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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.

CHRISTOPHER KHALIL,

Defendant and Appellant.

B270697

(Los Angeles County  
Super. Ct. No. LA080957)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Thomas Robinson, Judge. Affirmed.

Lenore De Vita, under appointment by the Court of Appeal,  
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Christopher Khalil was charged in an amended information with two counts of resisting an executive officer in violation of Penal Code section 69. The information specially alleged Khalil had suffered one prior serious or violent felony conviction within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(j), 1170.12) and had served three separate prison terms for felonies (Pen. Code, § 667.5, subd. (b)). Khalil pleaded not guilty and denied the special allegations.

After Khalil's counsel declared doubt as to his mental competence, criminal proceedings were suspended, and Khalil was ordered examined by a court-appointed mental health expert. At a hearing the trial court reviewed the psychiatric evaluation prepared by the court-appointed expert and found Khalil competent to stand trial and reinstated criminal proceedings. The court heard and denied Khalil's motion to replace his appointed counsel (*People v. Marsden* (1970) 2 Cal.3d 118). The court granted Khalil's motion to represent himself (*Faretta v. California* (1975) 422 U.S. 806 [95 S.Ct. 2525, 45 L.Ed.2d 562]).

The court heard Khalil's motion to suppress evidence (Pen. Code, § 1538.5) in conjunction with the preliminary hearing at which he represented himself. According to the evidence presented at the hearing, Los Angeles County Sheriff's Department Deputy Waleska Bracks was patrolling the North Hollywood Station of the Metro Red Line at approximately 7:15 a.m. when she was alerted by a departing passenger there was a man shooting heroin in one of the train cars. Bracks entered the train car, which was crowded with rush hour commuters, and saw Khalil sitting on the left side of the train.

Khalil's shoes were off, his leg was propped up, and he was holding a syringe. Next to him was a backpack.

After requesting assistance from her partner, Deputy Robert Thomas, Deputy Bracks told Khalil he could not inject himself with illegal drugs or narcotics on the train and ordered him to put away the syringe. Khalil denied he was doing so. He yelled and cursed at the deputy before turning his back on her. Bracks stepped away from Khalil because she could not see what he was doing.

Deputy Thomas entered the train car. He saw the syringe in Khalil's hand, and that Khalil was swinging his arms widely, yelling at Deputy Bracks and using profanity. Thomas believed Khalil to be a threat to himself, Bracks and other commuters. After twice ordering Khalil to put away the syringe, Thomas displayed his Taser and told Khalil he would be tased if he did not comply. Khalil put the syringe in his backpack. The deputies instructed Khalil to gather his belongings and to leave the train. Khalil refused to comply; he insisted he was not using heroin, but had a medical condition. Deputy Bracks twice asked if Khalil needed medical attention. Khalil refused her offers of assistance and accused the deputies of harassing him.

Khalil grabbed his backpack and left the train car, followed by the deputies. They ordered Khalil to leave the Metro Station, intending to conduct a narcotics investigation once Khalil had reached street level. Khalil and the deputies stepped onto the escalator leading to the street. At one point, Khalil advanced on Deputy Bracks, but he stopped when Deputy Thomas pointed his Taser in Khalil's direction.

When Khalil reached the street, he stepped off the escalator, and grabbed what appeared to be a small canister of pepper spray. Deputy Bracks produced her baton and called for

additional assistance. Khalil took a fighting stance and lunged toward the deputies as they were moving up the escalator. When the deputies reached the street, Khalil walked toward the Metro Orange Line bus stop. The two deputies followed him, repeatedly telling him to stop. Deputy Bracks paused, but Deputy Thomas continued following Khalil on foot. When Khalil took a fighting stance, Thomas deployed his Taser. Khalil fled, and the deputies gave chase. Khalil threw his backpack over a wall and continued to flee. Ultimately Thomas tackled Khalil.

Additional deputies responded and found Khalil's backpack; a search of the backpack yielded a cell phone, a canister, a syringe and a glass pipe.

Khalil did not testify or introduce other evidence in support of the suppression motion.

The court denied Khalil's suppression motion, and his oral motion to dismiss; the court held Khalil to answer.

Khalil renewed his motion to suppress evidence in the trial court. The court denied Khalil's request to introduce additional evidence and his renewed suppression motion.

Thereafter, Khalil entered into a negotiated plea of no contest to one count of resisting an executive officer. The trial court sentenced Khalil to a state prison term of 16 months, imposed statutory fines, fees and assessments and awarded Khalil 477 days of presentence custody credit.<sup>1</sup> On the People's motion, the court struck the remaining count and special allegations.

At the time he entered his plea, Khalil was advised of his constitutional rights and the nature and consequences of the

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<sup>1</sup> The trial court subsequently amended the custody credits and ordered Khalil released.

plea, which Khalil stated he understood. The trial court found a factual basis for the plea and expressly found Khalil's waivers and plea were voluntary, knowing and intelligent.

Khalil filed a timely notice of appeal in which he challenged the denial of his motion to suppress evidence.

### **DISCUSSION**

We appointed counsel to represent Khalil on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On December 14, 2016, we advised Khalil he had 30 days within which to personally submit any contentions or issues he wished us to consider. We have received no response.

We have examined the record and are satisfied Khalil's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*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.) The suppression motion was properly denied.

### **DISPOSITION**

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.