Defendant challenges the trial court's denial of his new trial motion based on ineffective assistance of counsel. “““We review a trial court's ruling on a motion for a new trial under a deferential abuse-of-discretion standard.” [Citations.] ““A trial court's ruling on a motion for new trial is so completely within that court's discretion that a reviewing court will not disturb the ruling absent a manifest and unmistakable abuse of that discretion.”””” (*People v. Lightsey* (2012) 54 Cal.4th 668, 729.)

To establish ineffective assistance of counsel, the burden is on the defendant to show “(1) trial counsel failed to act in the manner to be expected of reasonably competent attorneys acting as diligent advocates and (2) it is reasonably probable that a more favorable determination would have resulted in the absence of counsel's failings.” (*People v. Lewis* (1990) 50 Cal.3d 262, 288; *Strickland v. Washington* (1984) 466 U.S. 668.) A defendant establishes a reasonable probability of a more favorable determination when he demonstrates to the reviewing court the result of his or her trial was fundamentally unfair or unreliable. (*Strickland v. Washington, supra*, 466 U.S. at p. 694.)

An appellate court need not determine whether an attorney provided inadequate representation if there was no prejudice as a result of counsel's performance. (*People v. King* (2010) 183 Cal.App.4th 1281, 1298.) Regardless of trial counsel's failure to secure Brianna's testimony, defendant fails to demonstrate a probability of a more favorable result in the absence of counsel's error.

As noted, the fact defendant had an innocent explanation for possessing a large amount of cash does little to counteract other facts suggesting drug sales. For instance, the officers found him in the room of a motel known for drug use in an area known to suffer from high crime levels. A man's jacket in the room registered to defendant had several small baggies containing the same, commonly distributed amount

of methamphetamine packaged for quick sales. Under the circumstances, the court properly denied defendant's new trial motion based on ineffective assistance of counsel.

## 2. *Sufficiency of the Evidence*

Defendant next challenges the sufficiency of the evidence to prove he possessed methamphetamine with the intent to sell it. Our review of such claims is quite constrained. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) We do not disturb the trier of fact's credibility determinations or the truth or falsity of the facts on which that determination depends. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Instead, we review the entire record in the light most favorable to the verdict and determine whether there is evidence that is reasonable, credible, and of solid value such that a reasonable juror could find the defendant guilty beyond a reasonable doubt. (*People v. Davis* (1995) 10 Cal.4th 463, 509.) In doing so, we are mindful that circumstantial evidence may be sufficient to prove the defendant's guilt beyond a reasonable doubt. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) We may reverse for lack of substantial evidence only if "upon no hypothesis whatever is there sufficient substantial evidence to support" the conviction. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

In this case, the court instructed the jury on the elements of the crime of possession for sale of methamphetamine, which included the requirement the prosecution prove beyond a reasonable doubt that defendant knowingly possessed methamphetamine and "he intended to sell it." The court also told the jury possession for sale of methamphetamine requires a specific intent, and "[f]or you to find a person guilty of this crime, that person must not only intentionally commit the prohibited act, but must do so with a specific intent or mental state."

Defendant claims there is insufficient evidence he intended to possess methamphetamine for sale. However, Sanchez testified he found five 20 sacks, .2 grams methamphetamine that are commonly exchanged for \$20, and two empty baggies ready to be used, in a man's jacket in defendant's motel room. This particular motel has a

reputation for drug activity. Defendant was with two women, one a known drug offender, and he was holding a handful of money, the majority of which was \$20 bills. The officers also found a replica gun, which Sanchez said appeared to have been altered to pass for a real gun and could be used in drug transactions. Under the circumstances, the jury reasonably concluded defendant intended to possess methamphetamine for the purpose of sales.

Defendant also argues the absence of other common indicia of sales, i.e., scales, pay-owe sheets, and cutting agents and tools, and the fact that two more packets of methamphetamine were found inside a woman's jacket and two lines of methamphetamine on the bathroom counter, establish more than one person in the room could have been selling or using methamphetamine. While true, our role is to view the evidence in a way that supports the judgment. We do not reverse a judgment just because the facts could support more than one conclusion. In this case, the record contains substantial evidence defendant possessed methamphetamine with the intent to sell it.

### **DISPOSITION**

The judgment is affirmed.

THOMPSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.