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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. ANDRE PIERRE MORILLO, Defendant and Appellant.	B237203 (Los Angeles County Super. Ct. No. LA067369)

APPEAL from a judgment of the Superior Court of Los Angeles County, Susan Speer, Judge.

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

No appearance for Respondent.

PROCEDURAL BACKGROUND

On April 18, 2011, an information was filed, charging appellant Andre Pierre Morillo in count one with possession of marijuana for sale (Health & Saf. Code, § 11359), and in count two with the sale or transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)). Accompanying the charges were allegations that appellant had suffered three prior felony convictions (Pen. Code, §§ 667.5, subd. (b), 1203, subd. (e)(4).) Appellant pleaded not guilty and denied the special allegations.

On June 23, 2011, the trial court denied appellant's motion under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, which sought discovery regarding the personnel records of the police officers who arrested him. On September 23, 2011, the trial court denied appellant's motion to suppress evidence (Pen. Code, § 1538.5). Following this ruling, on November 2, 2011, appellant entered into a plea agreement under which he was to be given a term of 16 months in state prison. In accordance with the agreement, appellant pleaded nolo contendere to the charge of possession of marijuana for sale (count one). The trial court sentenced appellant to a total term of 16 months on this charge, and dismissed the remaining charge and allegations.

DISCUSSION

After an examination of the record, appellant's court-appointed counsel filed an opening brief raising no issues and requested this court to review the record independently pursuant to *People v. Wende* (1979) 25 Cal.3d 436. In addition, counsel advised appellant of his right to submit by supplemental brief any contentions or argument he wished the court to consider. Appellant has presented no such brief.

At the outset, we observe that appellant's plea of nolo contendere does not

limit the scope of our examination. Ordinarily, such a plea restricts the scope of an appeal in the absence of a certificate of probable cause. (*People v. Brown* (2010) 181 Cal.App.4th 356, 360.) However, as appellant obtained a certificate of probable cause, these restrictions are inapplicable here. (*People v. Hoffard* (1995) 10 Cal.4th 1170, 1176-1184.)

Although we received no brief from appellant, his certificate of probable cause relied on the contention that his motion to suppress evidence was improperly denied. As explained below, there are no arguable issues regarding the ruling.

Under Penal Code section 1538.5, subdivision (a), a defendant may move to suppress evidence gathered in violation of the state or federal Constitution. The California Constitution bars the exclusion of evidence obtained as a result of an unreasonable search or seizure unless this remedy is required by the Fourth Amendment of the United States Constitution. (Cal. Const., art. I, § 28, subd. (d); *People v. Camacho* (2000) 23 Cal.4th 824, 830.) "When reviewing a ruling on an unsuccessful motion to exclude evidence, we defer to the trial court's factual findings, upholding them if they are supported by substantial evidence, but we then independently review the court's determination that the search did not violate the Fourth Amendment. [Citation.]" (*People v. Memro* (1995) 11 Cal.4th 786, 846, overruled on another ground in *People v. Gaines* (2009) 46 Cal.4th 172, 181, fn. 2.)

The only witnesses who testified at the hearing on the motion to suppress were Los Angeles Police Department Officers Cesar Alvarez and Eloy Navarro. According to the officers, on March 10, 2011, they were driving in a patrol car when they saw a vehicle travelling at a high rate of speed. The vehicle contained two people, including appellant as a passenger. Without activating the lights or siren on the patrol car, the officers followed the vehicle, which stopped near a convenience store. As the officers parked behind the vehicle, appellant and the

vehicle's driver left it and began walking to the convenience store.

When the officers noticed that the vehicle's license tags had expired, they detained the driver to verify the vehicle's registration. Appellant, who was not detained, waited nearby while the officers discussed the vehicle's registration with the driver. After the driver disclosed that he had an outstanding warrant, he was handcuffed.

During these events, Officer Navarro made small talk with appellant, who volunteered that he was on parole. Navarro then conducted a full body search of appellant, during which appellant volunteered that he was permitted to use medical marijuana and that there was marijuana in the vehicle. In searching appellant, Navarro found eight $20 dollar bills, two $1 dollar bills, a cell phone, and a physician's business card displaying a recommendation that appellant be permitted to use medical marijuana. After the driver consented to a search of the vehicle, Navarro retrieved a glass jar from the passenger seat floor board. The jar contained four bindles of marijuana wrapped in plastic.

The officers arrested appellant and transported him to a nearby police station, where they determined that the jar contained more than one ounce of marijuana. As a result, appellant was approved to be booked for possession of marijuana (Health & Saf. Code, § 11357, subd. (c)). At the station, appellant's cell phone frequently rang, but the officers ignored the ringing because there was no cell phone reception within the station. After appellant was informed of his *Miranda* rights, he agreed to speak to Officer Navarro, and said that he sometimes sold marijuana to friends, but made no profit from the sales.[1]

As appellant had been taken to a station lacking jail facilities, the officers transported him to a second station. During the drive to the second station,

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

appellant's personal property, including his cell phone, was in a plastic bag within the police car. Because the cell phone continued to ring, Officer Navarro removed the phone from the bag and opened it to turn it off. When he did so, he heard a voice say, "'Hey, where's my weed?'" After Navarro asked, "'[W]hat do you need?,'" the person answered that he wanted "'40'" and that he was "'at home.'" Navarro then turned off the phone. At the second station, appellant was booked for possession of marijuana for sale (Health & Saf. Code, § 11359, subd. (c)).

Following the presentation of testimony at the hearing, the trial court denied the motion to suppress. The court found that the officers had properly detained the driver regarding the expired license tags; that they had not detained appellant prior to his voluntary disclosure that he was a parolee; that appellant was properly subjected to a body search, in view of his status as a parolee; that the search of the vehicle was authorized by the driver's consent and appellant's voluntary statements regarding the presence of marijuana; that the seizure of the marijuana, money, and cell phone were lawful; and that appellant had waived his *Miranda* rights prior to admitting that he sold marijuana. In addition, the court determined that the physician's business card recommending that appellant be permitted to use marijuana did not immunize him from arrest.

We see no arguable error in these determinations. As the officers' testimony was undisputed, the court's factual findings are not subject to challenge, including the findings regarding the waiver of appellant's *Miranda* rights. Nor is there any potential issue regarding the court's legal determinations under the Fourth Amendment. The officers were entitled to search appellant upon his voluntary admission that he was a parolee. (*People v. Middleton* (2005) 131 Cal.App.4th 732, 739; *In re Jeremy G.* (1998) 65 Cal.App.4th 553, 555-556.) Moreover, they were entitled to search the driver's vehicle, in view of the driver's consent and appellant's voluntary admissions regarding the presence of marijuana. (*People v.*

Jenkins (2000) 22 Cal.4th 900, 969-980.) Following appellant's arrest, Officer Navarro could properly examine appellant's cell phone, even though there was a short interval between the arrest and Navarro's examination. (*People v. Diaz* (2011) 51 Cal.4th 84, 90-93.) The conversation that occurred when Navarro opened the phone was thus within his "plain view," for purposes of the Fourth Amendment. (*U.S. v. Yockey* (N.D.Iowa 2009) 654 F.Supp.2d 945, 957-958 [officer's discovery of illegal pornographic images in cell phone fell with "plain view" exception to Fourth Amendment's search warrant requirement, as they appeared when officer tried to turn off phone he had properly seized].) Finally, appellant's possession of the physician's business card and recommendation did not immunize him from arrest for possession of marijuana. (*People v. Mower* (2002) 28 Cal.4th 457, 468-469; *People v. Fisher* (2002) 96 Cal.App.4th 1147, 1150-1152.)

Our review of the remainder of the record also discloses no potential error. We therefore conclude that appellant's counsel has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende*, *supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.