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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES G. BAXTER,

Defendant and Appellant.

A131731

(Sonoma County
Super. Ct. No. SCR586041)

I. INTRODUCTION

On July 27, 2010, appellant was charged in a seven-count complaint with multiple charges and special allegations in connection with a robbery and assault that had allegedly occurred on October 1, 2009, in the Dry Creek area of Sonoma County. In February 2011, appellant entered a negotiated plea of no contest to one of those counts, i.e., a charge of robbery under Penal Code section 211,¹ and admitted a charged enhancement. The trial court thereafter sentenced him to a midterm of six (6) years in prison on the robbery count and an additional year for the enhancement. Appellant has appealed this judgment and, pursuant to *People v. Wende* (1979) 25 Cal.3d 436, has filed a brief asking that we examine the record and determine if there are any issues deserving of further briefing. We have done so, find none, and hence affirm the judgment.

¹ All subsequent statutory references are to the Penal Code unless otherwise noted.

II. FACTUAL AND PROCEDURAL BACKGROUND²

At around 4:15 p.m. on the afternoon of October 1, 2009, Sonoma County deputy sheriffs were dispatched to the home of Michael Steffen on West Dry Creek Road in response to a report of an assault on Steffen by several men. The men took both cash and a large quantity of marijuana from Steffen's home.

Steffen told the officers that, at about 4 p.m. that day, a white-colored Toyota had driven by his home several times, prompting him to ask the occupants if they were lost. He then heard a "poor quality police siren," and two men from the Toyota ran toward him, pointing handguns, and yelling "I'm the police, get your hands up."

Steffen was forced to the ground by one of the men who was wearing a baseball cap with the letters "DEA" on it. Steffen's hands were tied behind his back and two of the men lifted him to his feet and took him from his front porch into the front room of his house, where he was placed face-down on the floor. The two men demanded to know where his marijuana plants and money were located, and threatened him if he did not tell them. While this was going on, Steffen heard a third man in his house, and also heard the house being "ransacked." He then told the three men that his marijuana was located in a shed next to the door, and that there was cash in his wallet—which there was, about \$300. When the men could not locate the shed, one of them kicked him and struck him in the back of his head with, apparently, the butt of a gun. Steffen then gave them more explicit directions to the shed containing his marijuana plants.

About 20 minutes later, the three men told Steffen they were leaving, but that he was not to get up after they had left; this statement was accompanied by the sound of a gunshot next to his head.

After the men had left, Steffen was able to free himself. He then saw that his house had been ransacked, that two handguns were missing, and that one of the telephone lines had been ripped from the wall. He went to a neighbor's house, called 911, and later

² Because appellant entered his plea before there was a preliminary hearing, our summary of the factual background in this case is (as is the summary in appellant's brief to us) based on the probation department's report to the court.

reported to the police that the three men had stolen about 50 pounds of marijuana, valued at about \$50,000.

A short time later, i.e., at about 4:25 p.m., sheriff's deputies stopped a white Toyota that matched the description Steffen had provided them; three men were inside and were taken into custody. All of them "smelled of fresh marijuana and marijuana debris was found on their clothing." The three men arrested were co-defendants Paul Huyck, James Cooper, and Brian Montgomery. They were all questioned by the sheriff's deputies, but two of them refused to answer questions and requested to consult with attorneys. The third denied any involvement in the crime, but refused to answer other questions.

A search of the white Toyota disclosed two dark-colored ski masks, a cap with the letters "DEA on it, two pairs of gloves which had material suspected to be marijuana particles on them, and a badge that read "Enforcement Officer 187" on it. The interior of the car smelled of fresh marijuana.

In a subsequent interview, Steffen told the deputies that, based on the fact that the three arrested men were from the Sonoma Valley area, he suspected a man named Ryan Baxter may also have been involved in the robbery.

A few days later, a person who had read about the robbery in a local newspaper contacted the sheriff's department and related that, on the day in question, she had seen both a white Toyota Corolla and a U-Haul truck near her residence, and four men there apparently associated with the vehicles. Those four men then drove both vehicles away from the location near her residence.

The sheriff's deputies discovered that a U-Haul truck had been reserved by one Linda Baxter on September 29, 2009, and was subsequently picked up by her husband, appellant, and then returned to the U-Haul garage on October 2, 2009.

On October 6, 2009, a search warrant was issued for the residence of appellant; both he and his wife were there at the time the warrant was executed, and both accompanied the deputies to the Sheriff's Department where they were interrogated.

During that interrogation, appellant admitted his involvement in the plan to steal the marijuana from Steffen.

More specifically, appellant admitted that he had devised the plan to steal the marijuana from Steffen, his son's former landlord, and recruited the other three men to assist him. While those three conducted the robbery and assault on Steffen, appellant "waited in the U-Haul at the bottom of a hill." He admitted to the sheriff's deputies that he had rented the U-Haul "for the purpose of stealing the marijuana." But he stated to the deputies that, because he thought "something went wrong," he did not personally participate in the robbery or assault on Steffen, and in fact had left in the U-Haul before the other men returned from Steffen's house. But he subsequently "changed his statement and stated that the plan," apparently executed, was to load the stolen marijuana in another truck and then "transfer the plants over to the U-Haul." He also admitted that the other defendants had put "a couple of ski masks and gloves into a bag and placed it in the back of the truck," but denied cleaning out the "truck with chemicals, possessing a gun during the offense or having knowledge of any guns used during the robbery."

Appellant was placed under arrest for violating sections 211 and 182, and booked into Sonoma County jail. He thereafter "refused to answer any further questions regarding the whereabouts of the guns or marijuana," neither of which were, apparently, ever recovered.

On July 27, 2010, a complaint was filed in Sonoma County Superior Court charging appellant and three other defendants with seven felony counts, i.e., of violating (1) section 182, subdivision (a)(1), conspiracy to commit several felonies, (2) section 207, subdivision (a), kidnapping by use of force, (3) section 211, robbery, (4) section 245, subdivision (a)(2), assault with a firearm, (5) section 487, subdivision (d)(2), theft of a firearm, (6) section 591, unlawfully taking down a telephone line, and (7) section 487, subdivision (a), grand theft. The complaint also alleged that the defendants were armed with a firearm within the meaning of section 12022, subdivision (a)(1).

On December 22, 2009, i.e., prior to the filing of that complaint, appellant filed a motion to suppress his statements to the sheriff's deputies on the basis that they were

obtained in violation of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). That motion was opposed by the District Attorney's office.

On November 3, 2010, the trial court held a hearing on this motion, and ruled that certain portions of appellant's statements to the deputies would be suppressed, and others would not.

On February 15, 2011, an information was filed alleging the same offenses against all four defendants, including appellant.

On the same day, appellant, represented by counsel, entered a negotiated plea of no contest to the third count, i.e., the count charging robbery, a violation of section 211, and admitted the enhancement charged under section 12022, subdivision (a)(1). His counsel conceded, and the court found, a factual basis for that plea.

On March 22, 2011, appellant was sentenced consistently with the plea agreement, i.e., to the midterm of six years for the section 211 conviction and a consecutive one-year term for the admitted enhancement.

On April 11, 2011, a timely notice of appeal was filed based on the partial denial of appellant's motion to suppress pursuant to section 1538.5. No request for a certificate of probable cause was made, and no such certificate was issued.

III. DISCUSSION

As appellant conceded in his motion of December 23, 2011, to this court asking us to strike his original opening brief (a motion we granted on January 5, 2012), his claim in that first brief that the trial court erred in denying all of his motion to suppress based on alleged violation of his *Miranda* rights cannot be considered by us because of appellant's subsequent guilty plea. This is a correct statement of the law. (See, e.g., *In re Troy Z.* (1992) 3 Cal.4th 1170, 1180-1181; *People v. DeVaughn* (1977) 18 Cal.3d 889, 895-896, and fn. 6; *People v. Shults* (1984) 151 Cal.App.3d 714, 718-720.)

We have reviewed the record of the hearing before the court when the several defendants, including appellant, entered their various pleas. As noted above, appellant was represented by counsel at that hearing. When the proceedings turned to him (the final of the four defendants), he was properly questioned by the court as to his

understanding of (1) the charge against him under section 211, (2) the alleged enhancement, and (3) the negotiated plea and its consequences in terms of the likely sentence he would receive. Both he and his counsel responded to the various questions posed to them by the trial court, and consented to the various waivers made. Appellant also specifically stated that he was pleading no contest to the section 211 count, and admitting the charged enhancement.

Appellant also properly executed all of the necessary forms regarding his plea and admission, as did his counsel.

The trial court appropriately handled the proceedings in which appellant pled no contest to the section 211 charge and admitted the enhancement, and appellant was ably represented by his counsel in the course of that hearing.

We have carefully examined the record and find no issues deserving of further briefing.

IV. CONCLUSION

The judgment is affirmed.

Haerle, J.

We concur:

Kline, P.J.

Lambden, J.