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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES LOMAS,

Defendant and Appellant.

A133132

**(San Francisco City & County
Super. Ct. No. 210447)**

In February 2010, defendant James Lomas was placed on probation after pleading guilty to one count of possession of hydrocodone for sale (Health & Saf. Code, § 11351).¹ In May 2011, the trial court found defendant violated the terms of his probation by committing an assault with a barber's razor; in August, the court sentenced him to the middle term of three years on the possession offense. Defendant's counsel has raised no issue on appeal and asks this court for an independent review of the record to determine whether there are any arguable issues. (*Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436.) We have considered a supplemental brief filed by defendant. We find no arguable issues and affirm.

¹ All undesignated section references are to the Health and Safety Code.

BACKGROUND

In August 2009, the San Francisco District Attorney filed a felony complaint charging defendant with sale of hydrocodone (§ 11352, subd. (a)), possession of Dronabinol² for sale (§ 11378), and possession of hydrocodone for sale (§ 11351). The charges arose out of a sale to an undercover officer during a narcotics operation. Defendant pled guilty to the possession of hydrocodone for sale charge, and the other charges were dismissed. In February 2010, the trial court suspended imposition of sentence and placed defendant on three years of probation.

On December 7, 2010, the district attorney moved to revoke probation based on a December 4 incident during which defendant, among other things, allegedly assaulted the victim, Scott Langston, with a razor. At a contested hearing, Langston testified that, on the evening of December 4, he was standing outside of a bar and saw two women attacking a friend of his, Ashley Candelmo, who had recently left the bar and was waiting for a bus across the street. Langston ran across the street and separated the two women from Candelmo; the women left. Defendant, who was standing nearby, said that Candelmo had “disrespected them,” and, as she stood up, Candelmo yelled “you fucking crack whores.” At that point, defendant “came” at Langston “swinging.” Langston punched defendant and then realized defendant had cut him on the neck. Langston punched defendant again and defendant dropped a blade, which turned out to be a barber’s razor. Defendant came at Langston again, Langston punched him, and defendant fell to the ground.

Candelmo also testified at the hearing, and she corroborated Langston’s testimony that defendant attacked first. Two other eyewitnesses testified that they saw Langston kick the defendant while defendant was on the ground, which Langston denied. Those two eyewitnesses also testified they did not see who attacked first.³

² The complaint referenced “Ronabinol,” but this court is aware of no narcotic with that name; we assume the district attorney intended to refer to Dronabinol.

³ There was additional testimony about subsequent events, but that testimony is not important to our analysis.

The trial court found that Langston and Candelmo were credible and that defendant had violated the terms of his probation. On August 19, 2011, the court sentenced defendant to the middle term of three years on the possession of hydrocodone for sale charge.

DISCUSSION

We have reviewed the entire record and have found no arguable appellate issues. Defendant was adequately represented by legal counsel throughout the proceedings.

Defendant freely and voluntarily pled guilty to the narcotics charge in 2009.

Substantial evidence supports the trial court's finding by the preponderance of the evidence (*People v. Quarterman* (2012) 202 Cal.App.4th 1280, 1292) that defendant assaulted Langston. Langston and Candelmo's testimony, which the court found credible, supported the court's finding that defendant was not acting in legal self-defense in striking Langston with a razor. No witness testified that Langston struck first. Although Langston and Candelmo omitted certain details in previous accounts to the police and investigators, their testimony was not significantly impeached.

In light of defendant's criminal history, the trial court did not abuse its discretion (*People v. Jones* (2009) 178 Cal.App.4th 853, 860-861) in imposing the midterm sentence of three years on the narcotics charge.

Appellate counsel advised defendant of his right to file a supplemental brief to bring to the court's attention any issue he believed deserved review. (*People v. Kelly* (2006) 40 Cal.4th 106.) Defendant filed a supplemental brief. He argues that revocation of his probation should be reversed because the San Francisco District Attorney's Office recently disclosed that a witness for the prosecution at the revocation hearing, Patrol Special Officer Ernest Tachihara, falsely represented himself to be a peace officer in an October 2010 form signed under penalty of perjury. The form was associated with Tachihara's purchase of a firearm from a gun shop in Alameda County. We reject defendant's contention that the disclosure justifies reversal because, as described above, the testimony of Langston and Candelmo provides substantial evidence for the trial

court's finding without any reference to Tachihara's testimony.⁴ Even assuming disclosure of the October 2010 form would have led the trial court to discredit Tachihara's testimony in its entirety, there is "no reasonable probability the outcome of this case would have been different had it been disclosed to the defense." (*People v. Marshall* (1996) 13 Cal.4th 799, 842; see also *People v. Superior Court (Meraz)* (2008) 163 Cal.App.4th 28, 52.)⁵

There are no legal issues that require further briefing.

DISPOSITION

The judgment is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.

⁴ Tachihara, who is not a regular police officer, was the first law enforcement official to the scene, and he was the person who took defendant into custody. The most probative aspect of Tachihara's testimony was his description of the appearance of defendant and Langston after the assault.

⁵ Defendant makes other arguments in passing in his supplemental brief. None have merit or require further briefing.