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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.

MAURICE DAVID ALLEN,

Defendant and Appellant.

A146668

(Marin County
Super. Ct. No. SC193432A)

Defendant Maurice Allen appeals from a judgment entered pursuant to a plea of guilty to second degree burglary (Pen. Code, §§ 459, 460, subd. (a))¹ and admissions of a prior strike and prior prison term. In accordance with the terms of the negotiated disposition, the trial court sentenced him to a total of five years in state prison (two years doubled on the burglary conviction and one year for the prior prison term enhancement). His appellate counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of his right to file a supplemental brief, but has not done so. Upon independent review of the record, we conclude no arguable issues are presented for review and affirm the judgment.

Penal Code section 1237.5 generally precludes an appeal from a judgment of conviction after a plea of no contest or guilty unless the defendant has applied for, and the trial court has granted, a certificate of probable cause. There are two exceptions:

¹ All further statutory references are to the Penal code unless otherwise indicated.

(1) a challenge to a search and seizure ruling, as to which an appeal is proper under section 1538.5, subdivision (m); and (2) postplea sentencing issues. (*People v. Shelton* (2006) 37 Cal.4th 759, 766; see also *People v. Buttram* (2003) 30 Cal.4th 773, 780.) Since defendant's application for a certificate of probable cause was denied, he is not able to challenge the validity of his plea or any other matter that preceded its entry, except as permitted under the exceptions. (*People v. Cole* (2001) 88 Cal.App.4th 850, 868.)

Defendant made a suppression motion. Tiburon Police Officer Shane Ford testified that on June 9, 2015, at around 4:00 p.m., he heard a dispatch of a possible residential burglary in progress on South Knoll Road in Strawberry. He came to a stop at South Knoll Road and Tiburon Boulevard. Officer Zebb, who had been following Ford, continued south on South Knoll Road toward the reported residence. Zebb then reported being "rammed" by an escaping Audi and told Ford the car was headed his way. Ford then saw a gold Audi, which "shot across" Tiburon Boulevard over a raised center median and fled westbound on Tiburon Boulevard. Ford turned on his patrol car lights and followed the Audi onto northbound 101. As Ford was getting onto the freeway he saw the Audi, about 75 to 100 yards ahead, cut through traffic, hit two cars, and then crash into a drainage ditch. Four males bailed out of the car and climbed over the fence along the freeway. Three ran northbound on the Redwood Highway frontage road, one ran across the road and behind a business. Ford broadcast the direction the suspects were heading and described them as Black males, with the driver wearing a beanie.

Mill Valley Police Officer Michael Lane heard the broadcasts about the suspected burglary, the Audi ramming Zebb's police car, and Ford's broadcast about the chase and the fleeing suspects. Lane drove to the Redwood Highway frontage road and saw a Black male, defendant, walking southbound, talking on a cell phone. This was a little over a tenth of a mile from where the Audi had reportedly come to rest. Lane stopped his car, exited with his gun drawn, and ordered defendant to the ground. About six minutes had passed since Officer Lane had heard Ford's broadcast about the Audi crashing and the suspects fleeing. Lane, who was alone, drew his gun in light of all of the events that had

been reported, and called for assistance. Other officers arrived within minutes, and Lane handcuffed defendant. Checking for identification, Lane removed defendant's wallet from a pocket, had one of the other officers run a records check, and was advised defendant was on parole. All of this occurred within a couple of minutes of when defendant had been detained. Lane initially had defendant sit on the sidewalk and then placed him in his patrol car and waited until a command post was set up. Lane then drove to the command post, which was two to three blocks from where the Audi had crashed, where he turned defendant over to another officer. A little under an hour and a half passed between the time Lane detained defendant until he transferred him to the other officer at the command post. Defendant was cooperative throughout the encounter.

At the command post, Ford identified defendant as one of the individuals who had bailed out of the Audi. In the meantime, several other individuals were also detained, one of whom Ford said was not one of the individuals who had fled the Audi, and that individual was released.

Considering the totality of circumstances, Officer Lane had a sufficient basis to detain defendant—Lane had listened to the broadcasts, knew the suspects had fled along the Redwood Highway frontage road, spotted defendant within six minutes within a tenth of a mile of where the Audi had crashed, and defendant fit the general description given by Officer Ford. (See *People v. Brown* (2015) 61 Cal.4th 968, 981, 983–985 [reasonable suspicion to detain must be assessed in light of the totality of the circumstances, and is more than a mere hunch, but considerably less than probable cause to arrest].) The totality of the circumstances—including the reported robbery, ramming of another officer's car, and hitting two other cars—also justified Officer Lane's drawing his weapon, particularly since Lane was by himself. (See *People v. Glaser* (1995) 11 Cal.4th 354, 366–369 [whether officer's use of weapon to detain depends on circumstances and information available to officer].) Finally, that the detention lasted an hour and a half, until Ford could identify defendant as one of the occupants of the Audi was also not unreasonable under the circumstances, including that officers were in pursuit of four suspects and needed time to set up a command post. (See *People v. Celis* (2004)

33 Cal.4th 667, 674–676 [there is no hard and fast rule as to length of detention or use of force and handcuffs; the issue is whether detention was reasonable and officers diligently investigated, using least intrusive means to detain].) Finally, given that the detention and subsequent arrest were proper, whether defendant’s wallet and cell phone were lawfully seized when he was detained is immaterial, as they would have inevitably been found on his arrest. (See *People v. Kraft* (2000) 23 Cal.4th 978, 1040 [even if items were unlawfully seized from defendant’s person, they would have been discovered upon his arrest].)

A week after the trial court denied defendant’s motion to suppress, on the date set for trial, defendant entered into a negotiated disposition whereby he would plead guilty to second degree burglary and admit one prior strike offense and one prior prison sentence, and receive a total sentence of five years in state prison. He initialed and signed a felony plea of guilty form, and was duly examined and admonished by the trial court as to the rights he would be waiving. At the end of the sentencing hearing, defendant said he was confused as to his strike status and believed he would be doing only 50 percent, rather than 80 percent time. Defendant’s confusion appears to have arisen from the fact he admitted only one prior strike. As the trial court explained, he admitted one prior strike and pled guilty to a second. The trial court also imposed fines and fees and ordered restitution to be determined for the two individual’s whose cars had been hit during the chase. On the prosecution’s motion, the court dismissed the remaining counts. At all times, defendant was ably represented by counsel.

DISPOSITION

After a full review of the record, we find no arguable issues and affirm the judgment.

Banke, J.

We concur:

Humes, P. J.

Margulies, J.