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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

HERMELO AGUSTINE BATRES,

Defendant and Appellant.

H041169

(Santa Clara County

Super. Ct. No. C1350555)

Pursuant to a plea agreement, defendant Hermelo Agustine Batres pleaded no contest to misdemeanor driving with a blood alcohol level of 0.08 or more (Veh. Code, § 23152, subd. (b)) and misdemeanor driving with a suspended or revoked license (*id.*, § 14601.2, subd. (a)). A jury subsequently found him guilty of the remaining felony charges and he was ultimately sentenced to a total term of 30 days in county jail, to be served on weekends. Following a contested hearing on his ability to pay, the trial court ordered Batres to pay \$3,700 in attorney fees pursuant to Penal Code section 987.8.¹

On appeal, Batres argues there was not substantial evidence to support the trial court's finding he had the ability to pay attorney fees and the trial court's order must be reversed.

We find no merit to Batres' argument and will affirm the order.

¹ Unspecified statutory references are to the Penal Code.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural history

Batres was charged by information with felony transportation and distribution of marijuana (Health & Saf. Code, § 11360, subd. (a), count 1), felony possession of marijuana for sale (*id.*, § 11359, count 2), felony possession of a controlled substance (cocaine) (*id.*, § 11350, subd. (a), count 3), misdemeanor driving under the influence of alcohol with a prior conviction (Veh. Code, § 23152, subd. (a), count 4), misdemeanor driving with a blood alcohol level of 0.08 or more with a prior conviction (*id.*, § 23152, subd. (b), count 5), and misdemeanor driving with a suspended/revoked license (*id.*, § 14601.2, subd. (a), count 6). The information further alleged Batres had suffered a prior felony conviction within the meaning of section 667.5, subdivision (b).²

On April 22, 2014, Batres entered a plea of no contest to counts 5 and 6 and admitted the prior conviction. The district attorney's motion to dismiss count 4 was submitted to the court. Following a trial on the remaining three counts, a jury found Batres not guilty on counts 1 and 2 but could not reach a verdict on count 3. The court declared a mistrial as to count 3 and subsequently dismissed counts 3 and 4. Batres was sentenced to 30 days on counts 5 and 6, with total credits of five days. The trial court granted Batres' request to serve the remainder of his sentence on the weekend work program. Batres had filed a statement of assets form in which he declared he had no assets, which the trial court found "difficult to believe." The trial court set a hearing on Batres' ability to pay attorney fees, directing him to file tax forms or other documents to support his statement of assets form.

² We dispense with a lengthy recitation of the facts associated with the underlying offenses, but will note below certain facts from the trial, upon which the trial judge relied in ordering Batres to pay attorney fees.

B. Ability to pay hearing

At the ability to pay hearing, the court reiterated that Batres previously filed a statement of assets in which he indicated he had no assets, savings, or cash, and the court was concerned this information was not credible. Batres turned over a number of documents to the court,³ which the court reviewed and described for the record.

According to various paystubs dated from late 2011 to early 2012, Batres was employed and being paid a rate of \$9.25 per hour, with hours worked ranging from 13 to 34 hours.⁴ From October through December 2012, Batres was employed by Excel (or perhaps XCED)⁵ Admin Corporation, beginning at \$8 per hour, and increasing to \$10 per hour. According to the documents provided, Batres worked as few as 11 hours and as many as 56 hours, though again the record does not reflect how often Batres was paid.

Batres apparently did not submit any documents showing earnings from December 2012 to May 2013. He did submit a letter dated May 21, 2013, from his then-employer, Hayward Electrical, indicating he was being laid off as of that date. Batres did not present any paystubs to the court from that employer.

In June and July 2013, Batres received approximately \$75 per week in unemployment benefits from the Employment Development Department.

Batres was working for Southeast Personnel Leasing Company in August 2013 and submitted a check and paystub from that employer, dated August 4, which reflected no earnings for that pay period. The paystub did show year-to-date earnings of \$2,296. In early September 2013, Batres also submitted a paycheck for the two-week period of September 2nd to the 15th, 2013, from Enviro Electric which reflected year-to-date earnings of \$2,473, with an hourly wage of \$14 and net pay of \$690. The final paycheck

³ None of these were tax forms.

⁴ The trial court did not indicate on the record whether the paystubs showed how often Batres was being paid, i.e., weekly, biweekly, etc.

⁵ The reporter's transcript includes both spellings.

Batres submitted was dated December 13, 2013, and showed 57.5 hours of work at \$15 per hour regular, \$22.50 overtime.

Batres also submitted three statements from Wells Fargo Bank for a checking account. The first, for September 7 to October 4, 2013, showed a balance of negative \$10. The second statement, from December 6, 2013 to January 7, 2014, showed a balance of zero. A third statement, with no date stated on the record, listed a balance of negative \$12.

The court asked Batres if he had any paychecks or unemployment checks from 2014 and Batres replied he had not been steadily employed that year. He “worked a little bit, but . . . couldn’t maintain a job” with his recurring court dates. He had been living with his grandmother the past four or five months, paying her whatever he could.

The court asked Batres where he obtained the “\$600 in cash” he took with him to Fresno to purchase marijuana, but defense counsel indicated Batres would not answer that question. The district attorney clarified that Batres testified at trial that he had a total of \$500 in cash and the marijuana cost \$400, leaving \$100 on his person at the time of his arrest.

The trial court again inquired how much money Batres had earned to date in 2014. Batres replied he had just started a new job the week before the hearing, so he had not yet been paid. His new job paid \$18 per hour and, so long as he did not have to come back to court, Batres said there was no reason he could not continue in that job. His year-to-date earnings for 2014 would be whatever he made in his first paycheck from that employer.

The court asked defense counsel how much time and money she spent defending Batres. Defense counsel said she paid a defense expert \$2,000, and spent two weeks working on the case. Defense counsel objected to the court imposing attorney fees in any amount because “It’s clear [Batres] has no money.”

Before stating its ruling, the trial court reiterated that it had issues with Batres’ credibility at the initial hearing. It further noted that both the documents he submitted to

the court at the present hearing and “the questions that he declined to answer . . . speak for themselves.” Referring back to Batres’ trial testimony, the court indicated “[h]is description . . . was a person who had the time and resources to visit multiple sources of what he perceived as medicine . . . and the fact that he had the resources to purchase the medicine for what I can only assume is not covered by insurance, suggests to me that he has assets and income sources . . . he has chosen not to share with the Court, and I will make inferences based on that.”

The trial court estimated defense costs to total \$6,000, consisting of two weeks of defense counsel’s salary (\$4,000) and the \$2,000 paid to the expert witness. Based on Batres’ hourly wage of \$18, the trial court calculated Batres’ gross salary would total \$37,000 per year, assuming he worked at least 40 hours per week. The trial court concluded that “a combination of previous existing and undisclosed assets as well as . . . [¶] . . . his ability for future income [*sic*] in the next period of time, suggests to me that I will order \$3,700 in attorney fees.”

Batres appealed.

II. DISCUSSION

Batres argues the trial court’s finding on his ability to pay attorney fees was not supported by substantial evidence and must be reversed. We disagree.

The court’s authority to order a defendant who has received legal assistance at public expense to pay all or part of the cost is set forth in section 987.8. (*People v. Viray* (2005) 134 Cal.App.4th 1186, 1213.) “In any case in which a defendant is provided legal assistance, either through the public defender or private counsel appointed by the court, . . . the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof.” (§ 987.8, subd. (b).) “If the court determines that the defendant has the present ability to pay all or a part of the cost, the court shall set the amount to be reimbursed and order the defendant to pay the sum to the county” (*Id.*, subd. (e).)

A finding that a defendant has the present ability to pay is a prerequisite to an order to pay attorney fees under section 987.8. “ ‘Ability to pay’ means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of the legal assistance provided to him or her, and shall include, but not be limited to, all of the following: [¶] (A) The defendant’s present financial position. [¶] (B) The defendant’s reasonably discernable future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining the defendant’s reasonably discernable future financial position. Unless the court finds unusual circumstances, a defendant sentenced to state prison shall be determined not to have a reasonably discernable future financial ability to reimburse the costs of his or her defense. [¶] (C) The likelihood that the defendant shall be able to obtain employment within a six-month period from the date of the hearing. [¶] (D) Any other factor or factors which may bear upon the defendant’s financial capability to reimburse the county for the costs of the legal assistance provided to the defendant.” (§ 987.8, subd. (g)(2).)

Whether express or implied, the attorney’s fee order cannot be upheld on appeal unless it is supported by substantial evidence. (*People v. Nilsen* (1988) 199 Cal.App.3d 344, 347.) Substantial evidence is evidence that is reasonable, credible and of solid value, such that a rational trier of fact could have found Batres had the financial ability to pay the fine. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) “Substantial” refers to the quality, not the quantity, of the evidence. (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) The evidence must be of ponderable legal significance rather than just “any” evidence (*ibid.*) and must be reasonable in nature, credible, and of solid value. (*DiMartino v. City of Orinda* (2000) 80 Cal.App.4th 329, 336.)

In exercising substantial evidence review, an appellate court does not evaluate the credibility of the witnesses but defers to the trier of fact. (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.) Similarly, the court does not reweigh the evidence, but will uphold a judgment that is supported by substantial evidence, even if substantial

evidence to the contrary also exists. (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.) This is true even when the evidence is primarily circumstantial. (*People v. Holt* (1997) 15 Cal.4th 619, 668.) When the historical facts are undisputed but different inferences may be drawn from the evidence, the appellate court is not at liberty to make its own deductions. Rather, the resolution of conflicting inferences by the trier of fact must be accepted. (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 301.)

Accordingly, we review the record below, and draw any reasonable inferences therefrom, in the light most favorable to the judgment. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053.) If the record contains substantial evidence to support the judgment, it will be upheld. (*Ibid.*)

At the sentencing hearing, Batres confirmed that he was working, and said he was being paid \$18 per hour. No contrary evidence appears in the record, and the trial court could properly rely on this admission. Batres also testified at his trial for possession of marijuana that he paid \$400 for the medical marijuana found in his vehicle and had \$104 in cash on his person when he was arrested. The trial court relied on this testimony to infer that Batres had other sources of income and assets that allowed him to support his purchases of medical marijuana.⁶ At his sentencing hearing, the trial court granted Batres' request to serve his sentence of 30 days, with credits of five days, through the weekend work program, thus (presumably) avoiding conflicts with other employment. The trial court could have reasonably concluded that Batres would have the ability to pay the attorney fees of \$3,700. The court's order regarding attorney fees is therefore supported by substantial evidence.

III. DISPOSITION

The order is affirmed.

⁶ Batres also testified that, in December 2012 when he was arrested, he used marijuana three or four times a day for pain and to help him sleep.

Premo, J.

WE CONCUR:

Rushing, P.J.

Márquez, J.