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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.

CARLOS CESAR GARCIA,

Defendant and Appellant.

E064290

(Super.Ct.No. FWV1500345)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gerard S. Brown, Judge. Affirmed.

William Paul Melcher, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On March 12, 2015, an information charged defendant and appellant Carlos Cesar Garcia with one count of possession of marijuana for sale under Health and Safety Code

section 11359, occurring on or about October 9, 2014 (count 1). The information also alleged that defendant had suffered four prior felony convictions.

After a preliminary hearing, defendant was held to answer on the charges and was found in violation of his probation in San Bernardino case No. FSB1101325. A jury trial proceeded on the charges. On July 9, 2015, a jury found defendant guilty of the lesser-included offense of possession of more than 28.5 grams of marijuana in violation of Health and Safety Code section 11357, subdivision (c).

On August 6, 2015, pursuant to his plea agreement in case No. FSB1101325, the court sentenced defendant to a term of four years. In this case, the court sentenced defendant to a six-month term, to run consecutively with his sentence in case No. FSB1101325. The trial court awarded defendant credits on both matters, and released defendant on this case with time served.

On August 19, 2015, defendant filed a timely notice of appeal.

B. FACTUAL HISTORY

On October 9, 2014, Deputies Garnett and Ruiz of the San Bernardino County Sheriff Department's SMASH gang narcotics suppression unit stopped by defendant's residence in Bloomington, California. They found defendant outside his residence and asked him if any illegal drugs were on the property. Defendant replied that there were no drugs and consented to a search of his residence.

The officers called in a K-9 unit and searched the driveway where several cars that defendant was working on were parked. The dog alerted the officers to one of the vehicles, a tow truck, and specifically to the truck bed where gas canisters were held.

Defendant stated that the tow truck belonged to him. The officers found a small amount of marijuana hidden underneath a trash bag; defendant said he was holding the marijuana for his brother.

The officers searched defendant's residence and found no drugs or drug paraphernalia. The officers then searched the carport area, which included several cars defendant was working on. The dog alerted the officers to a large black trash bag located between two engine blocks. There, the officers discovered approximately 3.5 pounds of "processed" marijuana in plastic baggies.

Defendant stated that the marijuana could be found in a Honda automobile parked nearby off the property, but that the vehicle did not belong to him. Officers discovered less than one ounce of marijuana in the center console.

After being advised of his *Miranda*¹ rights, defendant stated that he was holding the marijuana discovered in the tow truck for his brother, but forgot that it was still there. He denied that he knew about the amount of marijuana discovered between the two engine blocks, but admitted that the engine blocks belonged to him.

Defendant was asked to hand over his cell phone; he complied. The officers reviewed his text messages. The first set of messages reviewed were sent to one referred to as "Bro," and included a picture of a marijuana plant and processed marijuana. Another included images of large amounts of marijuana in buckets. The last included

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

pictures of marijuana with a message stating, “Bro, need the cash. Can’t be sitting on them.”

The officers also reviewed a text message chain with “Jesus” which read:

Jesus: “How much for the cerros?”

Response: “850.”

Jesus: “What if I get three? I’ll get a deal?”

Response: “800.”

Jesus: “When can we meet up to check out pay?”

Response: “Whenever. I’ll check up tomorrow meet up with you. Working in the morning.”

Further texts were reviewed, with one asking, “Did you ever ask your boy for a sample for the last of the 800?” A last text inquired regarding “24” to “2500,” which officers opined were references to prices for outdoor versus indoor grown marijuana.

Deputies Garnett and Ruiz opined that the term “cerros” was slang for marijuana, and that all of the text messages referred to the sale of marijuana. Based on the discovery of a large amount of marijuana, which was processed and ready to use in individual baggies, and with the text messages that were reviewed, both officers believed that defendant processed the marijuana for sale.

DISCUSSION

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 brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error.

DISPOSITION

The judgment is affirmed.

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MILLER
Acting P. J.

We concur:

CODRINGTON
J.

SLOUGH
J.