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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.

CHRISTOPHER LEE NELSON,

Defendant and Appellant.

A136007

**(Sonoma County
Super. Ct. No. SCR609767)**

Christopher Lee Nelson appeals from a judgment placing him on felony probation following his plea to a single count of unlawful possession of a firearm by a convicted felon. (Penal Code, former § 12021, subdivision (a)(1).)¹ His court-appointed counsel has filed a brief raising no issues, but seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*). We find no arguable issues and affirm.

I. BACKGROUND

Appellant was charged by felony complaint with two felony counts of unlawful possession of firearm by a convicted felon (Pen. Code, former 12021, subd. (a)(1)), possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), possession of hydrocodone (Health & Saf. Code, § 11350, subd. (a)), unlawful possession of a smoking

¹ This section was repealed operative January 1, 2012, but the statutory prohibition against possession of a firearm by a felon is now found in Penal Code section 29800. (Stats. 2010, ch. 711 (S.B. 1080), §§ 4, 6.)

device (Health & Saf. Code, § 11364, subd. (a)), and unlawful possession of ammunition (Pen. Code, former § 12316, subd. (b)(1); see Pen. Code, § 30305, subd. (a)).^(See fn. 1.) He filed a motion to suppress evidence under Penal Code section 1538.5, which was heard at the same time as the preliminary hearing, and at which time the following evidence was adduced:

On October 26, 2011, Officer Ginn of the Sebastapol Police Department saw a vehicle driven by appellant fail to stop for pedestrians in a crosswalk. He ran a check on the license plate number and determined that the plate was expired. Ginn stopped the car and asked appellant for his driver's license. Appellant said he did not have one and that his license had been suspended. Ginn confirmed this through dispatch, and learned that appellant was under a conditional sentence in the Sonoma County Superior Court. Consequently, Ginn placed appellant under arrest for driving with a suspended license and violating the terms of his conditional sentence. Ginn allowed a passenger in the vehicle to leave.

During a search of appellant's person incident to arrest, Ginn found a small plastic baggie containing a substance that appeared to be methamphetamine. He took appellant into custody for transport to the police station and called a tow truck to impound the vehicle. Ginn conducted an inventory search pursuant to his department's policy, looking for any valuable items. He found two glass methamphetamine pipes in the glove compartment with residue inside them and a green container with a tablet of hydrocodone. In the trunk of the vehicle, Ginn opened a nylon guitar bag and found an inoperable .22 caliber rifle.

Sebastapol Police Department Reserve Officer McGaffey arrived at the scene in his civilian capacity as a tow truck driver. He was not on police duty at the time. Ginn completed his inventory search and McGaffey towed the vehicle to the impound yard, where he noticed tools in plain sight within the vehicle and decided to move them to the trunk pursuant to the towing company's policy of securing valuable items. To make room for the tools, he moved a black briefcase from the trunk that had not been noted by Officer Ginn during the inventory search. The latch of the briefcase fell open and a

handgun case fell out. McGaffey opened the case and found an unloaded handgun inside, along with one bullet.

At the conclusion of the evidence, counsel for appellant conceded that appellant had been lawfully detained during the initial traffic stop and that the vehicle was properly impounded. He challenged the discovery of the guns, arguing that the officers had exceeded the permissible scope of an inventory search by looking inside closed containers. The court disagreed, denied the motion to suppress, and held appellant to answer on the charges.

Appellant waived his trial rights and entered a no contest plea to a single felony count of possession of a firearm by a convicted felon. He was placed on probation conditioned on 12 months in the county jail, and was ordered to pay various fines and fees. Appellant filed a notice of appeal and checked the box stating, “This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.” He did not obtain a certificate of probable cause. (Pen. Code, § 1237.5.)

II. *DISCUSSION*

As required by *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note that appointed counsel has filed a *Wende/Anders* brief raising no issues, that appellant has been advised of his right to file a supplemental brief, and that appellant did not file such a brief. We have independently reviewed the entire record for potential error and find none.

Appellant was placed on probation as specified in his plea agreement and has not obtained a certificate of probable cause. Consequently, issues regarding the validity of his plea and the propriety of the sentence are not before us. (§ 1237.5; *People v. Panizzon* (1996) 13 Cal.4th 68, 78.)

Turning to the sole issue indicated in the notice of appeal, the trial court properly denied the motion to suppress after concluding that the guns were discovered as part of a lawful inventory search. Police conducting an inventory search may exercise discretion in opening containers that discretion is exercised according to standardized criteria. (*People v. Needham* (2000) 79 Cal.App.4th 260, 266; see *Colorado v. Bertine* (1987) 479

U.S. 367.) Such criteria need not be written. (*Needham* at p. 266.) Here, the evidence established that the Sebastapol Police Department had a policy of allowing an officer to open closed containers during an inventory search at the officer's discretion to see whether the container held items of value. "[I]f there's a purse, we open it to see if there's money. For example, if there's a gun case, we would open it to see if there's a gun. So depending on the nature of the container, we would open it if we felt that it was something that may contain items of value." "A police officer may be allowed sufficient latitude to determine whether a particular container should or should not be opened in light of the nature of the search and characteristics of the container itself." (*Florida v. Wells* (1990) 495 U.S. 1, 4.)

We are satisfied that appellant's appointed attorney has fully complied with the responsibilities of appellate counsel and that no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 283.)

III. *DISPOSITION*

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

SIMONS, J.