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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

TYRONE ANDRE ERVIN,

Defendant and Appellant.

E054830

(Super.Ct.No. FSB1002277)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cara D. Hutson, Judge. Affirmed.

William W. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

On February 9, 2011, an information charged defendant and appellant Tyrone Andre Ervin with possession of marijuana for sale under Health and Safety Code section

11359 (count 1); and possession of a firearm by a convicted felon under Penal Code section 12021, subdivision (a)(1) (count 2).

On May 26, 2011, defendant filed a motion seeking to suppress evidence under Penal Code section 1538.5. On August 4, 2011, the trial court denied defendant's motion.

On August 26, 2011, pursuant to a plea agreement, defendant entered a plea of no contest to count 1. In exchange, the People dismissed count 2.

On October 25, 2011, the trial court suspended imposition of sentence and granted probation as to count 1. The court ordered defendant to serve 120 days in county jail as well as other probation conditions.

On October 26, 2011, defendant filed a timely notice of appeal. On appeal, defendant challenges the denial of his motion to suppress evidence. He also states: "Appeal after a no-contest plea. Defendant did not waive his right to appeal."

STATEMENT OF FACTS

On April 22, 2010, San Bernardino Police Department Officer David Rosas investigated a silent burglary alarm at a residence on North Wall Avenue at "12:40 hours." Upon arriving, Officer Rosas saw that another officer, Officer Sandoval, was already there. An audible alarm was beeping intermittently. Officer Rosas knocked on the side door of the residence. After five to 10 seconds, defendant answered the door.

Officer Rosas spoke to defendant. The officer was outside the porch, while defendant was inside behind the door. Defendant provided Officer Rosas with his name,

and told the officer that he lived at the residence. The officer then asked defendant to step outside to talk. Defendant complied.

At Officer Rosas's request, defendant provided the officer with this California driver's license. The officer saw that the address on the license did not match the street address of the residence. The officer advised defendant that because of the nature of the call, the officer needed to check the interior of the residence to "make sure everything is correct, everything is good inside the house."

Defendant did not initially respond. Officer Rosas described defendant as being nervous and stuttering during the conversation. It took defendant "a couple of seconds, five seconds" to answer the officer's questions. The officer then asked defendant whether he had any additional identification to show that he lived in the residence. Defendant stated that he did, but the additional identification was inside the house.

During this conversation, defendant went back inside the house to disable the alarm at the officer's request. Defendant was visible to the officer, who stood at the doorway, as defendant disabled the alarm using a code keypad.

Officer Rosas told defendant that if defendant were going back into the house, the officer would have to follow. The officer testified that defendant agreed verbally, but when defendant entered the house, he closed the door behind him before the officer could enter. The officer pushed the door back open and entered. Officer Sandoval remained outside the residence.

When Officer Rosas entered the kitchen of the residence, he saw marijuana and some money scattered on a table. He saw what he believed to be marijuana on top of a refrigerator. The marijuana was only residue at the bottom of a bag, and defendant showed the officer a medical recommendation. Defendant also showed the officer mail with the address of the residence and his name on it.

Officer Rosas testified that at no time did he hear anyone else in the house. The officer continued into the bedroom, where he saw a small cardboard box with “125 count” Ziplock bags. Officer Rosas entered another room adjoining the bedroom where he saw a large bag of marijuana. Upon seeing these items, the officer believed that defendant possessed marijuana for sale.

At this point, Officer Rosas called for Detective Murray to assist him in evaluating the situation. When Detective Murray arrived at the residence, he saw defendant and Officer Rosas standing outside the rear door. Detective Murray asked defendant for consent to search his home. Defendant stated, “go ahead.”

At Detective Murray’s direction, Officer Rosas conducted a further search of the master bedroom. There, he located a handgun in the closet.

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of

the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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MCKINSTER
J.

We concur:

HOLLENHORST
Acting P.J.
MILLER
J.