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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JACOB JOHN SERB, Defendant and Appellant.	A132744 (Solano County Super. Ct. No. FCR284806)

Defendant Jacob John Serb pled no contest to one count of possessing methamphetamine. The trial court suspended imposition of sentence and placed defendant on probation for a period of three years. Defendant's attorney has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requesting our independent review of the record. Defendant was informed of his right to file a supplemental brief, but has not done so. We find no arguable issue and shall affirm.

BACKGROUND

The following facts are taken from testimony at the preliminary hearing and at the hearing on the motion to suppress. Sergeant Edward Forsythe testified that on May 12, 2011, around 2:30 p.m., he received a call about a disturbance near Anderson Elementary School in Dixon. When Forsythe arrived at the school he spoke with the reporting party, Robert Fitzer. Fitzer informed the officer that defendant, his stepson, had approached Fitzer's car "and started pounding on it and yelling at him something that he couldn't understand, and then he wandered off towards the school . . . ." Fitzer told Forsythe that

he knew that sometimes defendant “is not real coherent, and he was afraid that he was about to be attacked.”

Forsythe found defendant near the gate to the school. When he asked defendant what he was doing, defendant “responded in a language that I didn’t quite understand. . . . It wasn’t that I couldn’t hear him. The words just . . . didn’t make sense.” Defendant “was shuffling back and forth with his hands in his pockets as well. I could see there were children on the other side of the fence waiting to be let out through the gate. It was towards the end of the school day, and I asked him to move away from the gate. I was concerned that he was attempting to get onto the campus.” Defendant “quoted a scripture . . . and then continued in the language that I didn’t understand — if it was a language. And then I asked him to step away from the gate and off the property, over to the sidewalk several times, and he didn’t follow my directions; he ignored me, but kept looking at me.” Forsythe “was concerned that [defendant] was going to try and get onto the school campus. I didn’t know what his intentions were. He was not seeming to be coherent to me. He was not conversing with me, but directing toward me; and then he looked back toward the campus every now and then. There were students lining up at the gate to leave, and I asked a person that was affiliated with the school . . . to move the children back, because I was afraid that he might try and jump the fence or try and get on the campus in some manner . . . .”

Defendant was on school property. Forsythe was concerned because other parents were arriving to pick up their children, and “he seemed to be unwilling to follow[] my directions or incapable of following my directions.” Forsythe placed defendant in a wrist lock and “directed him onto the sidewalk where I handcuffed him.” He then informed defendant that he was under arrest for causing a disturbance on school grounds. Forsythe spoke with defendant’s parents, who informed him that they did not know why defendant was at the school and that he would not have been there to pick up his brother.

Forsythe turned defendant over to Officer Nate Giovanetti after the arrest. Giovanetti testified that he took custody of defendant, who was placed under arrest for causing a disturbance on school grounds, and conducted a search incident to arrest before

placing defendant in the back of the police vehicle. He searched defendant's pockets but did not find any contraband. After defendant was in the vehicle, Giovanetti read defendant his *Miranda* [1]rights and transported him to the county jail. On arrival at the jail, Giovanetti asked defendant if he had "any . . . contraband that would cause an additional charge prior to entry into the sallyport area, which is a locked and secured area." Defendant replied that he did not. Giovanetti took defendant inside where a more thorough search was conducted by the booking officer. The booking officer also asked defendant if he was in possession of any contraband. Defendant told him that "he had 'crystal meth' in the left pocked of his athletic shorts." When the officer searched that pocket, he found a small plastic baggie containing approximately two grams of methamphetamine.

Defendant was charged by felony complaint with one count of possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), one count of bringing drugs into a jail (Pen. Code, § 4573), and one count of misdemeanor campus disruption (Pen. Code, § 626.6, subd. (a)). Defendant pled not guilty to all counts. Subsequently defendant was charged by information with the same felony counts. The misdemeanor charge was changed to violating section 626.7, subdivision (a), failure to obey direction to leave a school campus. Defendant again pled not guilty to all counts. Defendant filed a motion pursuant to section 1538.5 to suppress the methamphetamine that was seized at his arrest, and the court denied the motion. On the same day, the district attorney orally amended count 3 of the information to charge defendant with violating section 626.8, subdivision (a), disruptive entry upon school grounds.

Defendant subsequently entered a plea of no contest to the first count, possession of methamphetamine. The remaining two counts were dismissed. The court suspended imposition of sentence and placed defendant on formal probation for a period of three years. He was given credit for 97 total days of custody. Defendant was additionally ordered to pay $470 in fees, consisting of $200 to the restitution fund (§ 1202.4), $200 as

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

a probation revocation fee, stayed pending successful completion of probation (§ 1202.44), $30 as a criminal conviction assessment (Gov. Code, § 70373) and $40 as a security surcharge (§ 1465.8.) Defendant timely noticed an appeal and did not obtain a certificate of probable cause.

DISCUSSION

Section 1237.5 prohibits a defendant from appealing from a conviction following a plea of no contest unless the defendant first obtains a certificate of probable cause from the trial court. Appeals challenging denial of a motion to suppress are an exception to this rule. Section 1538.5, subdivision (m) "permits a defendant, after pleading guilty, to preserve for appeal the issue whether a motion to suppress evidence, based on a claimed unlawful search and seizure, was improperly denied. And [California Rules of Court], Rule 31(d) specifies that [Penal Code section] 1237.5 does not apply to such an appeal." (6 Witkin & Epstein, Criminal Law (3d ed. 2000) Appeal, § 16(4), p. 254.) Defendant's notice of appeal specifies the denial of his motion to suppress as the basis for this appeal.

Section 626.8, subdivision (a), with which defendant was ultimately charged provides that "[a]ny person who comes into any school building or upon any school ground, restraining order street, sidewalk, or public way adjacent thereto, without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of the activities of the school or disrupt the school or its pupils or school activities, is guilty of a misdemeanor if he or she does any of the following: (1) Remains there after being asked to leave by . . . a city police officer."

On the motion to suppress, defendant argued that Sergeant Forsythe lacked probable cause to arrest him for campus disruption. In denying the motion, the court referred first to the report that defendant had hit Fitzer's car and shouted at him: "the officer is told of an irrational act that . . . involved some violence, and then the individual . . . steps onto school property, and acts irrationally, and there are students about at the time because apparently they're gathering to leave. I am not saying at this point that an offense has occurred, but I do feel that . . . the officer had probable cause to detain, and that is the scope of the [motion to suppress]."

"An arrest is valid if supported by probable cause. Probable cause to arrest exists if facts known to the arresting officer would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that an individual is guilty of a crime." (*People v. Kraft* (2000) 23 Cal.4th 978, 1037.) Defendant was present on school grounds as the children were about to leave. Forsythe had a report from defendant's stepfather that defendant had been yelling incoherently and pounding on Fitzer's car, and that he feared being attacked by defendant. When Forsythe arrived, defendant continued to speak incoherently and refused the officer's instructions to leave school property, leading Forsythe to fear that the children might be in danger. Based on these facts, there was probable cause to arrest defendant. Therefore the search incident to arrest was lawful and the resulting contraband was properly admitted into evidence. (See, e.g., *United States v. Robinson* (1973) 414 U.S. 218, 235 ["A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification."].)

Defendant was competently represented by counsel at all times. There are no issues warranting further consideration.

DISPOSITION

The judgment is affirmed.

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Pollak, J.

We concur:

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McGuiness, P. J.

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Siggins, J.