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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCISCO VALDEZ,

Defendant and Appellant.

B279354

(Los Angeles County  
Super. Ct. No. BA448505 )

APPEAL from a judgment of the Superior Court of Los Angeles County, Bernie C. LaForteza, Judge. Affirmed.

Bird & Bird and Karen Hunter Bird, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Francisco Valdez appeals from the judgment entered following his conviction by jury on one count of possession of a firearm by a felon. (Pen. Code, § 29800, subd. (a)(1).)<sup>1</sup> We have conducted an independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and conclude that no arguable issues exist. Accordingly, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On July 17, 2016, at 11:53 a.m., Los Angeles County Sheriff's Deputy Daniel Marquez was driving down the street when he saw appellant. Deputy Marquez recognized appellant because they had had five to ten contacts in the prior four to five months. Appellant was standing on the sidewalk between a pickup truck and a car that were parked next to the curb. Deputy Marquez saw only appellant's head and upper body because the rest of his body was obscured by the parked vehicles. There was a pair of gloves on the hood of the truck.

Appellant made eye contact with Deputy Marquez and then turned away and started walking quickly toward the back of the pickup truck. Deputy Marquez thought it was odd for appellant to turn and walk away because, in prior contacts, appellant talked to him and was cooperative. Deputy Marquez saw appellant reach into the bed of the truck.

When Deputy Marquez drove closer, he saw an open beer container on the ground. He stepped out of his vehicle and asked

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<sup>1</sup> Unspecified statutory references are to the Penal Code.

appellant what he was doing. Appellant replied that he was not doing anything but enjoying a cold beer.

Deputy Marquez told appellant he was being detained for an investigation into drinking in public. He placed appellant in the rear of his patrol car and closed the door. Deputy Marquez checked the beer can to see if it was cold and looked into the bed of the truck to see what appellant had been reaching for. He saw a cloth bag and when he moved it, the bag opened. He found a gun inside the bag. He picked up the bag, placed it on the hood of his own car, and took a picture of it. He placed the bag in the trunk of his patrol car, checked to see if the gun had bullets in it, and removed the bullets. Deputy Marquez also found a spray paint can inside the bag. Deputy Marquez never saw appellant holding the gun or the bag. The Sheriff's Department latent print expert did not find any fingerprints on the gun.

After placing the gun in his trunk and closing the trunk, Deputy Marquez sat in the driver's seat of his vehicle and began inputting information into his computer to create an "observation," in preparation for the report he would write later. Appellant was sitting in the car behind him while he was inputting information. Appellant acted nervous and repeatedly asked Deputy Marquez what was happening and why he was going to jail. After initially ignoring him, Deputy Marquez said, "You know why." Appellant replied, "You're not going to find any prints on the gun."

Deputy Marquez never connected the pickup truck with appellant in any way. It was not registered to appellant, and appellant did not have the keys to the truck. After running the truck's license plates,

Deputy Marquez determined that the truck was registered to someone else who lived in the neighborhood.

Appellant was charged by information with one count of being a felon in possession of a firearm. (§ 29800, subd. (a)(1).) The information further alleged that appellant had suffered two prior felony convictions within the meaning of section 1203, subdivision (e)(4) and had served two prior prison terms (§ 667.5, subd. (b)). It was further alleged that one of his prior convictions was a serious or violent felony (§§ 667, subd. (d), 1170.12, subd. (b)) and a serious felony requiring sentence pursuant to section 1170, subdivision (h)(3).

The trial court granted appellant's motion to bifurcate the priors. The court also granted appellant's motions to exclude any references to his gang affiliation, the high-crime nature of the area where he was arrested, shootings in the area, and graffiti in the area of the same color as the spray paint can in his possession at the time of his arrest. The court granted the People's motion to allow testimony of appellant's prior contact with the police officer. After holding a hearing under Evidence Code section 402, the court denied appellant's request to exclude his statement made in the patrol car under *Miranda v. Arizona* (1966) 384 U.S. 436.

Appellant waived his right to a jury trial on the prior convictions.

The jury found appellant guilty. The trial court found the allegations of the prior convictions to be true. The court denied appellant's motion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, but exercised its decision under section 1385 to strike the two state prison priors (§ 667.5, subd. (b)). The court sentenced

appellant to the high term of three years doubled to six years.  
Appellant timely appealed.

### **DISCUSSION**

After review of the record, appellant's court-appointed counsel filed an opening brief asking this court to review the record independently pursuant to the holding of *Wende, supra*, 25 Cal.3d 436.

On July 31, 2017, we advised appellant that he had 30 days within which to submit any contentions or issues that he wished us to consider. No response has been received to date.

We have independently reviewed the record and conclude that there are no arguable issues on appeal. (See *Wende, supra*, 25 Cal.3d at pp. 441–442; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-279 [upholding the *Wende* procedure].)

### **DISPOSITION**

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.