IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

TONY MICHAEL ANDERSON, *Appellant*.

No. 1 CA-CR 19-0046
FILED 12-24-2019

Appeal from the Superior Court in Mohave County
No. S8015CR201400357
The Honorable Richard D. Lambert, Judge

AFFIRMED AS CORRECTED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Casey D. Ball
Counsel for Appellee

Mohave County Legal Advocate's Office, Kingman
By Jill L. Evans
Counsel for Appellant

MEMORANDUM DECISION

Judge Lawrence F. Winthrop delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Michael J. Brown joined.

W I N T H R O P, Judge:

¶1 Tony Michael Anderson ("Appellant") appeals his convictions and sentences for possession of dangerous drugs for sale (methamphetamine), possession of marijuana, and two counts of possession of drug paraphernalia. Appellant argues only that insufficient evidence supports his conviction for possession of dangerous drugs for sale (methamphetamine). Concluding that substantial evidence supports that conviction, we affirm, but correct the trial court's sentencing minute entry to reflect that Appellant's sentences are all concurrent.

FACTS AND PROCEDURAL HISTORY

¶2 In March 2014, Kingman police officers searched Appellant's residence pursuant to a search warrant. Upon entering the residence, officers observed a marijuana pipe containing marijuana, as well as other marijuana paraphernalia, on a table in plain view. Appellant then directed officers to look under the sink, where they found a metal container holding two "quarter bags" of methamphetamine,[1] a scale with methamphetamine residue on it, and numerous unused baggies. Additionally, officers found indicia of personal use, including baggies with white powder residue, metal spoons with white residue, syringes, cotton swabs, a glass pipe with burn

---

[1] Kingman Police Detective Bredenkamp later testified that, as methamphetamine passes from a manufacturer to dealers to the user, it is divided into smaller amounts. Street-level dealers often purchase an "eightball," or approximately one-eighth of an ounce at a time, which they apportion and place in small plastic baggies. One-eighth of an ounce equals slightly more than 3.5 grams, and most Mohave County purchasers buy methamphetamine in a .20-gram bag, commonly referred to as a "quarter bag" that sells for approximately twenty dollars. Most methamphetamine users use .10 grams or less at a time, although long-time users may need more to get high.

marks containing white residue, other glass tubing with white residue, and a plastic tube for snorting methamphetamine.[2]

¶3 Appellant admitted using methamphetamine earlier that day. When asked if he was also selling it, he responded affirmatively, explaining he had recently sold a quarter bag to a friend for twenty dollars and otherwise sold to approximately half a dozen people once or twice a week. Appellant stated he did not "front" drugs to his buyers,[3] however, as he had no other source of income, except limited access to food stamps. Appellant admitted typically purchasing one eightball at a time for approximately one hundred dollars before breaking it down into quarter bags for both sale and personal use. When asked whether the two quarter bags found under the sink had been measured out for sale, Appellant responded affirmatively but also noted that he weighed out his methamphetamine to regulate his personal use.[4]

¶4 A grand jury charged Appellant with Count I, possession of dangerous drugs for sale (methamphetamine), a class two felony; Count II, possession of drug paraphernalia (methamphetamine), a class six felony; Count III, possession of marijuana, a class six felony; and Count IV, possession of drug paraphernalia (marijuana), a class six felony.

¶5 Appellant was tried in absentia, and the jury convicted him as charged. After Appellant's conviction, the trial court issued a bench warrant, but Appellant was not apprehended for approximately four years.

---

[2] A criminalist later determined that both the scale and glass pipe contained methamphetamine residue. She also tested the two quarter bags, determining that the first contained approximately .20 grams of methamphetamine and the second approximately .24 grams.

[3] Detective Bredenkamp testified that street-level dealers may sell drugs on credit, also known as "fronting" the drugs, with the expectation a buyer will later pay them. Although dealers who front drugs often track the amounts owed in a ledger, other dealers have no reason to keep a ledger.

[4] The State played a redacted version of an audio recording of Appellant's statements to the jury.

The court then sentenced him to concurrent terms of imprisonment, the longest of which was five years.[5]

¶6 We have jurisdiction over Appellant's timely appeal pursuant to the Arizona Constitution, Article 6, Section 9, and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

ANALYSIS

¶7 Appellant challenges only the sufficiency of the evidence supporting the jury's finding that he possessed the methamphetamine for sale. He argues that "there was equal evidence that he possessed those drugs for personal use."

¶8 We review *de novo* the sufficiency of evidence to support a conviction, while viewing the facts in the light most favorable to sustaining the verdict and resolving all reasonable inferences against Appellant. *State v. Pena*, 235 Ariz. 277, 279, ¶ 5 (2014); *State v. Kiper*, 181 Ariz. 62, 64 (App. 1994). We will not reassess witnesses' credibility, *see State v. Soto-Fong*, 187 Ariz. 186, 200 (1996); *State v. Bronson*, 204 Ariz. 321, 328, ¶ 34 (App. 2003), or reweigh the evidence; instead, we will reverse the verdict only if it is unsupported by substantial evidence, *State v. Tucker*, 231 Ariz. 125, 138, ¶ 27 (App. 2012).

¶9 Substantial evidence is that which "reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt," and constitutes "more than a 'mere scintilla' of evidence." *State v. Stroud*, 209 Ariz. 410, 411-12, ¶ 6 (2005) (citations omitted). Evidence "is not insubstantial simply because reasonable persons might have drawn a

---

[5] The trial court's January 14, 2019 sentencing minute entry erroneously states the sentence for Count II is to run consecutive to the sentence for Count I, and the sentences for Counts III and IV are to run consecutive to the sentence for Count II. At sentencing, however, the court ordered "that all sentences shall run concurrent to each other." As a general rule, "[w]hen there is a discrepancy between the trial court's oral statements at a sentencing hearing and its written minute entry, the oral statements control." *State v. James*, 239 Ariz. 367, 368, ¶ 7 (App. 2016) (citation omitted). Accordingly, we correct the sentencing minute entry to reflect that all four sentences are concurrent. *See* Ariz. Rev. Stat. ("A.R.S.") § 13-4037; *State v. Contreras*, 180 Ariz. 450, 453 n.2 (App. 1994) ("When we are able to ascertain the trial court's intention by reference to the record, remand for clarification is unnecessary." (citation omitted)).

different conclusion from the evidence." *State v. Martinez*, 226 Ariz. 221, 224, ¶ 15 (App. 2011) (citations omitted). Instead, "[r]eversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *Soto-Fong*, 187 Ariz. at 200 (quoting *State v. Scott*, 113 Ariz. 423, 424-25 (1976)). The substantial evidence necessary to support a conviction may be direct or circumstantial. *State v. Pena*, 209 Ariz. 503, 505, ¶ 7 (App. 2005).

¶10 A person is guilty of possession of a dangerous drug for sale if he knowingly possesses methamphetamine with the intent to sell it. *See* A.R.S. §§ 13-3401(6)(c)(xxxviii), -3407(A)(2). When found in a defendant's possession, the quantity of methamphetamine, its packaging, its location, and the paraphernalia for measuring and weighing it are all circumstances from which a trier of fact could properly infer that the methamphetamine was possessed for sale rather than personal use. *See State v. Jung*, 19 Ariz. App. 257, 261-62 (1973); *see also State v. Cornman*, 237 Ariz. 350, 356, ¶ 22 (App. 2015) ("Between defendant's admission to the police that he sold methamphetamine and the corroborating evidence in the form of scales and the like, sufficient evidence supports the conviction.").

¶11 Here, the State presented substantial evidence from which the jury could convict Appellant of possession of methamphetamine for sale, including his admission that he had regular customers, intended to sell the methamphetamine, the sales-related paraphernalia, and Detective Bredenkamp's testimony.[6] Although the amount of methamphetamine possessed by Appellant was small, it was packaged into two quarter bags, the typical size for street-level sales. In the same container as the two quarter bags, officers found a scale with methamphetamine residue, and Detective Bredenkamp testified that street-level dealers use a scale to accurately measure and prepare the quarter bags for sale. Although the detective acknowledged some people who are only users take a scale to a drug deal to ensure they receive the bargained-for amount, he explained that a scale with drug residue is more indicative of sales because a dealer will measure and package the methamphetamine for individual sale, whereas users simply place a pre-measured baggie on their scale, which would leave no residue. Officers also found numerous small, unused baggies under Appellant's sink, which the detective testified, and Appellant acknowledges, are indicative of sales. Appellant's lack of any other income also suggests he sold methamphetamine to support both his

[6] "A police officer's expert testimony concerning whether drugs were possessed for sale has long been admissible in this state." *State v. Carreon*, 151 Ariz. 615, 617 (App. 1986) (citations omitted).

drug habit and daily expenses, and he admitted he had recently sold a quarter bag to a friend and routinely sold methamphetamine to approximately half a dozen people. He also admitted the two quarter bags found under his sink were divided from an eightball he had purchased for one hundred dollars, and that he had put them in quarter bags both for selling and to regulate his personal use. Appellant's statements indicate he possessed at least some of the methamphetamine for sale, and the physical evidence and Detective Bredenkamp's testimony corroborated that admission.

¶12 Appellant's admission that he used as well as sold methamphetamine does not diminish the sufficiency of the evidence, and we find unavailing his citation to several sufficiency-of-the-evidence cases, which merely stand for the proposition that the intent to distribute generally cannot be established by the quantity of drugs alone if the quantity is consistent with personal use.[7] The cases he cites do not address the sufficiency of the evidence where an amount of methamphetamine, consistent with both personal use and sale, is considered in conjunction with a defendant's admissions of intent to sell and other indicia of sales. Accordingly, substantial evidence supports Appellant's conviction for possession of methamphetamine for sale.

---

[7] *See, e.g.*, *Turner v. United States*, 396 U.S. 398, 422-23 (1970) (concluding that a defendant's possession of 14.68 grams of cocaine mixed with sugar did not alone permit the jury to "automatically and unequivocally know" the defendant was distributing cocaine); *United States v. Hunt*, 129 F.3d 739, 742 (5th Cir. 1997) ("[A] quantity that is consistent with personal use does not raise [] an inference [of intent to distribute] in the absence of other evidence." (citations omitted)); *United States v. Skipper*, 74 F.3d 608, 611 (5th Cir. 1996) (holding that because the quantity of drugs recovered was not clearly inconsistent with personal use, additional evidence was necessary to support a conviction for possessing crack cocaine with the intent to distribute); *United States v. Boissoneault*, 926 F.2d 230, 234 (2d Cir. 1991) (concluding that insufficient evidence supported a conviction of possessing cocaine with the intent to distribute because the amount was not inconsistent with personal use and the defendant "possessed none of the paraphernalia usually possessed by drug dealers, such as scales, beepers, and other devices"); *State v. Heberly*, 120 Ariz. 541, 545 (App. 1978) (holding that possession of marijuana and $1,695 in cash could not alone support the defendants' convictions for possessing marijuana for sale).

CONCLUSION

¶13 Appellant's convictions and sentences are affirmed, but we correct the January 14, 2019 sentencing minute entry to reflect that Appellant's sentences are all concurrent.

AMY M. WOOD • Clerk of the Court
FILED: AA