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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. THOMAS JAMES KUNZ, Defendant and Appellant.	E074314 (Super.Ct.No. FVI19001806) OPINION

APPEAL from the Superior Court of San Bernardino County. Tony Raphael, Judge. Affirmed.

Michael C. Sampson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On August 28,2019, an information charged defendant and appellant Thomas James Kunz with transportation of a controlled substance under Health and Safety Code

section 11379, subdivision (a) (count 1), and possession of a controlled substance under Health and Safety Code section 11378 (count 2).

After a jury trial, on November 6, 2019, the jury found defendant guilty on both counts.

On December 10, 2019, the trial court suspended the imposition of sentence and placed defendant on probation for three years.

On December 13, 2019, defendant filed a timely notice of appeal.

B. FACTUAL HISTORY

On the afternoon of July 3, 2019, Jason Aria, an officer with the Victorville Police Department, was on patrol when he observed a red Honda driving at a high rate of speed then drive through a red light. Officer Aria pulled the Honda over.

Defendant was the driver; there was a woman in the passenger seat. When Officer Aria conducted a records search based on defendant's license, the officer learned that defendant had a misdemeanor arrest warrant for possessing drug paraphernalia. Officer Aria returned to the vehicle to inform defendant about the warrant. The officer then saw, in plain view, a small digital scale on the dashboard above the steering wheel, and 30 to 50 small plastic baggies "scattered" on the floorboard of the driver's seat. Officer Aria ordered defendant out of the car and put handcuffs on him.

Officer Aria then proceeded to search the Honda. The officer found a methamphetamine pipe under the driver's seat, and there was a backpack on the center console that contained two baggies, which the officer suspected to contain

methamphetamine. The substance in the baggies was later determined to be methamphetamine; the total weight was 18.95 grams.

When Officer Aria searched defendant's person, the officer found an envelope with $1,600 cash in denominations ranging from $1 to $100, in defendant's pants pocket. The officer did not find any cell phones on defendant or in the car.

Officer Aria received training to identify whether a person possesses methamphetamine for personal possession or for sale. The officer explained that when methamphetamine is possessed for personal use, the amount is generally small. He opined that about 0.3 grams means the methamphetamine is for personal use. When methamphetamine, however, is possessed for sale, it is usually found in larger amounts. Moreover, the methamphetamine is possessed with other paraphernalia such as scales, baggies, cash, cell phones and pay/owe sheets.

In this case, Officer Aria opined that defendant possessed the methamphetamine for sale based on the large amount coupled with the digital scale, baggies, and a large amount of cash.

Detective Ryan Brosowske with the San Bernardino County Sheriff's Department testified as an expert with regards to the possession of controlled substances for sale. The detective explained that dealers of methamphetamine package the drug in small plastic baggies or wrap it in cellophane. The most common items possessed by drug dealers are scales, pay/owe sheets, a cell phone, small plastic baggies, and large amounts of money in small denominations. The detective then clarified that even if a person only possessed

the drug without the additional items, an officer could still determine that the person is a dealer based on "the totality of the circumstances."

Detective Brosowske was asked to consider a hypothetical with facts that matched the facts in this case: A police officer is on patrol and pulls over a suspect for a traffic violation, and during the stop, the officer finds 40 to 60 baggies, $1,600 in cash, a digital scale, two pipes, and 18 grams of methamphetamine. The detective opined that the suspect in the hypothetical possessed the drugs for sale. The detective then went on to state that his opinion would not change if the suspect did not have a pay/owe sheet or a cell phone.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and has requested this court to undertake a review of the entire record. Pursuant to *Anders*, counsel identified the following issues to assist the court in its search of the record for error:

(1) "Was trial counsel ineffective under the Sixth Amendment when she failed to file a timely motion to suppress?"

(2) "Was the probation condition prohibiting appellant from leaving the state without permission of his probation officer reasonable?"

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we

have independently reviewed the record for potential error, and find no arguable issue for reversal on appeal.

DISPOSITION

The judgment is affirmed.

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MILLER
Acting P. J.

We concur:

SLOUGH
J.

RAPHAEL
J.