Court of Appeal, Fourth Appellate District, Division Two - No. E067662

S247638

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

JAMIE ROZELLE HARRISON, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Filed 2/7/18 P. v. Harrison CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JAMIE ROZELLE HARRISON, Defendant and Appellant.	E067662 (Super.Ct.No. FBA900492) OPINION

APPEAL from the Superior Court of San Bernardino County. Dwight W. Moore, Judge. Reversed with directions.

Cynthia M. Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Meagan J. Beale and A. Natasha Cortina, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Jamie Rozelle Harrison guilty of first degree residential burglary (Pen. Code, § 459, count 1), unlawful driving or taking of a vehicle

(Veh. Code, § 10851, subd. (a), count 3), and transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a), count 5).[1] In a bifurcated hearing, a trial court found true the allegations that defendant had two prior strike convictions (Pen. Code, §§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)) and two prior serious felony convictions (Pen. Code, § 667, subd. (a)(1)), and that she had served one prior prison term (Pen. Code, § 667.5, subd. (b)). The court sentenced defendant to a total term of 41 years four months to life in state prison.[2]

Defendant appealed and raised a number of sentencing issues that resulted in a remand for resentencing, but this court affirmed the denial of a *Romero*[3] motion to strike her prior strike convictions. (*People v. Harrison, supra*, E057917.) At resentencing, defendant filed a second *Romero* motion, in light of *People v. Vargas* (2014) 59 Cal.4th 635 (*Vargas*), which the court granted. The People appealed the resentencing court's order, and the order was reversed. The matter was remanded again for resentencing. (*People v. Harrison, supra*, E064549.].) On remand, the court resentenced defendant to an indeterminate term of 25 years to life on count 1, plus a determinate term of four years

---

[1] Count 4 was dismissed, and defendant was acquitted of count 2.

[2] By order dated March 17, 2017, this court, on its own motion, took judicial notice of the records in case No. E057917 and case No. E064549. The procedural and factual backgrounds are taken from this court's previous opinions in those cases, unless otherwise noted. (See *People v. Harrison* (Aug. 14, 2014, E057917 [nonpub. opn.] and *People v. Harrison* (Aug. 10, 2016, E064549 [nonpub. opn.].)

[3] *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497.

on count 5 and five years for the prior serious felony conviction, for a total of nine years plus 25 years to life.[4]

Defendant now contends that her conviction for transportation of methamphetamine in count 5 must be reversed in light of the 2013 amendment to Health and Safety Code section 11379, subdivision (a).[5] The People concede. We agree that the conviction must be reversed, and we remand the matter for further proceedings.

FACTUAL BACKGROUND

On July 30, 2009, police officer Carlos Ugo responded to a call from Ronald Haywood (the victim), who reported that his house had been burglarized. He reported that someone had gained access to his home and stole several items, including two guns, his wallet, his car keys, and his car.

On August 18, 2009, Detective Leo Griego spotted the victim's stolen car parked in front of a residence that was being observed for narcotics activity. He decided to watch the car to see if anyone left the house and got into it. After about 15 minutes, some people came out of the house and drove away in the car. By that time, other officers had arrived at the scene. They followed the car a few blocks and conducted a vehicle stop. The occupants were ordered out of the car. Defendant was the driver.

---

[4] The court stayed the sentence on count 3.

[5] All further statutory references will be to the Health and Safety Code, unless otherwise noted.

The police searched the car and found a baggie containing methamphetamine, a small glass pipe, and a ring with four keys on it.

Detective Griego read defendant her *Miranda*[6] rights and interviewed her. Defendant admitted that the methamphetamine found in the car belonged to her and her boyfriend.

ANALYSIS

Defendant's Conviction in Count 5 Should be Reversed

Defendant argues that her conviction for transportation of methamphetamine should be reversed because of the 2013 amendment to section 11379. The People concede, and we agree.

This issue was squarely addressed in *People v. Eagle* (2016) 246 Cal.App.4th 275 (*Eagle*). In *Eagle*, as here, the defendant was convicted under a former version of section 11379, subdivision (a), which provided that any person who "transport[ed]" specified controlled substances, including methamphetamine, would be punished by imprisonment. (§ 11379; Stats. 2011, ch. 15, § 174; *Eagle*, at p. 278.) "The courts had interpreted the word 'transports' to include transporting controlled substances for personal use. [Citations.] Effective January 1, 2014, after [the] defendant's conviction, the Legislature amended section 11379 to define 'transports' as meaning to transport for sale." (*Eagle*, at p. 278.) "The amendment explicitly intended to criminalize the transportation of drugs

---

[6] *Miranda v. Arizona* (1966) 384 U.S. 436.

for the purpose of sale and not the transportation of drugs for nonsales purposes such as personal use." (*Ibid.*)

As recognized by the court in *Eagle*, "[g]enerally, 'where the amendatory statute mitigates punishment and there is no saving clause, the rule is that the amendment will operate retroactively so that the lighter punishment is imposed' if the amended statute takes effect before the judgment of conviction becomes final." (*Eagle*, *supra*, 246 Cal.App.4th at p. 279, citing *In re Estrada* (1965) 63 Cal.2d 740, 744, 748.)

Here, the People concede that defendant's judgment was not final at the time the amendment to section 11379 took effect. The People also concede that because the judgment was not final, defendant is entitled to benefit retroactively from the change to section 11379. Since both parties agree that the amendment applies to defendant, the issue remaining is the proper disposition of this appeal.

In *Eagle*, *supra*, 246 Cal.App.4th 275, the appellate court agreed that the defendant's conviction for transporting methamphetamine had to be reversed as a result of the Legislature's amendment to section 11379, subdivision (a). Thus, the court remanded the matter and held that the People should be allowed to proceed on the original charges. (*Eagle*, at p. 280.) The court stated that, "[w]hen a statutory amendment adds an additional element to an offense, the prosecution must be afforded the opportunity to establish the additional element upon remand." (*Ibid.*) The court explained that a retrial was not barred by the double jeopardy clause or ex post facto principles because the question of whether the defendant transported methamphetamine

for sale was not previously tried, since it was not relevant to the charges against the defendant at the time of trial. (*Ibid.*)

Defendant contends the rule that the prosecution must be afforded an opportunity to establish an element added by a statutory amendment does not apply here. She claims that the state's evidence "expressly established the transport was for personal use." Defendant cites Detective Griego's testimony at trial that the amount of methamphetamine found in her possession was approximately .13 grams, which was "a usable amount." He confirmed that, in his opinion, it was a "personal use quantity." While we acknowledge this testimony, we disagree with defendant's assertion that the evidence *established* the transport was for personal use. We note that Detective Griego also testified as follows: "For methamphetamines the normal amount used is a quarter gram. .2 is almost a quarter gram. .13 is half of a quarter gram, and those are usable amounts. . . . Those are used all the time, and *they're purchased in that quantity*, eighth of a gram, quarter of a gram and on up." (Italics added.) From this testimony, it could be inferred that defendant would be able to buy or sell methamphetamine in the amount that was in her possession. We additionally note Detective Griego's testimony that defendant's purse, which was found in the vehicle, did not contain anything associated with the personal use of methamphetamine. He also testified that defendant did not appear to be under the influence when he interviewed her after the vehicle stop. Thus, contrary to defendant's claim, the evidence presented was equivocal and would not necessarily preclude a finding of intent to sell.

We conclude that the decision of whether there was evidence to support a transportation charge under the amended statute should be left to the prosecution. As such, it would be improper to disallow the prosecution the opportunity to prove an intent to sell. (*People v. Figueroa* (1993) 20 Cal.App.4th 65, 72 ["Where, as here, evidence is not introduced at trial because the law at that time would have rendered it irrelevant, the remand to prove that element is proper . . . ."]; *Eagle*, *supra*, 246 Cal.App.4th at p. 280 ["When a statutory amendment adds an additional element to an offense, the prosecution must be afforded the opportunity to establish the additional element upon remand."].) Thus, we reverse the conviction in count 5 and remand the matter.

DISPOSITION

The judgment is reversed and remanded on the issue of the intent to sell in count 5, and for resentencing in the event the Health and Safety Code section 11379 charge is not proven. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

MILLER
J.

CODRINGTON
J.

COURT OF APPEAL
STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

REMITTITUR

THE PEOPLE,
Plaintiff and Respondent,

v.

JAMIE ROZELLE HARRISON,
Defendant and Appellant.

E067662

(Super.Ct.No. FBA900492)

The County of San Bernardino

I, KEVIN J. LANE, Clerk of the Court of Appeal, State of California, Fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above entitled cause on February 7, 2018, and this opinion or decision has now become final.

Witness my hand and seal of the Court
this May 2, 2018.

Kevin J. Lane, Clerk/Executive Officer

By: S. DeLeon, Deputy Clerk

cc: All parties (Copy of remittitur only, Rule 8.272, California Rules of Court).

Additional material from this filing is available in the Clerk's Office.