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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK WAYNE COLEMAN,

Defendant and Appellant.

F071735

(Kings Super. Ct. No. 15CM1081A)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Kings County. Thomas DeSantos, Judge.

Karriem Baker, under appointment by the Court of Appeal, for Defendant and Appellant.

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

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\* Before Kane, Acting P.J., Poochigian, J. and Smith, J.

## INTRODUCTION

Appellant/defendant Mark Wayne Coleman was arrested in the midst of burglarizing several vehicles and charged with multiple felony counts. He entered into a negotiated disposition and pleaded guilty to one count of vehicular burglary (Pen. Code, § 459).<sup>1</sup> He was sentenced to the midterm of two years.

On appeal, his appellate counsel has filed a brief that summarizes the facts with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). We affirm.

## FACTS<sup>2</sup>

On April 12, 2015, officers responded to a dispatch about two suspects attempting to break into vehicles parked in front of a residence on Columbia Way in Hanford. The dispatcher advised the officers that the suspects had arrived in a truck.

When the officers arrived at the location, they immediately located and detained defendant, who dropped a screwdriver as he was being taken into custody. The officers also saw a truck parked in the area. After a brief search with a K-9 unit, the officers found codefendant Nicholas Childress hiding under a nearby vehicle.

Defendant was advised of the warnings pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436, and was asked about the truck in which he had arrived. Defendant denied being in a truck. The officers checked the truck's registration and learned it was registered to defendant's mother. After sharing this information with defendant, he said the officers could not search the vehicle since it belonged to his mother.

The officers looked into the open truck bed and saw assorted tools and other loose items. They also looked into the passenger compartment through the windows and saw

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> The following facts are from the probation report since defendant waived a preliminary hearing and pleaded guilty.

numerous credit cards lying across the front seat. The truck was towed so a search warrant could be obtained. Defendant and Childress were taken into custody.

Defendant was interviewed at the police department and denied any knowledge of the vehicle burglaries. He said he arrived in town with a friend but refused to give that person's name. Defendant admitted he used methamphetamine a few hours before he was arrested.

Later that day, the officers obtained a search warrant for the truck registered to defendant's mother. They found several bags of tools and other assorted items that had not been reported stolen. They also found a wallet, credit cards and a driver's license belonging to Newton Winberg; three jackets; and a radar detector. These items had been reported stolen. The center console contained a glass pipe and multiple bindles of methamphetamine, which appeared to be packaged for sale.

### **The charges**

On April 14, 2015, a complaint was filed in the Superior Court of Kings County charging defendant with count I, possession of methamphetamine for sale (Health & Saf. Code, § 11378); and count II, transportation or sale of methamphetamine (Health & Saf. Code, § 11379, subd. (a)).

Defendant and Childress were jointly charged with count III, burglary of a vehicle belonging to Newton Winberg; count IV, attempted burglary of a vehicle belonging to Eric Jones (§§ 664/459); count V, attempted burglary of an unidentified owner's blue truck; count VI, attempted burglary of an unidentified owner's grey vehicle; count VII, receiving stolen property consisting of clothes, a radar detector, and a wallet and its contents (§ 496); count VIII, misdemeanor possession of burglary tools (§ 466); and count IX, misdemeanor possession of a narcotics pipe (Health & Saf. Code, § 11364, subd. (a)).

It was further alleged defendant had one prior prison term enhancement (§ 667.5, subd. (b)). Defendant and Childress pleaded not guilty.

### **Plea proceedings**

On April 23, 2015, a joint preliminary hearing was scheduled for defendant and Childress. Defendant's attorney stated that negotiated dispositions had been reached for both men, and they would plead guilty to count III, second degree vehicular burglary of Winberg's vehicle, with a stipulation for a two-year lid. The other charges would be dismissed with a *Harvey* waiver,<sup>3</sup> and "there's a further stipulation that the amount of goods that were stolen," and/or the damage to the vehicles, "was \$950 or greater." Childress's attorney agreed with the stated terms.

The prosecutor stated the following factual basis for the pleas: defendant and Childress were breaking into vehicles parked in one block; they had tools to break into the vehicles; numerous items were stolen from the vehicles; the vehicles were damaged; Childress spoke to the officers and "admitted to taking those stolen items"; and methamphetamine and a pipe were found in the possession of defendant and Childress.

The prosecutor said he offered the disposition because defendant and Childress were cooperative with the officers and the investigation; defendant had one prior felony; and Childress did not have any prior convictions. There was a two-year lid, and the matter would be referred for a probation report and recommendation.

Defendant and Childress stated they understood the terms of the plea and waived their rights to a preliminary hearing. The court advised them and obtained waivers of their constitutional rights.

The court asked defendant if he had any questions. Defendant said he was not going to take "the deal." The court asked if he wanted a speedy trial instead. Defendant said he did not want a trial or the deal, but he wanted "a program." The court advised defendant that he would only get a program if he was convicted of an offense or pleaded

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<sup>3</sup> A waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754, allows the sentencing judge to consider facts relating to charges that were dismissed or not proved. (*People v. Munoz* (2007) 155 Cal.App.4th 160, 167.)

guilty. The court further advised defendant that if he did not want a trial and pleaded guilty, the maximum term was three years, but the “deal” was for two years. Defendant again said he did not want “the deal.”

The prosecutor stated defendant faced a maximum term of nine years based on the charged offenses in the complaint. Defendant’s attorney said he had explained to defendant that it was an “open sentence” and there was a possibility he could be considered for probation or a program.

Defendant asked the court if he could “get the two [years] with half of the split ... and a program?” The court replied that if defendant accepted the deal, he faced a maximum term of two years, but the court had the discretion to split the term, or place him on probation or in a program. The court said it would order a presentence report to determine whether defendant was eligible for a program, or if he could follow the terms and conditions of probation. Defendant said he understood and that was “actually a pretty good idea.”

The court asked defendant whether he had any more questions, if he understood his rights, and if he wanted to enter into the plea. Defendant said he understood his rights, and he would accept the deal.

Thereafter, both defendant and Childress pleaded guilty to count III, second degree vehicular burglary of a red pickup truck belonging to Newton Windberg. The court granted the prosecution’s motion to dismiss the remaining charges with a *Harvey* waiver, ordered the preparation of a probation report, and vacated the preliminary hearing.

### **The probation report**

According to the probation report, defendant had prior misdemeanor convictions for possession of a controlled substance and paraphernalia in 2008 and 2009. Defendant also had two prior convictions for felony auto theft in 2009 and 2010 (Veh. Code, § 10851); two convictions for receiving stolen property in 2010; three convictions for

felony second degree burglary in 2010, 2011, and 2012; and a misdemeanor conviction for possession of personal identification with intent to defraud in 2014. He was placed on probation or mandatory supervised release for most of these convictions, and violated the terms so that the release was revoked and he was sentenced to jail. He was on probation or parole when he committed the current offense.

Defendant told the probation officer that he accepted full responsibility for his actions and acknowledged wrongdoing. Defendant said he was addicted to alcohol and methamphetamine and wanted to be placed in a residential treatment program.

### **Sentencing hearing**

On May 21, 2015, the court convened the sentencing hearing for defendant. The court stated defendant had seven prior felony convictions, and he was ineligible for probation absent unusual circumstances. The court did not find any unusual circumstances and denied probation.

The court intended to sentence defendant to two years and declined to split the sentence because of his lengthy criminal record, his previous failure to follow the terms and conditions in prior cases, the circumstances of this case, and he was already on mandatory supervised release when he committed the instant offense.

Defendant interrupted and said he wanted to “pull the plea back” because of an illegal search and seizure. Defendant said he wanted to “see my discovery and I want to see the warrants.” Defendant said he was not on mandatory supervision or probation, and therefore, there was an “illegal search and seizure.”

The court asked defendant’s attorney whether there were legal grounds to rescind the plea. Counsel said he was not aware of any such grounds.

The court stated there was no formal motion to withdraw the plea, it had reviewed the transcript of the plea proceeding, and it was appropriately taken. The court found no legal reason to withdraw the plea.

Defendant said he wanted to be placed in a two-year Delancey Street program, and the probation officer said that defendant could “pull [his] plea back” if he did not get a program. The court said he was not going to receive a program because of his prior record.

The court sentenced defendant to the midterm of two years, to be served in county jail under section 1170, subdivisions (h)(1) and (h)(2), and declined to split the sentence.

On June 5, 2015, defendant filed a timely notice of appeal based on the court’s denial of his request to “pull my plea.” He requested and obtained a certificate of probable cause.

### **DISCUSSION**

As noted above, defendant’s counsel has filed a *Wende* brief with this court. The brief also includes the declaration of appellate counsel indicating that defendant was advised he could file his own brief with this court. By letter on October 14, 2015, we invited defendant to submit additional briefing. He has failed to do so.

After independent review of the record, we find that no reasonably arguable factual or legal issues exist.

### **DISPOSITION**

The judgment is affirmed.