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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.

MICHAEL YASUNAGA,

Defendant and Appellant.

B242198

(Los Angeles County
Super. Ct. No. LA069711)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Joseph A. Brandolino, Judge. Affirmed.

Michael Yasunaga, in pro. per.; and Richard L. Fitzer, under appointment by the
Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Michael Yasunaga appeals from the judgment entered following revocation of probation previously granted following his plea of no contest to two counts of possession of ammunition (former Pen. Code, § 12316, subd. (b)(1),¹ Pen. Code, § 30305, subd. (a)(1)),² after denial of his motion to suppress evidence (§ 1538.5). The trial court sentenced Yasunaga to three years in county jail (§ 1170, subds. (h)(1) & (2)), suspended imposition of sentence and granted him three years formal probation. We affirm.

FACTUAL AND PROCEDURAL HISTORY

*1. Facts.*³

Ben Meda is a detective for the Los Angeles Police Department, assigned to the gang and narcotics gun unit. He has been a police officer for 22 years. According to Meda, all stores which sell ammunition are required to keep an “ammunition log.”⁴ In the log, the purchaser must provide his or her name, address, signature, driver’s license or I.D. number and a fingerprint. The police department then periodically collects the logs from the vendors to review them. An officer runs a background check on each person who has purchased ammunition. If the officer finds that a purchaser has suffered a felony conviction, further investigation is performed. A background check, “using the department resources,” is conducted.

¹ Former Penal Code section 12316, subdivision (b)(1) was repealed by Statutes 2010, chapter 711, section 4 (Sen. Bill No. 1080), operative January 1, 2012. However, Yasunaga purchased the ammunition on February 12, 2011. Moreover, Penal Code section 30305, subdivision (a)(1) provides: “No person prohibited from owning or possessing a firearm under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, shall own, possess, or have under custody or control, any ammunition or reloaded ammunition.” In the comments following section 30305, it is stated that “Subdivision (a) of Section 30305 continues former Section 12316[, subdivision] (b)(1) & (3) without substantive change.”

² All further statutory references are to the Penal Code unless otherwise indicated.

³ The facts have been taken from the transcript of the preliminary hearing.

⁴ See Los Angeles Municipal Code sections 55.09, 55.11, 103.13, 103.14 and 103.15.

On July 20, 2011, a detective collected the “ammo log” from a Big 5 store located at 12033 Ventura Place. On October 25, 2011, in reviewing the log and running the records of the purchasers, an officer discovered a listing for Michael Yasunaga. Yasunaga, a convicted felon, was on probation for burglary. (§ 459.)⁵ The store’s records showed that, on February 12, 2011, he had purchased 25 rounds of Winchester 12-gauge ammunition. The officer showed the log and Yasunaga’s “rap sheet” to Meda. It appeared that Yasunaga had violated the terms and conditions of his probation by purchasing and possessing ammunition in violation of former section 12316, subdivision (b)(1) and section 30305, subdivision (a)(1). Once the appropriate paperwork had been completed, Yasunaga’s case was presented to the district attorney, who issued a warrant for Yasunaga’s arrest.

Using his driver’s license number, Detective Meda obtained Yasunaga’s address and his house was subsequently searched. The ammunition found in Yasunaga’s bedroom matched that described in the Big 5 store’s ammunition log. In addition, officers found in Yasunaga’s bedroom 25 rounds of .357 ammunition.

Yasunaga was placed under arrest and given his *Miranda*⁶ rights. He admitted that he had purchased the ammunition from the Big 5 store and indicated that he had purchased the .357 ammunition from the Glendale gun show. He stated that he had been curious about the 12-gauge ammunition. He “took it apart [and] found the bearings and the balls and the powder inside”

In addition to the ammunition, there were 10 firearms at Yasunaga’s residence. Yasunaga lived with his parents, who kept eight handguns in the kitchen, in a cabinet above the counter. There was no lock on the cupboard. “[L]ong guns,” a shotgun and an SKS rifle, were kept in the master bedroom, under the bed. Yasunaga “did not have permission to have . . . control of [the long guns].”

⁵ Yasunaga had been twice convicted of burglary, once in 2007 and once in 2008. He had been granted probation, one condition of which was “a firearm restriction.”

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

The firearms were all legally registered to Yasunaga's father. Only the ammunition was found in Yasunaga's room.

2. Procedural history.

In an amended complaint filed May 2, 2012, Yasunaga was charged with two counts of possession of ammunition (former § 12316, sub. (b)(1), § 30305, subd. (a)(1)). As he previously had been convicted of two counts of second degree burglary (§ 459), it was alleged that Yasunaga was prohibited from owning or possessing a firearm, and as a consequence, ammunition pursuant to chapters 2 and 3 of division 9 and sections 8100 and 8103 of the Welfare and Institutions Code.

After being charged, Yasunaga filed a motion to suppress evidence (§ 1538.5) of the ammunition log kept by the Big 5 store and all evidence stemming from that log, including the ammunition found at his home. At the hearing held on the matter, it was established that, in December 2011, Meda had learned from another officer, who had personally spoken with Yasunaga's probation officer, that Yasunaga's probation included a "search and seizure" condition. Meda had obtained Yasunaga's address from his partner, then verified it with Yasunaga's probation officer. Meda and his partner then went to the address, 12345 Sarah Street in Studio City, and found a vehicle, a Mitsubishi, parked there. The license plate on the car indicated that it was registered to Yasunaga.

On January 6, 2012, Meda decided to execute the arrest warrant and to search Yasunaga's residence. Because there was likely at least one firearm at the house, approximately 10 officers went to Yasunaga's home to conduct the search.

The officers parked at various locations around the house. Meda parked at what he referred to as the " 'point' " where he could observe the front of the house, the driveway and Yasunaga's Mitsubishi.

At approximately 7:50 that morning, the gate on the right side of the house opened and a white Toyota RAV4 drove down the driveway, then turned right onto the street. The vehicle was being driven by Yasunaga's mother and Yasunaga was in the front passenger seat. One of the officers in a nearby unit stopped the car and detained Yasunaga. Meda, who had followed the RAV4 and the police unit, drove up to the

RAV4 and identified Yasunaga. He then explained the situation to Yasunaga's mother and told her that they were going to do a probation search of the house.

The police units and the RAV4 drove back to the house. Just as Meda was about to knock on the front door, Yasunaga's father walked out onto the driveway. Meda approached him and explained to him that the police officers were going to search his home. Meda asked Yasunaga's father if Yasunaga had a room there and his father indicated that Yasunaga occupied the room in the back. His father pointed out which room was Yasunaga's, then went into the backyard. Yasunaga's mother stayed in front of the house and talked to a detective. Yasunaga, who had been placed under arrest, was sitting in the back seat of a patrol car. After they were certain that no one was in the house, several officers entered.

Meda first went to Yasunaga's room. There, he and other officers found a box with 24 rounds⁷ of 12-gauge ammunition and a box with 25 rounds of .357-magnum ammunition. The boxes were on a bookshelf on the south wall of the room. As soon as one opened a small door to the shelves, the boxes of ammunition were exposed. The name, brand and type were readily apparent. It appeared that Yasunaga had complete control over his room and was free to keep whatever he wished there.

In the kitchen, which is open to the rest of the house, Meda found eight pistols and four or five boxes of ammunition in a cabinet. The guns and ammunition were on a top shelf and had been covered "by something else" as if they were "meant to be hidden."

Under the bed in Yasunaga's parents' room, officers found two "long guns," a rifle and a shotgun. Yasunaga's father had told Meda that the room was his and his wife's bedroom and that the guns were there. Yasunaga's father had also told Meda that Yasunaga did not have access to that room and that it was usually kept locked.

After presenting his evidence, counsel for Yasunaga argued that "[t]he initial discovery that Mr. Yasunaga was, in fact, on probation was made through methods that involved an illegal seizure of his personal information, as well as the personal

⁷ The box had been made to hold 25 rounds.

information of several other people who [had] committed no crime and who [were] mandated to provide their name, address, driver's license number [and] fingerprint to a store for collection by the government. [¶] And that seizure is distinguishable from bank records that the Supreme Court has said are legally kept. The form is not a business record. The form is provided by the LAPD for a store to collect information to return to the LAPD. It's mandatory that [the] information be turned over. [¶] That is not the case with any . . . of the other governmental schemes such as bank records The ammunition forms . . . also violate the privilege of self-incrimination. There's no notice of what's being done with these forms." "To . . . take that information and use it in an incriminating manner is . . . a violation of due process." Counsel argued that, under these circumstances, the trial court should suppress all of the information that the police had "learned as a result of the records that were taken from the Big 5" store.

The trial court denied the motion, indicating that the procedure provided "a reasonable statutory scheme" which promoted the governmental interest of making certain that firearms and ammunition did not "get into [the] hands of people who [might] misuse them." The trial court did not believe it was a violation of due process or the second amendment for cities and states to require "any vendor or institution that is selling ammunition or firearms to collect . . . identification information of the" individuals to whom they are selling such items.

After the trial court denied the motion to suppress evidence, Yasunaga decided he wished to change his plea. The trial court had earlier "indicated" that "if the defendant were to plead open, . . . then the court would suspend [the] high term of three years in the case and grant the defendant three years formal probation with a year in jail, psychiatric counseling, . . . and all other standard terms of probation. [In addition, the court would] revoke and reinstate probation on [Yasunaga's] other matters, so he would still be on probation [with regard to those] cases, as well."

At proceedings held on June 20, 2012, the prosecutor addressed Yasunaga and asked him if he had discussed the resolution of his case with his counsel. Yasunaga indicated that he had and that he was "satisfied" with the result. The prosecutor then

indicated that, if Yasunaga “were [to be] convicted of both charges, [his] maximum penalty would be three years and eight months in custody. . . . [I]nstead of doing that, the court [was] going to put [him] on probation and hang three years over [his] head in terms of custody commitment, so . . . if [he] violate[d] [his] probation, [he] would go to jail for three years [In addition, Yasunaga had] the [previous] probation case that ha[d] three years custody suspended over [him], so the [court was] going to revoke but reinstate [his] probation on that case, and that three years would still exist”

Yasunaga agreed to the trial court’s terms, then waived his right to a court or jury trial, his right to present a defense, his right to testify on his own behalf, his right to subpoena witnesses on his behalf, his right to confront and cross-examine witnesses and his right against self-incrimination. After Yasunaga indicated that he understood these rights and that no one had threatened him or otherwise caused him to give them up, the prosecutor explained that he would be placed on probation for three years with certain conditions and requirements. Among the conditions would be that he get psychological counseling, that he “submit [his] person and property to search and seizure at any time of the day or night, by any probation officer or other peace officer, with or without a warrant, probable cause or reasonable suspicion,” and that he not “possess a firearm [or] ammunition, which [he] could not do in the first place because of [his] first conviction [and which] still applie[d] in light of [his] current convictions.” In addition, if he were at that time on probation or parole for any other matter of which the court was unaware, this admission would amount to a violation of that parole or probation and he “could spend more time in custody.”

After receiving all of his advisements, Yasunaga pled “no contest” to the crime of possession of ammunition, a felony as alleged in count 1 of the information. With regard to count 2, Yasunaga again pled no contest to possession of ammunition. Yasunaga then admitted that, as a result of his prior convictions, the matter was a “presumptive custody case.”

The trial court found that Yasunaga's pleas and admissions had been "knowingly, voluntarily and intelligently made," that there was "a factual basis for the pleas," and that it was going to accept the pleas and "find the defendant guilty."⁸

The trial court sentenced Yasunaga "to county jail for the term of three years as to count one. Count two, [was to] be three years concurrent." Execution of sentence was then suspended and Yasunaga was placed on formal probation for a period of three years. One of the terms of his probation was that he serve 365 days in jail, minus credit for the 167 days he had actually served and 167 days of good time/work time, or 344 days. Some of the other conditions included that he obey all laws and orders of the court, report to and cooperate with the probation officer, submit to search and seizure by the probation officer or any other law enforcement officer, not possess any firearms or other concealable weapons, pay a \$200 restitution fine (§ 1202.4, subd. (b)), a \$200 suspended probation revocation restitution fine (§ 1202.44), a \$40 court security fee (§ 1465.8, subd. (a)(1)) and a \$30 criminal conviction assessment (Gov. Code, § 70373).⁹

On June 20, 2012, Yasunaga filed a timely notice of appeal. He indicated that the appeal was based upon the denial of his motion to suppress evidence pursuant to section 1538.5.

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.

⁸ The trial court indicated that, although they were charged as felonies, the crimes of possession of ammunition were actually "wobblers."

⁹ With regard to his previous matter, Yasunaga admitted he was in violation of probation based on "the conviction . . . just handled." After revoking the probation previously granted, the court reinstated it "under the same terms and conditions" as those in the present case.

By notice filed August 22, 2012, the clerk of this court advised Yasunaga to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. On September 19, 2012, Yasunaga filed a supplemental brief. However, none of his assertions addressed the denial of his motion to suppress evidence.

Yasunaga's primary argument is that he did not violate the terms of his probation. Although he admits that, on his probation instructions for his case decided in 2012, it is indicated on the form setting out the terms that he is " 'not to own/use/possess any dangerous/deadly weapons,' " he claims these instructions do not appear on the form he received for his 2007 offense and he does not know, because he cannot find them, if they appear in the instructions for his 2008 crime.

Yasunaga, however, had admitted violating the terms of his probation and, at the time he did so, did not assert that they did not include the fairly standard term that he not own, use or possess deadly or dangerous weapons. To make that argument now, Yasunaga would be required to file with the court a written statement and obtain a certificate of probable cause.

"Section 1237.5 provides in relevant part that '[n]o appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere . . . except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.' " (*People v. Buttram* (2003) 30 Cal.4th 773, 780; see *People v. Hayton* (1979) 95 Cal.App.3d 413, 415, fn. 1.) Nowhere in the record is there a written statement by Yasunaga indicating that there are constitutional, jurisdictional or other grounds which made the plea unlawful and nowhere in the record is there an application for a certificate of probable cause.

It has been held that only “two types of issues may be raised on appeal following a guilty or nolo plea without the need for a certificate: issues relating to the validity of a search and seizure, for which an appeal is provided under section 1538.5, subdivision (m), and issues regarding proceedings held subsequent to the plea for the purpose of determining the degree of the crime and the penalty to be imposed. [Citations.]” (*People v. Buttram, supra*, 30 Cal.4th at p. 780.) Neither situation exists here.

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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CROSKEY, Acting P. J.

We concur:

KITCHING, J.

ALDRICH, J.