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

THE PEOPLE,

Plaintiff and Respondent,

v.

TYLER DILLION KIRCHER,

Defendant and Appellant.

B264644

(Los Angeles County
Super. Ct. No. MA064031)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Kathleen Blanchard, Judge. Affirmed.

Juliana Drous, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2014 three men attacked and robbed at gunpoint several victims who were in or near their cars in Lancaster. The men stole cell phones, cash, and other personal belongings, and attempted to take one victim's car. They fired a shot at another victim, shattering the car window.

The People charged Tyler Dillion Kircher and codefendants G'Vonn Anthony Broom and Albert Lee Smith with conspiracy to commit murder (Pen. Code, §§ 182, subd. (a)(1), 187, subd. (a)),¹ attempted second degree robbery (§§ 211, 664), attempted first degree murder (§§ 187, 664), shooting at an occupied motor vehicle (§ 246), attempted carjacking (§§ 215, subd. (a), 664), and three counts of second degree robbery (§ 211). As to all counts, the People alleged that a principal personally used a firearm (§ 12022.53, subds. (b), (e)(1)) and that the defendants committed the offense for the benefit of, at the direction of, or in association with a criminal street gang with the specific intent to promote, further, or assist in criminal conduct by gang members within the meaning of section 186.22, subdivision (b)(1)(C).

Prior to trial, the trial court dismissed the conspiracy count on the People's motion (§ 1385). Outside the jury's presence, counsel for Kircher made an oral motion to suppress some incriminating statements Kircher made to a Los Angeles County Deputy Sheriff after his arrest because they were obtained in violation of *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694] (*Miranda*). Counsel argued that the *Miranda* advisements were improper and incomplete because, after Kircher stated he understood his rights, the deputy immediately began questioning Kircher without asking if he was willing to waive those rights. The trial court denied the motion.

Following the close of evidence on March 27, 2015, Kircher told his attorney that he wanted to enter a plea. Pursuant to a negotiated disposition, Kircher agreed to plead

¹ Statutory references are to the Penal Code.

no contest to attempted murder as charged in count 3 and to an added charge of assault with a firearm (§ 245, subd. (a)(2)), and to admit the firearm-use and gang enhancement allegations. In exchange, Kircher agreed to a 30-year state prison term and dismissal of the remaining counts.

At the time he entered his plea, the court advised Kircher of his constitutional rights and the nature and consequences of the plea, which he stated he understood. Kircher's counsel joined in the waivers of Kircher's constitutional rights. The trial court found Kircher's waivers and plea were voluntary, knowing, and intelligent.

At the sentencing hearing, Kircher asked to withdraw his plea, asserting that his attorney had not fully advised him of the consequences of his plea. The court considered the request a motion pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. After a hearing, the trial court denied the motion to withdraw the plea and imposed the agreed-upon sentence of 30 years, consisting of the nine-year upper term for attempted murder, plus 10 years for the firearm-use enhancement and 10 years for the gang enhancement, and a consecutive term of one year (one-third the middle term of three years) for aggravated assault. The court dismissed the remaining counts as part of the negotiated agreement.

Kircher filed a timely notice of appeal, in which he checked the preprinted box indicating his appeal "is based on the denial of a motion to suppress evidence under Penal Code, section 1538.5." Kircher did not obtain a certificate of probable cause.

DISCUSSION

We appointed counsel to represent Kircher on appeal. After an examination of the record, counsel filed an opening brief raising no issues. On November 12, 2015, we advised Kircher he had 30 days to submit any contentions or issues he wanted us to consider. On November 23, 2015 we received a two-page hand-written supplemental brief from Kircher arguing that the trial court erred in denying the motion to suppress his incriminating statements to law enforcement and that his attorney improperly failed to

make the motion before trial. Kircher further contends that he was on medication, confused, and under duress at the time he entered his plea of no contest.

Under section 1237.5, a criminal defendant may not appeal from a judgment of conviction after a plea of guilty or no contest unless he or she has obtained a certificate of probable cause. (§ 1237.5; see *People v. Buttram* (2003) 30 Cal.4th 773, 780.) There are two exceptions. “First, a defendant may appeal from a ruling involving a search and seizure issue without obtaining a certificate, because an appeal from such a ruling explicitly is authorized by section 1538.5 ‘notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty.’ [Citations.] Second, a defendant is ‘not required to comply with the provisions of section 1237.5 where . . . he is not attempting to challenge the validity of his plea of guilty but is asserting only that errors occurred in the subsequent adversary hearings conducted by the trial court for the purpose of determining the degree of the crime and the penalty to be imposed.’” (*People v. Johnson* (2009) 47 Cal.4th 668, 677; see *People v. Brown* (2010) 181 Cal.App.4th 356, 360.)

Kircher challenges the trial court’s denial of a motion to suppress, but it was not a denial of a motion to suppress evidence that involved the search and seizure of evidence allegedly obtained in violation of the Fourth Amendment, but a motion to suppress statements allegedly obtained in violation of the Fifth Amendment under *Miranda*. An appeal from the former is an exception to the requirement of a certificate of probable cause, but an appeal from the latter is not. (*People v. DeVaughn* (1977) 18 Cal.3d 889, 896-897, fn. 6; *People v. Brown* (1981) 119 Cal.App.3d 116, 124-125; see *People v. Whitfield* (1996) 46 Cal.App.4th 947, 959 [“denial of appellant’s motion to exclude her statements on the grounds that they were obtained in violation of *Miranda* is not cognizable on this appeal” under section 1237.5].) In any event, Kircher’s claim has no merit. “A suspect’s expressed willingness to answer questions after acknowledging an understanding of his or her *Miranda* rights has itself been held sufficient to constitute an implied waiver of such rights.” (*People v. Saucedo-Contreras* (2012) 55 Cal.4th 203, 218-219.) The record shows that after the deputy gave Kircher the *Miranda* advisements Kircher stated he understood his rights and then answered the deputy’s questions

willingly and responsively. There is no evidence that Kircher was coerced into making his statements or somehow failed to understand his rights. (See *id.* at p. 219; *People v. Cunningham* (2015) 61 Cal.4th 609, 642 [“a valid waiver of *Miranda* rights may . . . be inferred from the defendant’s words and actions”].)

Finally, Kircher’s failure to obtain a certificate of probable cause precludes him from appealing his conviction on the grounds that his plea was invalid because he was medicated, confused, or under duress. (See *People v. Hoffard* (1995) 10 Cal.4th 1170, 1173.) By arguing that his plea was not voluntary, knowing, and intelligent, Kircher is seeking to challenge the validity of his plea, which he cannot do without a certificate of probable cause. (See § 1237.5; *People v. Johnson, supra*, 47 Cal.4th at p. 678; *People v. Panizzon* (1996) 13 Cal.4th 68, 73.)

With respect to other potential sentencing or post-plea issues that do not in substance challenge the validity of the plea, we have examined the record and are satisfied that Kircher’s attorney has fully complied with her responsibilities and there are no arguable issues. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

BLUMENFELD, J.*

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