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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

OTIS RAY CAMOTTA,

Defendant and Appellant.

A143874

(Sonoma County Super. Ct.
Nos. SCR-643712, SCR-644905)

Defendant Otis Ray Camotta appeals from the judgment below based on his challenge to the trial court's denial of his two motions to suppress evidence, after which defendant pled no contest to one count each of transporting cocaine for sale and possession of methamphetamine for sale. He was found guilty and sentenced to 180 days in county jail and three years probation. His appellate counsel has found no arguable appellate issues and has asked this court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Defendant has submitted a supplemental brief as well. We conclude there are no arguable issues for review and affirm the judgment.

BACKGROUND

I.

The Complaints Filed Against Defendant

On December 18, 2013, the Sonoma County District Attorney filed a complaint against defendant in case number SCR-643712 after defendant was arrested and his vehicle was searched on December 13, 2013. Defendant was charged with felony

possession of cocaine for sale (Health & Saf. Code, § 11351), felony transportation of cocaine for sale (*id.* § 11352, subd. (a)) and misdemeanor use/under the influence of cocaine (*id.* § 11550, subd. (a)).

On January 8, 2014, the Sonoma County District Attorney filed another complaint against defendant, this one in case number SCR-644905. The complaint's allegations related to what police discovered during a December 19, 2013 search of defendant's residence pursuant to a search warrant. Defendant was charged with felony possession of cocaine for sale (Health & Saf. Code, § 11351) and of methamphetamine for sale (*id.* § 11378). Both counts were accompanied by firearm and an out-on-bail enhancement allegations. (Pen. Code, §§ 12022, subd. (a)(1), 12022.1.)

II.

Defendant's Motions to Suppress

Defendant filed motions to suppress evidence in both cases. The court heard these motions at the relevant preliminary hearings.

A. Case Number SCR-643712

In case number SCR-643712, defendant argued all evidence should be suppressed because it was obtained as a result of an unjustified December 13, 2013 traffic stop of his vehicle, during which he was illegally detained and he and his vehicle were illegally searched. At the hearing on this motion, the court designated police officer Corie Joerger of the Petaluma Police Department as an expert in recognizing controlled substances and whether they were possessed for sale, and heard her testimony.

Joerger said that on the afternoon of December 13, 2013, she was on patrol in a marked police vehicle when she received a call from an "Agent Cox" between 3:45 p.m. and 4:00 p.m. informing her that defendant may have been involved in a drug transaction. Based on this call, Joerger followed defendant's vehicle and looked for independent probable cause to stop him. She saw his vehicle veer to the right and cross over a solid fog line on three separate occasions, and that a three-by-four-inch air freshener was hanging from his rear view mirror, possibly obscuring defendant's view. Joerger thought

these matters were Vehicle Code violations¹ and stopped defendant's vehicle around 4:00 p.m. Defendant pulled his vehicle into a parking lot and parked horizontally across two parking stalls.

Joerger contacted defendant as he sat in the driver's seat of his vehicle. He appeared extremely nervous, had shaking hands, accelerated speech, "a white pasty tongue" and dilated eyes, and he fidgeted in his seat. He told her he had heart and cataract health issues. Based on her observations, Joerger suspected he was under the influence of a controlled substance and conducted tests of him as he stood outside his vehicle. Defendant was unable to measure thirty seconds accurately and had a rapid pulse, eyelids that "flickered uncontrollably" and no pupil contraction in response to light. Joerger placed him under arrest for driving under the influence of a controlled substance and had him transported to the police department.

Joerger further testified that in her experience, drugs may be inside the vehicle of a person arrested for driving under the influence of a controlled substance. Therefore, she searched defendant's vehicle with her canine partner, Basco. Basco did not react during an exterior search of the vehicle, but when let inside he "showed a strong interest around the passenger seat, then gave [Joerger] a final alert or change of behavior to a white envelope that was between the center console and the passenger seat." Joerger discovered the envelope contained a powdery substance that she believed was cocaine, and that it weighed 32.90 grams. Joerger thought defendant possessed the substance (which was later determined to be cocaine) for sale because it comprised 164 average dosages. She had not seen or heard of a person having 32 grams of cocaine for personal use, although it was possible.

¹ Joerger indicated she thought defendant's repeatedly crossing over fog lines on the roadway was a violation of Vehicle Code section 22107. It states: "No person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided in this chapter in the event any other vehicle may be affected by the movement."

Joerger had the vehicle towed incident to defendant's arrest because it was parked in an unsafe position across two parking stalls. Typically, Joerger said, when a vehicle was towed, an inventory search of it was conducted to document all of the items in it. Defendant was unable to provide a urine sample and Joerger did not seek a warrant to obtain blood.

The court denied defendant's motion to suppress. It found Joerger properly stopped defendant's vehicle based on his erratic driving, which could have been because he was driving under the influence, or having a medical emergency or mechanical problem; properly arrested him because Joerger's observations indicated he was under the influence; properly search his vehicle, if only because it would have been searched incident to it being towed; and properly had Basco enter the vehicle because of defendant's arrest, the vehicle's public nature and the possibility that narcotics were located in such a public place.

The court also found sufficient evidence existed to hold defendant on the charges brought. The "very large quantity" of cocaine found in his vehicle justified charging him with sale and transport for sale of cocaine.

B. Case Number SCR-644905

In case number SCR-644905, defendant moved to suppress all evidence obtained as a result of the December 19, 2013 search of his residence pursuant to the search warrant. Defendant argued the warrant was improperly issued because it was based on the improper stop, detention, and search conducted on December 13, 2013. Further, if these acts were proper, there was not sufficient evidence to justify the search of his residence.

At the hearing on this motion, Joerger was certified as an expert as before and again testified. She said that on December 19, 2013, she and another officer contacted defendant at his residence, which consisted of one room. In their search of the residence, they found a .38-caliber revolver in a bedside dresser, a tin canister in a nightstand containing 2.7 grams of cocaine, three baggies in a blue box on the nightstand containing 6.45 grams of methamphetamine, \$4,700 in cash, plastic baggies with a white powdery

substance inside them, and .20 grams of cocaine in an end table. In a television cabinet, they found 200 clear plastic, empty baggies, a functioning digital scale, a small spoon with some white powder substance on it and a metal strainer. Joerger believed defendant possessed these drugs for sale “[b]ased on the clear packaging, the functioning digital scale, the controlled substance found throughout [defendant’s] residence . . . broken up into smaller quantities,” the large amount of cash found there, and the 32 grams of cocaine found in defendant’s vehicle on December 13, 2013.

Joerger also testified that she found “hundreds and hundreds” of lighters, which defendant said he was selling online. Joerger did not know if the lighters could fit into the empty plastic baggies she found.

The court denied defendant’s suppression motion. It found that there was probable cause for issuing the search warrant based on the December 13 traffic stop and the police observations of alleged other purchases, and that the search warrant’s information was consistent with the facts of the traffic stop and that it was properly executed.²

The court found the evidence was sufficient to hold defendant over on the charges brought. Although the amounts of controlled substances found in defendant’s residence were smaller than the amount of cocaine found in the traffic stop, the cash, packaging and scale found there justified the charges alleging possession for sale.

III.

The Resolution of the Cases After Consolidation

In June 2014, the court consolidated the two cases. In a consolidated information, the district attorney charged defendant with two counts of possessing cocaine for sale (Health & Saf. Code, § 11351) and one count each of transporting cocaine for sale (*id.* § 11352, subd. (a)), possessing methamphetamine for sale (*id.* § 11378) and misdemeanor being under the influence of cocaine (*id.* § 11550, subd. (a)). The cocaine and

² Defendant argued the charges referred to in a police report and in the warrant were inconsistent, but the court concluded this was not relevant to the warrant’s validity.

methamphetamine possession counts were accompanied by firearm and out-on-bail enhancement allegations (Pen. Code, §§ 12022, subd. (a)(1)), 12022.1). Defendant entered not guilty pleas to all counts. Also, the court appointed a public defender as defendant's counsel and allowed his previous counsel to withdraw after that counsel indicated defendant wanted this to occur.

Defendant rejected the prosecution's first proposed negotiated disposition of the case. Negotiations continued up to the date of trial. At that time, the prosecution and defense counsel agreed that defendant potentially could be sentenced to as much as nine years and four months in state prison if convicted of all charges. They then reached a negotiated disposition, which was less favorable than the previous offer defendant had rejected in that the People now insisted that defendant enter a no contest plea to a count of possession of methamphetamine *for sale*.

Defendant pled no contest to one count of transporting cocaine for sale and one count of possessing methamphetamine for sale. He stipulated that the preliminary hearing transcript provided a factual basis for his plea. The trial court found he had made a "knowing, intelligent, voluntarily made plea based on the *Tahl* waiver³] and [his] statements in court." It granted the prosecution's motion to dismiss all other remaining counts at the time of sentencing, found defendant guilty of the charges pled to and subsequently sentenced him to serve 180 days in county jail and three years on probation, as the prosecution recommended.

Before entering his no contest plea, defendant raised the question whether the prosecution would return the \$4,700 in cash that was seized from his residence. The parties agreed to leave the issue for the court's determination after defendant was sentenced. At the subsequent hearing, the trial court denied defendant's request for the return of his property, including the cash, based on facts indicating that defendant was transporting cocaine for sale when he was stopped and police found sales-related drug

³ *In re Tahl* (1969) 1 Cal.3d 122.

paraphernalia in his residence; given these facts, the court found defendant's contention that the cash was from his sale of lighters online to be "beyond belief."

Defendant filed a notice of appeal from the judgment based on the trial court's denial of his suppression motions. Defendant has also filed a petition for writ of habeas corpus alleging ineffective assistance of counsel. By separate order issued concurrently with this opinion, we have summarily denied this petition.

DISCUSSION

Defendant entered into a valid plea agreement without renewing his suppression motions in superior court. Therefore, he cannot appeal from the denial of these motions. (*People v. Richardson* (2007) 156 Cal.App.4th 574, 594, following *People v. Lilienthal* (1978) 22 Cal.3d 891, 896.)

In any event, we see no arguable issues on appeal regarding the trial court's suppression rulings. " 'In ruling on a motion to suppress, the trial court must find the historical facts, select the rule of law, and apply it to the facts in order to determine whether the law as applied has been violated. We review the court's resolution of the factual inquiry under the deferential substantial-evidence standard. The ruling on whether the applicable law applies to the facts is a mixed question of law and fact that is subject to independent review.' [Citation.] On appeal we consider the correctness of the trial court's ruling *itself*, not the correctness of the trial court's *reasons* for reaching its decision." (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 145 (*Letner and Tobin*).

Officer Joerger's testimony provided substantial evidence to justify the court's denial of defendant's two suppression motions. The trial court's rulings indicate it found Joerger credible, and we see no reason to interfere with this view. (See, e.g., *In re Andrew I.* (1991) 230 Cal.App.3d 572, 578 [“ 'If a trier of fact has believed the testimony . . . this court cannot substitute its evaluation of the credibility of the witness unless there is either a physical impossibility that the testimony is true or that the falsity is apparent without resorting to inferences or deductions' ”].)

Regarding defendant's suppression motion in case number SCR-643712, Joerger, having observed defendant's car cross over fog lines on three separate occasions, had a

reasonable suspicion that defendant was driving in an erratic, unsafe manner in violation of the Vehicle Code; as the trial court indicated, it could be reasonably suspected from his driving that he was driving under the influence, or having a medical emergency or mechanical problem. Therefore, Joerger was justified in stopping defendant's vehicle. (See *Letner and Tobin, supra*, 50 Cal.4th at p. 145 [reasonable suspicion of intoxication sufficient for a traffic stop].) Defendant's contention that Joerger stopped him because she had learned he might have been involved in a drug transaction is not relevant. (*Id.*; *Whren v. United States* (1996) 517 U.S. 806 [officers' subjective motivations in conducting an otherwise valid traffic stop did not invalidate the search of the vehicle for drugs].)

Joerger's initial observations of defendant's appearance and behavior, including his extreme nervousness, shaking hands, accelerated speech, "white pasty tongue" and dilated eyes, gave her further reasonable suspicion to detain him. Upon defendant's poor performance in Joerger's tests of his sobriety, Joerger had probable cause to arrest him.

Further, Joerger's subsequent search of defendant's vehicle with her canine partner and discovery of 32 grams of cocaine was not a ground for granting defendant's suppression motion. Even assuming for the sake of argument that the search was improper, Joerger testified that defendant's vehicle, having been stopped by defendant haphazardly across two parking stalls, was subject to towing and a standard inventory search. Therefore, it was inevitable that the cocaine would have been discovered. This satisfies the requirements of the "inevitable discovery doctrine," pursuant to which the prosecution must show a "reasonable probability that [the challenged evidence] would have been procured in any event by lawful means." (*People v. Boyer* (1989) 48 Cal.3d 247, 278, disapproved on another ground in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.) This may include pursuant to a police department's standardized inventory search. (See *People v. Needham* (2000) 79 Cal.App.4th 260 [concluding a standardized inventory search of a motorcycle was constitutionally reasonable in its scope].)

Regarding defendant's suppression motion in case number SCR-644905, "[p]robable cause sufficient for issuance of a warrant requires a showing that makes it 'substantially probable that there is specific property lawfully subject to seizure presently located in the particular place for which the warrant is sought.'" [Citations.] That showing must appear in the affidavit offered in support of the warrant. [Citation.]" (*People v. Carrington* (2009) 47 Cal.4th 145, 161.) "The showing required in order to establish probable cause is less than a preponderance of the evidence or even a prima facie case." (*Id.* at p. 163.) Joerger testified that 32.90 grams of cocaine were found in defendant's vehicle, enough for 164 average dosages, and that she thought, based on her expertise that he possessed this cocaine for sale because of its large amount. This testimony provided probable cause for issuance of the search warrant and the search of defendant's residence six days later.

Defendant has submitted a supplemental brief containing six contentions. These are that the police report detailing his arrest on December 13, 2013, was false because it left out the fact that Joerger was told to find a reason to stop him and instead stated Joerger was conducting a random stop; that he was held in a police garage without a recording or the ability to make a phone call, instead of in the police department; that there was a "clean inventory" upon the search of his vehicle; that he was refused a blood test, although he requested one three times; that the search of his residence was based on the search of his vehicle and that the police went to the wrong house; and that neither he nor his lawyer were told about the "arrest [warrant] from resident search" dated January 8, 2014, when they appeared in court a couple of days later.

Defendant's contentions are not supported by any citations to the record, legal analysis or legal authority. We have considered them as stated, reviewed the record with them in mind, and conclude they present no arguable appellate issues.

Finally, in her *Wende* brief, defendant's appellate counsel states that "[t]o the extent it is cognizable on appeal," defendant asks that we address the trial court's denial of his request for the return of the \$4,700 in cash that was seized from his residence. This issue is not cognizable on appeal because defendant has not appealed from the court's

order denying his request for the return of his property. Therefore, it need not be addressed further.

DISPOSITION

We have independently reviewed the record pursuant to *Wende, supra*, 25 Cal.3d 436, and conclude there are no arguable issues to review regarding defendant's suppression motions. The judgment is affirmed.

STEWART, J.

We concur.

KLINE, P.J.

MILLER, J.