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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTONIO AVILA,

Defendant and Appellant.

B287159

(Los Angeles County
Super. Ct. No. VA144969)

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

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

No appearance for Plaintiff and Respondent.

* * * * *

Defendant and appellant Antonio Avila appeals from a conviction pursuant to a plea agreement of a violation of Health and Safety Code section 11370.1, subdivision (a). We affirm that conviction.

On July 14, 2017, defendant was charged by information with carrying a loaded firearm with a prior conviction (Pen. Code, § 25850, subd. (a); count 1), carrying a concealed firearm in a vehicle (Pen. Code, § 25400, subd. (a)(1); count 2), possessing a controlled substance (Health & Saf. Code, § 11350; count 3), driving with a suspended license after prior DUI offense (Veh. Code, § 14601.2, subds. (a), (d); count 4), driving with a suspended license within five years of prior offense (Veh. Code, § 14601.5, subds. (a), (d); count 5), and possession of a controlled substance with a firearm (Health & Saf. Code, § 11370.1, subd. (a); count 6). Defendant pled not guilty to all counts.

The charges arose from an incident on June 8, 2017, in which defendant was observed by a patrol officer failing to stop at a stop sign while talking on a cell phone and not wearing a seat belt.

Prior to trial, defendant requested a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. Defendant's request to substitute counsel was denied.

The case proceeded to trial. On the first day of pretrial proceedings, defendant moved to suppress evidence pursuant to Penal Code section 1538.5.

At the hearing on defendant's motion, the court heard testimony from Officer Mario Bojorquez, a 12-year veteran of the Huntington Park Police Department, who pulled defendant over for a traffic stop on the morning of June 8, 2017. Officer Bojorquez testified that he saw defendant fail to stop at a stop

sign while talking on a cell phone. He also observed defendant was not wearing a seat belt. Officer Bojorquez pulled defendant over and asked to see his driver's license. Defendant said he did not have one.

Officer Bojorquez said it was policy under such circumstances to then ask the driver to step out of the car because the car would have to be impounded. Upon doing so, Officer Bojorquez asked defendant, for purposes of officer safety, if he had anything illegal on him. Defendant said he had a rifle in the trunk of his car. Officer Bojorquez sought and obtained consent from defendant to perform a patdown search and to open the trunk of the car. Officer Bojorquez handcuffed defendant and called for backup.

Officer Bojorquez testified that he then asked defendant if there was anything else besides the rifle in the car. Defendant said there was a loaded handgun in the car. After the backup officers arrived, defendant also admitted he had some cocaine in the center console. Defendant consented to a search of the car for those items. The car was searched and those items were located and taken into evidence. Defendant's car was impounded.

Defendant also testified at the motion hearing. He said he stopped at the stop sign and waited because there were children crossing the street. Defendant said he immediately pulled over after the officer put on his lights. Defendant said he told Officer Bojorquez that he did not have a driver's license and then clarified that it was a suspended license. He was handcuffed when he got out of his car. Defendant testified that he did not immediately consent to the officer searching his car, but did consent after the officer said he would get permission to do so. He said he felt obligated to comply with a police officer's requests.

Defendant also denied talking on his cell phone and said he had been wearing his seat belt at the time.

Defendant was arrested and taken to the police station where he was interviewed. After being advised of his rights, defendant answered Officer Bojorquez's questions. When asked if he knew why he had been pulled over, defendant said because he had been talking on his phone and not wearing a seat belt.

After hearing argument from counsel, the court denied the motion to suppress. Later the same day, the parties entered into a plea agreement.

Defendant agreed to withdraw his plea of not guilty and enter a plea of no contest to count 6 in exchange for a three-year prison sentence. Defendant signed a Felony Advisement of Rights, Waiver, and Plea Form, which was reviewed and signed by the court. The court accepted defendant's waivers on the record, finding the plea to have been freely, voluntarily and intelligently made.

Pursuant to the terms of the plea, the court found defendant guilty on count 6 and dismissed the remaining counts. The court sentenced defendant to the midterm of three years in state prison, awarded 346 days of custody credits and imposed various fees.

The record does not contain a certificate of probable cause. Defendant filed a notice of appeal challenging only the denial of his motion to suppress (Pen. Code, § 1538.5, subd. (m)).

We appointed appellate counsel to represent defendant. Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. The brief included a declaration from counsel that he reviewed the record and sent a letter to defendant explaining his evaluation of the

record. Counsel further declared he advised defendant of his right, under *Wende*, to submit a supplemental brief within 30 days.

On July 24, 2018, we sent a letter to defendant advising him of his right to file a supplemental brief. No supplemental brief was filed.

We have examined the entire record of the proceedings and are satisfied that appointed counsel fully complied with his responsibilities in assessing whether any colorable appellate issues exist. We conclude there are no arguable appellate issues. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436.)

DISPOSITION

The judgment of conviction is affirmed.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

DUNNING, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.