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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.

JAMES WALTER COOMES,

Defendant and Appellant.

A136660

(Humboldt County
Super. Ct. No. CR1104688)

Following a plea of guilty to one count of maintaining a space or enclosure for storage of a controlled substance in violation of Health and Safety Code section 11366.5, subdivision (a), defendant was placed on probation. Defendant has timely filed an appeal challenging the trial court's denial of his motion to suppress evidence. 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, 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.

STATEMENT OF FACTS¹

On November 5, 2011 at 10:30 a.m., Deputy Sheriff Robert Hamilton was on patrol in Garberville when he observed a black Chevy Suburban pulling a red cargo trailer coming out of the parking lot of a restaurant. Hamilton stopped his vehicle, and allowed the Suburban to proceed out of the lot. Within 10 seconds after the Suburban and trailer pulled in front of Hamilton, through the vents of his patrol vehicle, Hamilton “got a big odor of marijuana that I believed was coming from in front of me.”² Because the distance between the front end of Hamilton’s vehicle and the back end of the trailer was “fairly close,” he was “positive” the odor he was smelling came from the trailer and not from any other location. The Suburban followed by Hamilton traveled down Conger Street about 200 to 300 feet until it stopped at a stop sign and turned right onto Redwood Drive. One car length separated the two vehicles as they traveled down Conger. The patrol car and the Suburban were the only two vehicles traveling on Conger at that time. According to Hamilton, the intense odor of marijuana was “constant from when [defendant] pulled in front of me till we got to the stop sign.” Once on Redwood Drive, the vehicles drove faster, about 35 miles per hour, and were three car lengths apart. With the greater distance between the vehicles, the smell of marijuana was not as intense.

Hamilton initiated a traffic stop at Redwood Drive and Alderpoint, where he exited his vehicle and walked to the back of the trailer before approaching the driver’s side window. He “could smell the odor of marijuana coming from the trailer.” When Hamilton reached the driver’s side, the driver, identified as defendant, rolled down the window at which point Hamilton smelled “another faint odor of marijuana coming from inside the vehicle.” After explaining he suspected defendant was transporting marijuana, Hamilton asked for consent to search the trailer. Defendant asked, “You only want to

¹ Because this appeal is from the denial of a preplea motion to suppress, this summary of the facts is based on the testimony and evidence presented at the motion to suppress hearing. Humboldt County Deputy Sheriff Robert Hamilton was the only witness to testify.

² Without going into detail, suffice it to say the record strongly establishes Hamilton’s extensive experience and training in the detection of marijuana.

search the trailer[?]" Hamilton said, "Yes," and defendant responded, "Okay." As the double doors to the trailer were opened, an "overwhelming odor of marijuana came from the vehicle." Hamilton also observed black plastic bags stacked from the floor to the ceiling of the trailer. Next, he put his finger in the top of one of the plastic bags, opened it and pushed down a cardboard flap. He could see marijuana inside the package. Asked whether defendant had a prescription for marijuana, defendant told Hamilton he did not.

Ultimately, dried marijuana in bud form was discovered in 92 boxes contained within 46 packages. The gross "field weight" totaled 276 pounds. The gross weight was determined by weighing a representative box and multiplying its weight by the total number of boxes.

The trial court denied defendant's motion to suppress finding Deputy Hamilton had sufficient cause to stop defendant's vehicle and detain him.

DISCUSSION

Following defendant's entry of a guilty plea, he is limited to raising "(1) search and seizure issues for which an appeal is provided under [Penal Code] section 1538.5, subdivision (m); and (2) issues regarding proceedings held subsequent to the plea for the purpose of determining the degree of the crime and the penalty to be imposed. (*People v. Jones* (1995) 10 Cal.4th 1102, 1106; [citations].)" (*People v. Panizzon* (1996) 13 Cal.4th 68, 74.)

The detention of defendant was valid. "A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza* (1994) 9 Cal.4th 224, 231.) Deputy Hamilton's testimony at the hearing on the suppression motion established the bases supporting the detention.

Hamilton smelled the strong odor of marijuana emanating from the trailer of defendant's Suburban as it exited the parking lot and as he followed it one car length behind for 200 to 300 feet. There were no other cars traveling on Conger Street and no other possible sources of the marijuana odor in the surrounding areas. Although the

smell was not as intense when the Suburban turned onto Redwood Drive, Hamilton still detected the odor of marijuana even driving three car lengths behind. Considering these circumstances, Hamilton was justified in conducting a vehicle stop.

The subsequent search of the trailer was legal because Hamilton obtained defendant's consent to search it.

Even if Hamilton had not obtained defendant's consent, we conclude Hamilton's warrantless search of the trailer was also properly conducted under the automobile exception. The automobile exception has its genesis in *Carroll v. United States* (1925) 267 U.S. 132, which established that "a search [of a motor vehicle] is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained." (*United States v. Ross* (1982) 456 U.S. 798, 809, fn. omitted (*Ross*)).) The dispositive inquiry in a motion to suppress evidence found in an auto search is whether the objective facts demonstrate the "officer[] [had] probable cause to believe that the vehicle contain[ed] contraband." (*Ross*, at pp. 807–809; see *California v. Carney* (1985) 471 U.S. 386, 392.)

In light of the foregoing considerations the warrantless search of defendant's trailer satisfied the constitutional standard of reasonableness. After Hamilton smelled the odor of marijuana from the trailer as he followed defendant's vehicle, again detected the odor when he approached the trailer, and smelled the faint odor of marijuana emanating from the driver's side when defendant rolled down the window, he had probable cause to search the trailer for the drug.

Hamilton was further justified in searching the boxes contained in the packages found in the trailer. Where "probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." (*Ross, supra*, 456 U.S. at p. 825.) Accordingly, "[t]he police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained." (*California v. Acevedo* (1991) 500 U.S. 565, 580.) In this case, the overwhelming odor of marijuana inside the trailer

provided probable cause to search the packages containing the boxes because they were the type of container where marijuana might be located.

Nothing in the punishment imposed upon defendant warrants further review. Imposition of sentence was suspended and defendant was placed on three years of supervised probation with various terms and conditions.

Defendant was represented by competent counsel throughout the proceedings.

The judgment is affirmed.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.