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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.

DOMINGO HERNANDEZ MARTINI,

Defendant and Appellant.

G052386

(Super. Ct. No. 15NF1151)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Robert C. Gannon, Judge. Affirmed.

Laurel Simmons, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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A jury found defendant Domingo Hernandez Martini guilty of possession for sale and transportation of a controlled substance in violation of Health and Safety Code sections 11378 and 11379, subdivision (a). The trial court suspended imposition of sentence and placed defendant on five years formal probation, one of the terms of which was spending 365 days in the Orange County Jail.

At trial, a California Highway Patrol officer testified that at 2:30 a.m., on April 26, 2015, he stopped defendant on a freeway in Orange County. The officer observed nothing to indicate defendant was under the influence of methamphetamine. Because defendant had no driver's license, the officer inventoried the vehicle for impound. The officer described what was found in the vehicle: "I opened the box, noticed that there was a masonry jar with a crystallized substance inside of it, a plastic, like, Ziploc almost like you'd take the corner of a plastic bag with a crystallized substance in it and twist the bag, known as a bindle, and then a small plastic Ziploc bag, a little square with a – one-inch-by-one-inch square. It also had the same crystallized substance in it. There was a methamphetamine pipe in there. There was a scale in there. There was three spoons in there. And there was a large amount of those plastic baggies that were empty." The officer performed a field test on the substances in the jar and in the bindle; both tested positive for methamphetamine. Later, a forensic scientist testified the methamphetamine in the jar weighed 28.54 grams, the methamphetamine in the bindle weighed 10.41 grams and the methamphetamine in the bag weighed 1.1 grams.

Defendant told the officer he paid \$600 for the methamphetamine and that it was for his personal use. He also said he has been addicted to the drug since he was 14 years old and that he uses a gram of methamphetamine per day. Defendant said the purpose of his having the scale was so he did not get "ripped off." He said he had the baggies to separate his daily use. Defendant told the officer he smokes the methamphetamine, but a lighter was not among the contents of his vehicle.

At trial, a prosecution expert testified about “whether or not somebody is possessing an item for purposes of sales.” The expert is a police officer who has been involved with “well over a thousand investigations involving controlled substances,” and has “arrested more than 500 individuals for violations involving cocaine, heroin, methamphetamine, marijuana and prescription pills.” The expert said that for every gram of methamphetamine, “you can get either five uses or ten uses,” but that it would not be unusual for a heavy user to use up to a gram a day. The expert explained: “So even if you’re using a gram a day, you are not using a gram a day every day. You’re not using 30 grams a month. You’re using for one, two or three days and binging, and then you’re down for one, two or three days.”

The prosecution expert said there are 28 grams in an ounce, and that defendant was found possessing approximately an ounce and a quarter. He said “quarter ounces and ounces are normal amounts that are purchased on the street.” In his 14 years of experience, the expert has never encountered anyone possessing an ounce and a quarter of methamphetamine simply for personal use.

A defense expert who served as chair of the California Narcotics Officers Association for about five years also testified. On direct examination, he said 36 grams of methamphetamine is consistent with both sales and personal use. When he was asked why someone would buy drugs in bulk, the expert responded: “We call this on the street buying drugs Costco style. The more you buy, the cheaper the price is. You may not need 50 pounds of dog food, but you save a lot of money buying it that way. So the more you buy, the better the price.” The expert was asked a hypothetical question containing all the facts in defendant’s stop by the California Highway Patrol officer, and he opined the hypothetical facts were consistent with both personal use and possession for sale.

Defendant testified at trial. He described his use of methamphetamine over the years. He said he made \$12.50 an hour working, and purchased his methamphetamine “[a]bout every week to every two weeks.”

The court thoroughly instructed the jury. Those instructions included CALCRIM No. 302 on evaluating conflicting evidence, CALCRIM No. 332 on expert witness testimony, CALCRIM No. 2300 on transportation of controlled substances for sale, CALCRIM No. 2302 on possession for sale of a controlled substance and CALCRIM No. 2304 on simple possession of a controlled substance.

Defendant timely appealed and we appointed counsel to represent him. Counsel submitted a brief that, while not arguing against defendant, informed the court he had found no arguable issues to assert on defendant's behalf. (*Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of his right to file his own written argument, but he did not submit a supplemental brief. (*People v. Kelly* (2006) 40 Cal.4th 106.)

Counsel posed two issues for this court to consider while conducting its independent review of the record: "1. Was the evidence sufficient to prove beyond a reasonable doubt that appellant transported or possessed the drugs with the intent to sell?"; and, "2. Did the trial court properly instruct the jury?" We have thoroughly reviewed the record and find no errors.

The judgment is affirmed.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.