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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. JOSE CUEVAS TORRES, Defendant and Appellant.	F062706 (Super. Ct. No. F10902109) **O P I N I O N**

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Jonathan B. Conklin, Judge.

Jennifer Hansen, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Cornell, J., and Poochigian, J.

A jury convicted appellant, Jose Cuevas Torres,[1] of sale of methamphetamine (Health & Saf. Code, § 11379, subd. (a)) and acquitted him of two other felony Health and Safety Code violations. The court imposed a prison sentence of two years, awarded appellant 825 days of presentence custody credit, and released him from custody because his credits exceeded the term imposed.

Appellant's appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, with citations to the record, raises no issues, and asks that this court independently review the record. (*People v. Wende* (1979) 25 Cal.3d. 436.) Appellant has not responded to this court's invitation to submit additional briefing. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Facts

On April 21, 2011, a police informant, who was paid for his services as an informant and who was acting at the direction of City of Fresno police detectives, arranged to make a "controlled buy" of methamphetamine from Sergio Armenta. The next day, City of Fresno Police Detective Rudy Ruiz, acting in an undercover capacity and accompanied by the informant, drove to a gas station on Manning Avenue in Fresno, near Highway 99, where he parked next to a blue pickup. Armenta was in the driver's seat of the pickup and appellant was in the passenger seat.

Armenta, Ruiz and the informant got out of their respective vehicles and stood in the space between the two vehicles. Appellant remained seated in the passenger seat of

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[1] Appellant is identified by a different name in the notice of appeal and in the briefing in the instant appeal: Jose Torres Cuevas. However, in documents prepared before the filing of the notice of appeal, including trial court minute orders, pleadings filed below by both parties, the information and the abstract of judgment, appellant is referred to as Jose Cuevas Torres or Jose Torres. At trial, the court referred to him by the Torres surname. We refer to appellant as Jose Cuevas Torres.

the blue pickup. His window was rolled down. Ruiz, who was standing huddled together with the informant and Armenta, was approximately five to six feet away from appellant. The informant asked Armenta "where is the sample, the stuff." Appellant "was manipulating below the base of the window," "indicat[ing]" by "gesturing" that he "wanted the money." It was "[v]ery" clear to Ruiz that appellant "had the product and wanted money[.]"

Ruiz removed $800 from his pocket, and handed the money to the informant who then "did the hand to hand exchange for the methamphetamine with [appellant]." Appellant "gave the methamphetamine to [the informant]," "who, in turn, gave it to [Ruiz]."

Armenta told Ruiz he could supply more methamphetamine. Ruiz told Armenta that he wanted to determine "the quality of the dope," and that he would contact him later. No arrests were made at that time.

Approximately one hour later, Ruiz had the informant contact Armenta, and another transaction was arranged for the next day. The following day, at the arranged meeting, appellant and Armenta were arrested.

DISCUSSION

Following independent review of the record, we have concluded that no reasonably arguable legal or factual issues exist.

DISPOSITION

The judgment is affirmed.