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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.

MARCUS RAYMOND NELSON,

Defendant and Appellant.

B240267

(Los Angeles County  
Super. Ct. No. VA119289)

APPEAL from judgments of the Superior Court of the Los Angeles County,  
Lori Ann Fournier, Judge. Affirmed.

Jennifer Hansen, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

Marcus Raymond Nelson appeals from the judgments entered following his pleas of no contest to first degree residential burglary, a felony (Pen. Code, § 459)<sup>1</sup> and the misdemeanor of battery on a person (§ 243, subd. (e)(1)). The trial court sentenced Nelson to four years in prison. We affirm.

## **FACTUAL AND PROCEDURAL HISTORY**

### *1. Facts.*<sup>2</sup>

At approximately 5:50 a.m. on April 5, 2011, Rebecca Madrigal left her home at 5042 Bell Avenue in the City of Bell. When she returned at approximately 11:20 a.m., “[d]rawers were open[,] [d]ocuments were thrown everywhere[,] [t]hings were out of place” and “[o]ther things [had been] thrown on top of [her] parents’[s] bed.” She also noted that a “silver ACER laptop” and a total of three IPODS were missing. One IPOD was a charcoal gray NANO, another was a silver IPOD classic with an engraving on the back which stated “ ‘Happy Father’s Day 2008’ ” and the third was a black IPOD classic. In addition, a “lot of jewelry” was missing. Some of Madrigal’s cousin’s jewelry was gone as was her mother’s watch.

Madrigal did not know Nelson and had not given him permission to enter her home or to take any of the property there.

Los Angeles County Deputy Sheriff Sergio Cosio was assigned to the patrol unit at the Lakewood Sheriff’s Station. At approximately 3:30 p.m. on April 5, 2011, the deputy was near Leahy Avenue in the City of Bellflower. There, Cosio attempted to perform a traffic stop on a black Chevy Impala. There were a number of people in the car, which was being driven by Nelson. Nelson was not wearing a seat belt. When Cosio directed him to stop, Nelson “accelerated into a driveway” and all the occupants got out and began to run from the car. One hopped a wall, another ran east and hid behind a car. Nelson began to walk westbound down the driveway. Cosio walked toward Nelson, intending to detain him. However, Nelson “pulled away from [the deputy] and . . . ran.”

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> The facts have been taken from the transcript of the preliminary hearing.

Cosio searched the Impala and found “[m]iscellaneous jewelry” in the center console and the glove compartment. In the back of the vehicle, there were several backpacks which contained computers and IPODS. One of the IPODS had an engraving on it which read, “ ‘Happy Father’s Day.’ ”

Los Angeles County Sheriff’s Department Detective Ron Vande Vegte also worked at the department’s Lakewood station. He was on duty and near Leahy Avenue at approximately 3:30 p.m. on April 5, 2011 when he saw Nelson. He took Nelson into custody and placed him in the back seat of the patrol car. He and his partner, Detective Ramos, then spoke to Nelson after Vande Vegte advised him of his *Miranda*<sup>3</sup> rights. When Vande Vegte asked Nelson if he understood his rights, Nelson answered, “ ‘Yes.’ ” When Vande Vegte then asked Nelson, “ ‘Having these rights in mind, do you wish to talk to us now?’ ” Nelson responded, “ ‘Yes.’ ” Finally, when Vande Vegte asked Nelson, “ ‘Do you want a lawyer or not?’ ” Nelson stated, “ ‘No.’ ”

Vande Vegte asked Nelson about “the jewelry, IPODS, and laptop computers that were found in the car he [had been] driving.” Nelson first told the detective that he had gone to the Santa Fe Springs swap meet where he bought the items. He intended to resell them to try to make some money. However, after Vande Vegte told Nelson that he had spoken to two other suspects who had been with Nelson and had told the detective about the burglaries, Nelson changed his story. He admitted that he had been involved in the burglaries. He said, “ ‘Okay, I did it. It was all me.’ ”

Nelson stated that he and two other suspects went to two houses in South Gate. He broke windows, then entered the homes and took the laptops and the jewelry. After that, Nelson became “uncooperative” and “didn’t really want to talk to [Vande Vegte] too much [any] more . . . .”

The interview with Nelson was not taped or recorded. Approximately 45 minutes after the detectives returned to the station, Vande Vegte wrote a report regarding his conversation with Nelson.

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<sup>3</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

Later that day, Madrigal met Detective Vande Vegte at the police station. He showed Madrigal some items which had been recovered from Nelson's car. She was able to identify some of them as belonging to her father, her cousin and her mother.

## *2. Procedural History.*

Following the preliminary hearing, an amended information was filed on October 12, 2011 in which Nelson was charged with one count of first degree residential burglary in violation of section 459, a felony. It was further alleged that the offense was a serious felony within the meaning of section 1192.7, subdivision (c) and that the granting of probation was precluded absent unusual circumstances (§ 462, subd. (a)). It was also alleged that the offense was a "serious felony, violent felony or an offense requiring registration pursuant to . . . section 290[, subdivision (c)], and that prison custody time for the . . . offense [was] to be served in state prison pursuant to . . . section 1170[, subdivision] (h)(3)."

At proceedings held on November 8, 2011, the trial court noted that Nelson had a second case, a misdemeanor, case No. 1BF02963. The misdemeanor, a violation of section 243, subdivision (e)(1), consisted of battery on a person by the name of Dannette Trahan. The trial court further indicated that Nelson was "going to change his earlier not guilty plea and enter a new plea of no contest to . . . count[] 1 in the case ending [in] 289; and . . . count number 1 in the case ending [in] 963[.]" The court indicated that the agreed-upon disposition was two years in state prison for the felony and 30 days concurrent for the misdemeanor.

The trial court addressed Nelson and indicated that, in order for the court to accept his plea of guilty or no contest, there were certain constitutional rights he would be required to waive. The court continued: "With regard[] to these cases, you have a right to have a jury trial, or a . . . court trial. If you were to have a trial, you would have a right to confront and cross-examine the witnesses called against you, you would have a right to subpoena witnesses to court to testify on your behalf at no cost to you, and you [would] have a right again[st] self-incrimination." Nelson stated that he had discussed each of

these rights with his counsel, that he understood them and that he was willing to waive them in order to enter the pleas.

Nelson indicated that no one had made any promises to him or threatened him and that he understood that he would be serving two years in state prison; that if he was on probation or parole, these pleas would amount to violations of that probation or parole; that if he were not a citizen of the United States, these pleas could result in his deportation; and that with regard to the felony, it was known as a “strike” offense which could be used to enhance or increase the punishment for any future felony conviction.

Finally, the trial court indicated to Nelson, who was not in custody at that time, that the maximum confinement time on the felony was six years in state prison. The court stated: “You are not going to get 6 years, . . . [b]ut I need to let you know that’s the max. You agreed to two years. You’re going to get two years, as long as two things happen[]: you show up on time on the next court date” and “you [don’t] get into trouble between now and then. You get arrested for something else, whatever else, . . . it becomes an open plea to me, and I’m not going to give you two years. I’m probably going to give you 6 years.”

With regard to restitution, the prosecutor indicated that, although the property was returned, he would check to see if there had been any damage to the home. After Nelson then pled no contest to first degree residential burglary and battery on a person, sentencing in the matter was set for November 30, 2011. The prosecutor indicated that he had no objection to Nelson remaining out on bail until that time.

At proceedings held on January 26, 2012, defense counsel indicated that Nelson wished to personally address the court.<sup>4</sup> The trial court agreed to hear Nelson, who stated: “I just want[ed] to apologize to the People and to you, ma’am. Um, I’m going through a lot, you know. I laid my trials and tribulations out to the court. I’m just—I’m in a tight spot right now, ma’am. And, you know, I’m a hundred percent wrong for

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<sup>4</sup> Nelson had agreed to be sentenced by a different judge than had taken his plea. The plea was taken by Judge Roger Ito. Nelson was sentenced by Judge Lori Ann Fournier.

missing my surrender date, but at that time I was going through so much, ma'am. And I'm still going through so much with my family. And the most I can say is, I'm just at the court's mercy, ma'am."

The trial court responded: "Well, Judge Ito was very clear, and he explained to you that if you failed to appear, he was probably going to give you six years. So the only thing that you've saved yourself from by my being here as opposed to Judge Ito is I'm not going to give you six, I'm going to give you four, because you had to come in. If you did have all these problems, which I know there were some issues, and there are some things mentioned in the plea and sentencing report, or the plea transcript, but you didn't—you just failed to show up at all. Everyone is a lot more understanding if you walk in the front door as opposed to coming in the side door in custody. [¶] So I accept your apology, and luckily it's not going to cost you the maximum."

The trial court then sentenced Nelson to four years in state prison for his violation of section 459, first degree residential burglary. As to the misdemeanor, the trial court imposed a concurrent term of one year, to be served in any penal institution. The court ordered Nelson to pay \$240 to the victim restitution fund (§ 1202.4, subd. (b)), a stayed \$200 parole revocation restitution fine (§ 1202.45), a \$40 court operations assessment (§ 1465.8, subd. (a)(1)), a \$30 criminal conviction assessment (Gov. Code, § 70373) and a \$10 crime prevention fee (§ 1202.5). In addition, Nelson was ordered to make restitution, which was to be paid before any other fine or fee.

Nelson was awarded presentence custody credit for 24 days actually served and 24 days of good time/work time, or a total of 48 days. In addition, because he had "security concerns," the trial court ordered that he be placed in "some sort of protective custody."

On March 20, 2012, Nelson filed a notice of appeal. His request for a certificate of probable cause was denied.

## **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 July 19, 2012, the clerk of this court advised Nelson 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 judgments are affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.