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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

BENNY ALBERT
GONZALEZ,

Defendant and Appellant.

2d Crim. No. B282320
(Super. Ct. No. 2016029802)
(Ventura County)

Benny Albert Gonzalez appeals his conviction by jury of second degree robbery (Pen. Code, § 211)¹ and misdemeanor possession of drug paraphernalia (Health & Saf. Code § 11364, subd. (a)). In a bifurcated proceeding, the trial court found that Gonzalez had served two prior prison terms (§ 667.5, subd. (b)). It suspended imposition of sentence and placed Gonzalez on

¹ All further statutory references are to the Penal Code unless otherwise stated.

formal probation for three years with the condition that he enroll in a residential treatment program. The court also ordered Gonzalez to serve 421 days in county jail. Because Gonzalez had 421 days of presentence credit, the jail term was deemed served.

Prior to trial, Gonzalez moved to suppress the evidence seized during a warrantless patdown search. The trial court denied the motion, finding that the officers had reasonable suspicion to conduct a patdown search because the stop occurred at night in an alley and because Gonzalez, who was wearing baggy clothing, had made a furtive gesture toward his waist. The court did find, however, that there might be a *Miranda*² issue as to Gonzalez's statements to police.

The trial court conducted a hearing, pursuant to Evidence Code section 402, to determine which of Gonzalez's statements, if any, were admissible. Officer Martin Cook testified at the hearing. After hearing Officer Cook's testimony and counsel's argument, the court granted the prosecution's motion to introduce at trial all of the statements made by Gonzalez during the police investigation.

We appointed counsel to represent Gonzalez in this appeal. After an examination of the record, counsel filed an opening brief requesting that the court make an independent review under *People v. Wende* (1979) 25 Cal.3d 436.

We subsequently advised Gonzalez that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. The 30 days have since passed, and Gonzalez has not presented any contentions or issues for our consideration.

² *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

On August 11, 2016, an assistant manager at Warehouse Shoe Sale in Oxnard stopped Gonzalez from carrying two shoe boxes out of the store without paying for the shoes. Gonzalez said he wanted to take the shoes outside to show his girlfriend. When that request was denied, Gonzalez dropped the two boxes and headed for the door. The boxes were empty.

Another employee, Juan Valdez, attempted to stop Gonzalez. After seeing that Gonzalez was wearing new shoes, Valdez instructed him to take off the shoes and put on his old shoes. Gonzalez then moved his hand toward his pocket. Believing Gonzalez was reaching for a weapon, Valdez moved out of the way for safety reasons. Gonzalez left the store still wearing the new shoes.

At 9:30 p.m. that same evening, Officer Cook observed Gonzalez riding a bicycle on a sidewalk in violation of the Oxnard City Code. Gonzalez also was in violation of the Vehicle Code because his bicycle did not have a forward-facing light. Officer Cook and his partner stopped Gonzalez. Prior to contacting Gonzalez, Officer Cook saw him place his hand against the front of his waistband. It appeared that Gonzalez was trying to conceal something.

Gonzalez was wearing a baggy sweatshirt, long pants and a backpack. Because Officer Cook could not tell if Gonzalez had a weapon in his pockets or waistband, the officer patted him down. Officer Cook discovered that Gonzalez had a pair of new Converse sneakers jammed into the front of his waistband. The officer also found a box cutter in one of Gonzalez's pockets.

Upon learning that Gonzalez was on probation, Officer Cook's partner searched Gonzalez's backpack and found

two syringes containing a brown liquid. The liquid appeared to be heroin.

During the probation search, one of the officers asked Gonzalez if he had stolen the shoes. Gonzalez admitted stealing them from Warehouse Shoe Sale. Officer Cook sent other officers to the store, where they confirmed the theft of both pairs of shoes.

The officers arrested Gonzalez and took him to the Oxnard Police Department booking facility. They advised him of his *Miranda* rights and placed him in an interview room. Gonzalez waived his *Miranda* rights and described how he stole the shoes. He admitted that he made Valdez believe he had a weapon so that he could leave the store with the shoes.

We have reviewed the entire record and are satisfied that Gonzalez's counsel has fully complied with his responsibilities and that no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 443; *People v. Kelly* (2006) 40 Cal.4th 106, 126.)

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Roger L. Lund, Judge

Superior Court County of Ventura

Richard L. Fitzer, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.