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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.**  
**NATHANIEL CAINE,**  
**Defendant and Appellant.**

**A141822**  
**(Contra Costa County**  
**Super. Ct. No. 05-140225-4)**

On January 3, 2014, at around 6:20 p.m., Mike Anderson, a loss prevention officer, noticed appellant Nathaniel Caine as he entered the Lucky Supermarket in El Cerrito. He noticed Caine because appellant was wearing an unusual black hat and pulling a suitcase. Anderson followed Caine and saw him pick up a sandwich and a red-colored drink. Anderson lost sight of appellant for about 10 seconds and then saw appellant place the sandwich and drink, along with some cookies, inside his suitcase.

Anderson watched Caine return to the store entrance. There were one-way gates at the entrance, which Caine pulled in to allow him to exit. Outside the store, Anderson tapped appellant on the shoulder and demanded that he go back inside. Caine asked why, and Anderson told him he had seen him place some items inside the suitcase. Appellant denied there was anything in the suitcase belonging to Anderson. Anderson insisted Caine come with him inside the store, and appellant followed Anderson to the loss prevention office.

Caine refused to tell Anderson his name or to open his suitcase. Anderson called the police, and officers arrived a few minutes later. Officer Zach Wells handcuffed appellant. Officer Wells opened Caine's suitcase and removed five items of food. These included the sandwich, cookies, and juice Anderson had seen appellant put in his suitcase, as well as chips he had seen in appellant's hand and some cake that bore a Lucky store price tag. The five were valued at a total of \$14.30.

Officer Wells transported Caine to the El Cerrito Police Department. Wells did not record his interview of Caine. The officer read appellant his *Miranda* rights from a card issued by the police department. Caine told the officer he understood his rights. Officer Wells asked Caine if he had entered the store with the intent to steal the items, and appellant told Wells he did not want to talk about "that" or "it." Based on the wording of Caine's response and the fact that he was grinning, Wells believed appellant was only declining to answer that specific question regarding his intent. The officer then asked Caine whether he had stolen all five of the items found in his suitcase or only the three items Anderson had witnessed him take. Caine admitted he had taken all five items. Officer Wells asked Caine if there was anything else he wanted to add, and the latter told him he did not want to speak with the officer any further. At that point, the interview ended.

An information filed February 6, 2014, charged Caine with one felony count of petty theft with a prior theft conviction, in violation of Penal Code sections 484 and 666.<sup>1</sup> The information alleged Caine had 16 prior convictions for which he had served a term in a penal institution.

Caine waived his right to jury trial with respect to the allegation of prior convictions. The constructively amended information the trial court read to the jury indicated Caine was charged with a misdemeanor in violation of section 484. Defense counsel objected to the court informing the jury that the charge was a misdemeanor.

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<sup>1</sup> All undesignated statutory references are to the Penal Code.

Citing *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*), Caine moved in limine that the trial court order the prosecution to run “rap” sheets on all witnesses, civilian or otherwise, and to disclose to the defense any potential impeachment evidence revealed therein. The trial court denied the motion with respect to witnesses who were police officers. The prosecutor explained the district attorney’s office procedure for obtaining *Brady* evidence on police officers: “If there is anything with respect to an officer, we are notified [by various agencies] and then we can discuss that, bring that information to the Court and counsel’s attention.” The prosecutor added she was not aware of any relevant evidence in this case.

Caine moved to suppress evidence of statements he made to the police officer that were allegedly obtained in violation of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436. After holding a hearing pursuant to Evidence Code section 402, the court denied Caine’s motion, finding he had not invoked his right to remain silent until after he had made incriminating statements.

Prior to jury selection, Caine requested that he be allowed to present a necessity defense and that the court instruct the jury pursuant to CALCRIM No. 3403. Appellant’s offer of proof was that at the time he stole the food, he was hungry and had no access to food. Caine was homeless and had no source of income. The court denied the request, finding that a reasonable person would not believe that the act was necessary under the circumstances and that there was a legal alternative to committing the crime.

A jury was sworn to try the cause on March 28, 2014. The case was submitted to the jury on April 1, 2014, and it returned a verdict of guilty less than one hour later.

The prosecution presented certified copies of Caine’s criminal record from the California Department of Justice that showed 16 prior convictions. In a bifurcated proceeding, the court found 13 prior convictions proved beyond a reasonable doubt.

The trial court denied Caine’s motion to reduce the charge to a misdemeanor pursuant to section 17, subdivision (b). On May 2, 2014, the trial court placed Caine on formal probation on conditions including 240 days in county jail. Caine received credit for 120 days actually spent in custody and 120 days of conduct credit.

Caine filed a timely notice of appeal on May 14, 2014.

On September 22, 2014, appointed counsel submitted a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, certifying that she has been unable to identify any issues for appellate review. Counsel has also submitted a declaration affirming that she has advised Caine of his right to file a supplemental brief raising any points which he wishes to call to the court's attention. No supplemental brief has been submitted.

#### DISCUSSION

As required, we have independently reviewed the entire record and found no arguable issues. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110.)

The trial court did not err in denying Caine's request under section 1054.1 that the prosecution run "rap sheets" of police officer witnesses. The prosecutor informed the court there was no such information in this case. (*People v. Little* (1997) 59 Cal.App.4th 426, 433 [*"If a felony conviction exists, the prosecutor shall disclose that information to the defendant . . ."*], italics added; *People v. Santos* (1994) 30 Cal.App.4th 169, 176 [record of felony conviction must be disclosed, but not rap sheets themselves]; see *People v. Cruz* (2008) 44 Cal.4th 636, 670-671 [defendant could not demonstrate prejudice from denial of discovery of police personnel files where "no information of the nature being sought through the discovery motion was to be found"].)

There was no error in the denial of Caine's motion to suppress, because appellant's statement was not an unambiguous invocation of the right to remain silent. (*People v. Williams* (2010) 49 Cal.4th 405, 434 [defendant did not unambiguously invoke right to remain silent by saying, "I don't want to talk about it"]; *People v. Michaels* (2002) 28 Cal.4th 486, 510 ["Defendant's statement, 'Okay, *that one*' implies a refusal to answer a particular question," not refusal to answer any questions].) Moreover, the trial court could properly rely on Officer Wells's interpretation of Caine's demeanor and body language in determining whether appellant had invoked his right to remain silent. (*People v. Jennings* (1988) 46 Cal.3d 963, 978-979.)

Caine was not entitled to a jury instruction on the necessity defense, because at a minimum, he proffered insufficient proof of a central element of the defense — "the

imminence of the greater harm which the illegal act seeks to prevent.” (*People v. Patrick* (1981) 126 Cal.App.3d 952, 960, fn. omitted.) While Caine may have stolen because he was hungry, he failed to show he had no alternative means of obtaining food. “The commission of a crime cannot be countenanced where there exists the possibility of some alternate means to alleviate the threatened greater harm.” (*Ibid.*)

Section 666 permitted the trial court to impose a felony sentence on Caine because he was convicted of misdemeanor petty theft after finding he had suffered prior theft convictions for which he had served time in a penal institution. (*People v. Tardy* (2003) 112 Cal.App.4th 783, 787.) The sentence the court imposed is authorized by statute. (§ 666 [permitting imprisonment not exceeding one year].)

#### DISPOSITION

The judgment is affirmed.

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Jones, P.J.

We concur:

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Needham, J.

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Bruiniers, J.

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