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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.

JON MICHAEL DOUCETTE,

Defendant and Appellant.

G051976

(Super. Ct. No. 15WF0049)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Lance P. Jensen, Judge. Affirmed.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Felicity Senoski, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant, Jon Michael Doucette, of all three counts with which he was charged: (1) felony possession for sale of methamphetamine (Health & Saf. Code, § 11378)<sup>1</sup>; (2) felony transportation of methamphetamine (§ 11379, subd. (a)); and (3) misdemeanor possession of Lorazepam (§ 11375, subd. (b)(2)). The court sentenced defendant to three years in jail. Defendant contends the evidence was insufficient to establish he had the intent to sell the methamphetamine, an element required for counts 1 and 2. As to count 1, defendant contends the judgment must be modified to show conviction for simple possession of methamphetamine, a misdemeanor (§ 11377, subd. (a)). As to count 2, defendant urges reversal and dismissal. Defendant does not challenge the conviction on count 3. We conclude the evidence of intent was sufficient to support the jury's verdict and affirm.

## FACTS

On January 8, 2015, at 12:45 p.m., as defendant prepared to exit the parking lot of the Royal Inn Motel in Cypress, California, Police Officer Daniel Shin observed defendant reverse the vehicle and pull back into the motel parking lot. Defendant parked the vehicle and entered the motel lobby, where he sat down without attempting to engage the desk clerk. Shin contacted defendant. When searched, defendant had one Lorazepam tablet in his pants pocket, but he could not produce a prescription. Defendant also had five \$20 bills and two \$1 bills.

Shin requested backup assistance, and Police Officer Jonathan Krok arrived on the scene. Krok approached the vehicle and saw a female curled up in the front passenger seat, either hiding or sleeping. Police searched the vehicle and underneath the driver's seat found a small zippered pouch holding a digital scale, a business card, and

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<sup>1</sup> All statutory references are to the Health and Safety Code unless otherwise stated.

three baggies containing a total weight of approximately 4.5 grams of methamphetamine. There was no paraphernalia in the vehicle associated with consumption or ingestion of methamphetamine, and defendant did not appear to be under the influence. Police also found six cell phones. Shin and Krok opined defendant possessed the methamphetamine with the intent to sell.

## DISCUSSION

Defendant challenges his conviction on counts 1 and 2 on grounds the evidence was insufficient to establish his intent to sell the methamphetamine found in the vehicle he was driving. 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. (*People v. Meza* (1995) 38 Cal.App.4th 1741, 1745-1746.) Intent to sell is now an element of the offense of transportation of a controlled substance that must be decided by a jury by proof beyond a reasonable doubt. (§ 11379, subd. (c) [“For purposes of this section, ‘transports’ means to transport for sale”]; *People v. Ramos* (2016) 244 Cal.App.4th 99, 102-103.) Hence, the People and defendant agree intent to sell is a required element for both counts.

Intent to sell may be established by circumstantial evidence. (*People v. Harris* (2000) 83 Cal.App.4th 371, 374.) When reviewing a challenge to the sufficiency of the evidence to support a conviction based upon circumstantial evidence, we must decide whether the circumstances reasonably justify the findings of the trier of fact, but our opinion that the circumstances also might reasonably be reconciled with a contrary finding does not warrant reversal. (*People v. Lewis* (2009) 46 Cal.4th 1255, 1289-1290.) Expert testimony is admissible when it relates to a subject that is sufficiently beyond common experience that the opinion would assist the trier of fact. (Evid. Code, § 801, subd. (a).) In cases involving possession of drugs, officers may give their opinion that

the narcotics are held for the purpose of sale based upon the quantity, packaging and normal use of an individual. (*People v. Newman* (1971) 5 Cal.3d 48, 53, disapproved on other grounds in *People v. Daniels* (1975) 14 Cal.3d 857, 860.) On the basis of such testimony, convictions of possession for the purpose of sale have been upheld. (*Newman*, at p. 53.)

Here, the evidence defendant possessed methamphetamine with the intent to sell, rather than for personal use, is sufficient to support the jury's verdict. While Shin had been a police officer for only eight months when defendant was arrested, Krok was a veteran. Having served on the police force for 13 years, Krok was acting as a field training officer at the scene of defendant's arrest. He testified at trial as a drug recognition expert and an expert in street level drug transactions in Cypress.

Krok based his opinion defendant possessed the methamphetamine with intent to sell on his training and experience by examining the totality of the evidence. The 4.5 grams of methamphetamine was packaged in multiple baggies, with one containing 4 grams, consistent with an amount a street-level dealer would break up into smaller amounts for sale in order to make a profit. Although Krok testified it was possible for the 4.5 gram quantity to be for personal use entirely, it was more probable defendant intended to sell some or all of it. Defendant had a digital scale used by drug sellers to divide the narcotics and package it for individual sales. Defendant was found with cash in denominations indicating drug sales. Finally, according to Krok, the Royal Inn, with a high frequency of narcotics-related arrests and contacts, is known to be frequented by street level dealers.

Defendant argues the expert evidence is insufficient, because defendant was not found with empty baggies, the cell phones contained no buy/sell records, the amount of methamphetamine could have been for defendant's personal use, a scale can be used by buyers as well as sellers, and the \$102 in cash was in denominations typically dispensed at an automated teller machine. The jury found defendant's argument

unpersuasive; on appeal, we will not reweigh the evidence or address witness credibility. (*People v. Misa* (2006) 140 Cal.App.4th 837, 842.)

Krok's opinion defendant possessed the methamphetamine with intent to sell constitutes sufficient evidence of intent. The circumstances reasonably justify the jury's findings of fact leading to a guilty verdict on counts 1 and 2.

#### DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.