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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN PEREZ,

Defendant and Appellant.

B248548

(Los Angeles County
Super. Ct. No. BA406002)

APPEAL from a judgment of the Superior Court of Los Angeles County, Drew E. Edwards, Judge. Affirmed.

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

No appearance for Plaintiff and Respondent.

Defendant and appellant, Jonathan Perez, appeals from the judgment entered following his plea of no contest to having a concealed weapon on his person (Pen. Code, § 25400, subd. (a)(2)).¹ The trial court suspended imposition of sentence and placed Perez on formal probation for three years on the condition, among others, that he serve one year in county jail. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*²

At approximately 2:20 p.m. on December 20, 2012, Los Angeles Police Department Officer Christian Ventura and his partner, Officer Graber, responded to a call directing them to 118 North Lake Street in Los Angeles. When the officers arrived at the address, they were “flagged” down by the woman who had made the 911 call. The woman was a tenant in the building and she told the officers “there [were] four gang members . . . inside the storage room of the apartment complex which was located on the second floor.” The woman described the men as “male Hispanics wearing black-gray hoodies, . . . [and] black-gray pants . . . or shorts.” She also indicated the men were “known Temple Street gang members,” none of whom lived at the complex.³ The woman had previously been threatened by gang members and it had frightened her. Accordingly, she wished to remain anonymous.

Ventura and his partner walked the between 50 and 100 feet to the storage room area of the complex and proceeded to walk up the stairs. The officers saw Perez, who was wearing a black hoody and gray shorts, sitting at the top of the stairwell next to the storage room. The officers determined he did not live at the building and, based on the information they had received in the radio call and from the woman who had made the

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

² The facts have been taken from the transcript of the preliminary hearing, during which Perez’s motion to suppress evidence was heard (see § 1538.5).

³ At one point in the proceedings and in the probation report, Ventura referred to Perez as a member of “the 415 gang group.”

911 report, the officers ordered Perez to stand up, turn around and place his hands “up over his head” so that Ventura could conduct a pat-down search. In view of the description given to them by the 911 operator and the woman who had contacted them when they arrived at the apartment building, Ventura and his partner determined they “had enough facts to detain Mr. Perez for [a] trespassing investigation.”

As Perez stood up and Ventura was about to approach him, the officer observed what “appear[ed] to be a black handle of a handgun sticking out of his right front shorts pocket.”⁴ Ventura recovered the object, which turned out to be “a .22 caliber black semi-automatic handgun.” The gun appeared to be in working order and was loaded with one cartridge in the chamber and six in the magazine.

2. Procedural history.

At the preliminary hearing held on February 28, 2013, the trial court heard evidence and argument regarding Perez’s motions to dismiss and to suppress evidence of the handgun found during the pat-down search conducted by Officer Ventura. The court noted that when Ventura and his partner arrived at the apartment complex, they were flagged down by the individual who had made the 911 call, that she had described the men in the storage room and “that she knew [from previous experience] . . . they were Temple Street gang members” who did not live at the apartments. When the officers then went to the storage room area, they saw Perez, who matched the description given to them by the reporting party: “[h]e appeared to be a male Hispanic” and his clothing was identical to that which the woman who had called 911 had described. Under these circumstances, the trial court concluded Ventura and his partner had “probable cause” to believe Perez was one of the four men trespassing and they could lawfully detain him. In addition, although there was a discrepancy between Ventura’s testimony and his report regarding whether he saw the handle of the handgun before he performed the pat-down search, the court determined that, based on “the totality of the circumstances,” the search

⁴ In his report, Ventura had written he discovered the gun “during the search” of Perez, not “prior to” the search.

was necessary to protect the officers' personal safety. The trial court concluded, although it was a close call, Officer Ventura observed the handle of the handgun "at or about the time he was going to commence the pat-down [search] and[,] having observed the gun handle," he was entitled to recover the weapon. The trial court accordingly denied the motion to dismiss the case for insufficiency of the evidence and denied the motion to suppress evidence. The court indicated it believed sufficient evidence had been presented to hold Perez to answer to the charge of having a concealed weapon on his person in violation of section 25400, subdivision (a)(2) and set bail in the amount of \$150,000.

On March 14, 2013, an information was filed charging Perez with one count of having a concealed firearm on his person in violation of section 24500, subdivision (a)(2), a felony. It was further alleged "that the firearm and unexpended ammunition were in the immediate possession of, and readily accessible to, [Perez] and that the firearm was not registered to [him]."

At proceedings held on March 19, 2013, counsel for Perez requested an "indicated sentence." After acknowledging Perez wished to enter a plea to the count alleged, the trial court indicated "[t]he sentence would be three years probation, 365 days in the county jail, 120 hours of Caltrans and the standard gang conditions." Counsel for Perez then indicated Perez wished to accept the offer and plead no contest to the charge.

The prosecutor advised Perez of his right to a "public court or jury trial," a court trial, his right to confront and cross-examine the witnesses against him, the right to produce evidence in his own behalf, the right to subpoena witnesses to testify for him at no cost to him, his right against self-incrimination and his right to remain silent. After indicating he understood these rights, Perez, joined by his counsel, waived them.

The prosecutor advised Perez that "it would have been the People's recommendation that [he] receive 16 months state prison" and that "[t]he maximum [he] could have done in this case [was] three years." The prosecutor continued, "The court is going to give you a break based on your lack of a record." After the prosecutor then gave to Perez additional advisements, Perez pled no contest to having a concealed firearm on

his person in violation of section 25400, subdivision (a)(2), a felony committed on December 20, 2012. Perez then admitted the gun had not been registered to him.

The trial court found Perez had “knowingly, expressly, and understandingly waived his statutory and constitutional rights,” “that [his] plea [had been] freely and voluntarily made with a full understanding of the nature of the charges and . . . consequences,” and that there was “a factual basis for the plea.” Accordingly, the trial court found Perez “guilty based on his plea.”

The court suspended imposition of sentence and placed Perez on probation for a period of three years on the condition, among others, that he serve 365 days in county jail and “perform 120 hours of Caltrans service.” The trial court then awarded Perez presentence custody credit for 90 days actually served and 90 days of good time/work time, for a total of 180 days. The court ordered Perez to pay a \$280 restitution fine (§ 1202.4, subd. (b)), a suspended \$280 probation revocation restitution fine (§ 1202.44), a \$40 court operations assessment (§ 1465.8, subd. (a)(1)) and a \$30 criminal conviction assessment (Gov. Code, § 70373). The trial court then ordered Perez to return to court for a hearing on September 16, 2013. He was to bring with him proof he had performed the work with Caltrans.

Perez filed a timely notice of appeal on April 11, 2013.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed June 28, 2013, the clerk of this court advised Perez to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.