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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.

ARISTOTLE BUSEFULUS HARRIS,

Defendant and Appellant.

A133853

(San Mateo County
Super. Ct. No. SC073369A)

Following a jury trial, defendant was convicted of possession of a controlled substance, cocaine. In a subsequent court trial, the court found all special allegations, the prison priors and the prior strike to be true. Defendant filed a timely appeal from the judgment of conviction. As required under *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note counsel for defendant has filed a *Wende* brief (*People v. Wende* (1979) 25 Cal.3d 436) raising no arguable issue, counsel apprised defendant of his right to file a supplemental brief, and defendant did not file such a brief. Upon review of the record for potential error, we conclude no arguable issues are presented for review and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

This matter arises out of an incident in which defendant was found in possession of cocaine. On January 21, 2011, at approximately 10:15 p.m., three South San Francisco police officers served a warrant at the Comfort Inn & Suites, room 360, located at 121 East Grand Avenue in South San Francisco. Before serving the warrant, the officers verified Ebonee Crawford was registered as a guest in that room. After knocking on the

door several times over the course of several seconds, and identifying themselves as police, Crawford eventually opened the door and all three officers entered.

As Crawford was being handcuffed, one of the officers, Nichol Alday, heard noises coming from the bathroom causing him to draw his gun. He “ordered the person to come out of the bathroom with their hands up.” Defendant emerged from the bathroom clothed only in black shorts and white socks and was immediately handcuffed. Although defendant identified himself verbally, Officer Christy Wesselius followed up by asking defendant if he had in his possession any “formal identification.” Defendant indicated his identification was in his pants and “then nodded his head and chin toward the corner of the room, that small table where I located the pants.” On the table was miscellaneous clothing including two pairs of jeans.

Wesselius searched one pair of jeans; the pockets were empty. During the search of the second pair of jeans, however, the officer located in the rear right pocket a “bunch of papers, folded papers, and scraps of papers” and a California Department of Corrections identification card. In the middle of the card was a picture of defendant, but the bottom portion of the card where a person’s name or birth date should have been located appeared to have been scratched off. Further examination of the papers revealed ones with defendant’s “name or identification, either first or last name, handwritten on them . . . [and] one piece of paper in particular that was an officially issued document from an agency . . . that had a photograph” of defendant.

Following her discovery of the identification card and papers, Wesselius continued to search the pants and located in the front right coin pocket “a ‘bindle’ . . . containing a white powdery round substance” of suspected cocaine.¹

Wesselius did not collect either pair of jeans as evidence. A latent print processing technician examined a piece of paper and a piece of plastic recovered from

¹ It was stipulated the white powdery substance contained a useable quantity of cocaine.

defendant's pants for latent impressions and was unable to develop any latent impressions on either of the items.

An information filed against defendant on May 2, 2011 charged him with one count of felony possession of a controlled substance, cocaine, in violation of Health and Safety Code section 11350, subdivision (a). The information alleged defendant had a prior strike (Pen. Code, § 1170.12, subd. (c)(1)), three state prison priors (Pen. Code, § 667.5 subd. (b)), and was ineligible for probation (Pen. Code, § 1203, subd. (e)(4)). It was further alleged that prior to the commission of the current offense, defendant was convicted of four controlled substance and narcotic drug offenses. (Health & Saf. Code, § 11370, subd. (a).)

Defendant entered a plea of not guilty.

No pretrial motions were filed.

The first trial commenced on June 14, 2011, at which time the court heard and granted most of the in limine motions filed by defendant and the prosecution, including defendant's motion to bifurcate the trial on the issue of defendant's prior convictions. That afternoon, however, the court was required to declare a mistrial because while the prospective jurors were waiting in the hallway outside of the courtroom, defendant was brought into the courtroom in shackles, escorted by two deputy sheriffs. After questioning several of the prospective jurors on the record, the court had no choice but to declare a mistrial and dismiss the entire panel.

The following day a second trial commenced and a jury was selected. On June 16, an alternate juror was seated in place of Juror No. 5, who was excused because the previous evening she had seen defendant leaving the courthouse "in chains."

Opening statements were given by both counsel followed by the prosecution calling three witnesses over a two-day period. The defense rested without calling any witnesses.

Court and counsel reviewed the proposed jury instructions. An issue arose over a defense request to give CALCRIM No. 306, untimely disclosure of evidence, apparently because defense counsel believed she was not timely provided with the district attorney's

interview notes of Officers Alday and Wesselius. The trial court denied the request. Both counsel delivered their closing arguments and the court proceeded to instruct the jury. The jury retired and returned 40 minutes later with a verdict finding defendant guilty of possession of cocaine.

A bench trial was held on June 20, 2011 on the prior convictions and special allegations. The court admitted into evidence the Penal Code section 969 package containing certified copies of defendant's records from the California Department of Corrections and certified court records from Sonoma County and San Francisco City and County Superior Courts. The court found the special allegations, the prison priors, and the prior strike to be true. The matter was set for sentencing on August 26, 2011.

The sentencing hearing was eventually held on June 26, 2011. The court granted defendant's *Romero*² motion and struck his prior strike conviction. Pursuant to Penal Code section 1385, the court exercised its discretion to strike the special allegations under Health and Safety Code section 11370, subdivision (a) and in addition struck the allegations under Penal Code section 1203, subdivision (e)(4), which would otherwise prohibit probation.

The court suspended imposition of sentence, placed defendant on four years of probation with a condition he serve one year in the county jail, "modifiable to a residential drug treatment program" in Delancey Street for a period of two years.

As further conditions of probation, the court ordered defendant to pay various fines, abstain from the use and possession of controlled substances and alcohol, submit to chemical testing for alcohol and controlled substances, and submit to search and seizure at any time. Defendant was given credit for time served of 249 actual days.

DISCUSSION

Defendant was ably represented by counsel during the jury and nonjury phases and at sentencing.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

Although it appears from the record defense counsel did not receive the prosecutor's interview notes of Officers Alday and Wesselius until shortly before they testified, the failure to give CALCRIM No. 306 was at worst harmless error. We have found nothing in the record indicating defendant was prejudiced by the alleged failure to timely disclose the notes or by the omission of this instruction.

Defendant's conviction as well as the trial court's subsequent findings regarding the special allegations and prior convictions were amply supported by the evidence. The jury was correctly instructed. We find no meritorious sentencing issues requiring reversal of the judgment. There are no issues requiring further briefing. The judgment is affirmed.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.