

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT GARY HENDERSON,

Defendant and Appellant.

A147285

(Mendocino County

Super. Ct. No. SCUK-CRCR-1581653)

Defendant Robert Gary Henderson appeals following a judgment entered pursuant to a no contest plea to one count of transporting a controlled substance for sale (Health & Saf. Code, § 11379, subd. (a)). In accordance with the terms of the negotiated disposition, the trial court sentenced him to four years in state prison (with 334 days of presentence credit), and imposed a restitution fund fine of \$1,200 and other fees. 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) a challenge to a search and seizure ruling, as to which an appeal is proper under Penal

Code 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 did not apply for a certificate of probable cause, 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. At the hearing on the motion, the arresting officer, John Anderson, a Sergeant with the Willits Police Department, testified in pertinent part as follows: At approximately 2:15 p.m. on an April 2015 afternoon, he received a domestic violence dispatch and started driving to the described location, looking out for a described Nissan Altima. Within minutes, he spotted a car driving toward him that met the description except for one numeral of the license plate number. He turned around so he would be behind the Altima and could make an enforcement stop. The car came to a stop on a private driveway in front of a motel, and Anderson approached to explain the reason for the stop. Defendant told the officer that when he saw him turn around, he (defendant) “just pulled right over.”

When Anderson asked defendant “for his description of the events,” defendant acknowledged getting into an argument with the victim, who had been driving the Altima. She pulled over when defendant wanted to take over the driving and, after defendant alighted to change places, took off in the car. Defendant flagged down a ride and found the Altima at a gas station. The driver who had picked up defendant parked in front of the Altima, and defendant approached from the rear. The arguing continued, and defendant reached into the car and threw out some of the victim’s belongings.

Anderson then called the attendant at the gas station. The attendant confirmed what defendant had said, and added defendant ultimately grabbed the victim’s hair and pulled her out of the Altima. Anderson placed defendant under arrest and put him in the back of his patrol car.

Anderson next searched the Altima. Anderson explained he had not yet made contact with the victim, and was looking for “[s]omething that would help me smooth out the—the statements a little bit more” “Like a lot of things we do [O]r that I

end up doing in the course of my job, it was the totality of the circumstances that led me to feel I had authority and cause to search the vehicle.” In the back seat, in what looked like a small tool bag, he found approximately 40 grams of methamphetamine and a digital scale. After that, he located a small bag on the front passenger seat or floor board that contained residue that appeared to be methamphetamine. He then searched the trunk, where he found about a pound and a half of marijuana.

Anderson also arranged for the Altima to be towed, despite defendant’s request that it not be towed. Anderson did not observe anyone else who could take control of the car. Further, the Altima was rented, only defendant’s name was on the rental agreement, and Anderson believed most rental companies limit driving to the individual on the agreement. In addition, the car was partially blocking the driveway to the motel, and while another car could “squeeze” by, it was an obstacle to use of the driveway. Anderson did not ask defendant whether there was anyone who could come retrieve the car. In Anderson’s view, the towing complied with police department towing policies.

Anderson admitted defendant never consented to a search of the Altima. Nor did Anderson obtain a warrant for the search. Anderson spent “over an hour” at the location.

Officer Michael Nguyen testified he arrived on the scene and was first told to go to the gas station and transport the victim to the police station. He then returned to the scene and assisted with transporting the car. Anderson needed to transport defendant and asked Nguyen to complete a CHP-180 form, inventory the Altima and wait for the tow truck. According to the Nguyen, the towing was in accordance with both the Vehicle Code (“Section (h)”) and department policy. Nguyen explained an inventory search includes a search of the entire vehicle.

Following this testimony, defendant argued the search was impermissible under *Arizona v. Gant* (2009) 556 U.S. 332 (*Gant*), in which the Supreme Court limited the search-incident-to-arrest exception to the general rule that officers must obtain a warrant or consent to search. He argued Vehicle Code section 22651 only authorized towing of vehicles on public property and therefore the towing from the private motel driveway was not permissible, nor was the inventory search that preceded the towing. He additionally

argued there were no exigent circumstances that justified the towing. If the court denied the motion on the basis of the inventory search and tow, defendant claimed it would be “crumbl[ing]” up *Gant* and “put[ting] it in the garbage.”

The prosecution maintained there was probable cause even under *Gant* to search the car for evidence of an assault, given the report that defendant had thrown things out of the car and then yanked the victim out. Alternatively, the towing was reasonable under the circumstances and the doctrine of inevitable discovery applied, since the drugs and scale would have been found in Nguyen’s inventory search. (*Gant* did not, said the prosecution, dispense with the inevitable discovery doctrine.

Two weeks later, the trial court issued a lengthy written order denying defendant’s motion. The court ruled the search was not permissible under the provision in *Gant* allowing searches incident to an arrest when it “is ‘reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.’ ” (*Gant, supra*, 566 U.S. at pp. 343–344.) Defendant was arrested for suspected battery of the victim—grabbing her by the hair and pulling her out of the Altima. There was no evidence, ruled the court, that Sergeant Anderson was reasonably likely to find any evidence in the car pertaining to that suspected criminal conduct. The court further ruled, however, that Anderson’s decision to have the Altima towed was reasonable and not a ruse to conduct a warrantless search, and therefore the inventory search was proper and the contraband would inevitably have been found during the inventory search. (See *South Dakota v. Opperman* (1976) 428 U.S. 364, 373.)

We see no error in the trial court’s handling of and decision on the motion to suppress. It was well aware of the applicable legal principles, and its factual findings are supported by substantial evidence.

Following the denial of his suppression motion, defendant entered into a negotiated disposition of the case and pleaded no contest to one count of transporting methamphetamine for sale (Health & Saf. Code, § 11379, subd. (a)). He executed a change of plea form and was duly advised and admonished by the trial court as to the terms of the plea and rights he was waiving.

Consistent with the terms of the plea agreement, the trial court sentenced him to an aggravated term of four years in state prison. The court awarded 328 days of presentencing credit, and imposed a restitution fund fine and various fees. The credits were subsequently corrected by way of an amended abstract of judgment to 334 days.

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.

A147285, *People v. Henderson*