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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. JOHN PAUL PHILLIPS, Defendant and Appellant.	A133485 (Solano County Super. Ct. No. VCR209298)

Defendant John Paul Phillips appeals from a final judgment after a bench trial. He was found guilty by the court of a misdemeanor violation of former Penal Code section 12020, subdivision (a)(4) (carrying a dirk or dagger). The appeal is authorized under Penal Code section 1237, subdivision (a). Appellate counsel has reviewed the file in this case and has determined there are no meritorious issues to raise on appeal. He has complied with the relevant case authorities. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of his right to file a supplemental brief, but has not done so. Upon independent review of the record, we conclude that no arguable issues are presented for review, and affirm the judgment.

On January 11, 2011, the Solano County District Attorney filed a one-count information charging defendant with a felony violation of former Penal Code section 12020, subdivision (a)(4) (carrying a dirk or dagger). On March 14, 2011, defendant filed a motion to suppress pursuant to Penal Code section 1538.5, contending the police lacked probable cause to arrest and search him. After a hearing, the court denied the

motion. On August 22, 2011, defendant waived his right to a jury trial. The trial court conducted a one-day bench trial on a reduced count of violation of Penal Code 12020 subdivision (a)(4). At the completion of the trial, the court found defendant guilty of this misdemeanor count. Defendant waived his right to a presentence report, and the court pronounced judgment at that time. The court suspended the imposition of sentence and placed defendant on three years of informal probation. He was ordered to serve one day in the county jail with one day of credit. The court also ordered defendant to perform 20 hours of community service, complete no less than 20 A.A. meetings, participate in a weapons class, submit to warrantless search, possess no weapons while on probation, and submit to drug testing and counseling. The court also imposed a restitution fine of $100, pursuant to former Penal Code section 1202.4, subdivision (b).

STATEMENT OF FACTS

On the night of October 28, 2010, Officer Mark Thompson of the Benecia Police Department, engaged in a traffic stop of a blue Ford Mustang due to the absence of a rear light illuminating the license plate. (Veh. Code, § 24601.) The defendant was driving the car and gave the officer his driver's license. After running a check, Officer Thompson returned to defendant and asked: "Do you have anything on your person or in your car that I need to be concerned about?" and "Do you mind if I look?" Defendant replied he did not mind. Thompson did not intend to issue a citation at this time.

Exiting the Mustang, defendant advised Thompson he had a knife underneath his T-shirt dangling on a chain. The officer then placed defendant in cuffs for safety reasons and obtained the knife. It was totally concealed by defendant's T-shirt. No other illegal items were found in the car.

In denying the motion to suppress, the court found this was a legal stop by the police and a brief detention. Consent given by defendant was voluntary and clear. The court determined "The conduct of the officer was reasonable under the circumstances."

At the court trial, Officer Thompson was the lone witness who testified. His testimony was consistent with his remarks at the Penal Code section 1538.5 hearing. At the trial, he indicated the knife was in a sheath and was probably seven inches in length.

The blade itself was four inches. The knife had a "single-sided blade." The weapon was received in evidence.

The trial court determined defendant was guilty beyond a reasonable doubt of the charge of possession of the dirk. In summary of his remarks, the court determined: "Not only is it capable of being concealed, it literally was concealed. So I'm going to find the defendant guilty because I'm convinced beyond a reasonable doubt that he carried this concealed on his person. It is a fixed blade, stabbing instrument, a dirk or dagger within the definition of the Penal Code as well as CALCRIM. So I'm going to find him guilty."

DISCUSSION

The motion to suppress was properly denied. A traffic stop to enforce the Vehicle Code of the state is a proper basis for detention. (*Whren v. United States* (1996) 517 U.S. 806, 809–810.) Asking the driver of the car if he has anything presenting danger to the officer is reasonable under the circumstances of a traffic stop by a lone officer at night. (*People v. Brown* (1998) 62 Cal.App.4th 493, 499.) The affirmation he had a knife concealed on his person was an answer that permitted retrieval of the weapon by Thompson. (*Terry v. Ohio* (1968) 392 U.S. 1, 27; *People v. Avila* (1997) 58 Cal.App.4th 1069, 1074.) Additionally, regarding the events presented at the suppression hearing, no contradictory evidence was presented to the court.

At trial, the sole witness, Officer Thompson, gave testimony consistent with his narration at the suppression hearing. Based on the evidence, the trial court correctly found that the government had satisfied its burden of proof for the misdemeanor charge of possession of a dirk. The summary by the court reflects this determination. (Pen. Code, § 12020, subd. (c)(24); *In re Victor B.* (1994) 24 Cal.App.4th 521, 525–526; CALCRIM No. 2501.)

We affirm the judgment.

Dondero, J.

We concur:

Marchiano, P. J.

Margulies, J.