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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>RANBIR SINGH,<br><br>Defendant and Appellant. | H037347<br><br>(Santa Clara County<br>Super. Ct. No. CC941725) |

## I. INTRODUCTION

After a jury trial, defendant Ranbir Singh was found guilty of two counts of second degree burglary (Pen. Code, §§ 459, 460, subd. (b))[1] and one count each of grand theft (§§ 484, 487, subd. (a)) and possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)). The trial court found true the special allegation that defendant had a served a prior prison term (§ 667.5, subd. (b)). At sentencing, the court placed defendant on formal probation for three years and imposed a one-year county jail sentence pursuant to defendant's waiver of his custody credits.

Defendant filed a timely notice of appeal, and we appointed counsel to represent him in this court. Appointed counsel has filed an opening brief that states the case and facts but raises no issue. We notified defendant of his right to submit written argument

[1] All further statutory references are to the Penal Code unless otherwise indicated.

on his own behalf within 30 days. The 30-day period has elapsed and we have received no response from defendant.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the entire record. Following the California Supreme Court's direction in *People v. Kelly*, *supra*, at page 110, we provide "a brief description of the . . . procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed."

## II. FACTUAL AND PROCEDURAL BACKGROUND

### A. *Factual Background*

Our summary of the facts is taken from the testimony given at the jury trial.

On April 23, 2009, defendant and his girlfriend Elise Pyers entered the Fry's Electronics store in Campbell, where they took an iPod Touch that cost $219.99 without paying for it. The store kept the iPods in clamshell-type security containers, which defendant took from the shelf and handed to Pyers. Pyers then opened one security container, removed the iPod, and placed it in her purse. After Pyers concealed the iPod, the couple left the store and drove off in a black Honda Accord. Their actions were recorded in a store surveillance tape, which the jurors viewed at the time of trial.

Two days later, during the morning of April 25, 2009, defendant and Pyers entered the Fry's Electronics store in San Jose. A loss prevention officer recognized the couple from a "be on the lookout" email, which included photos from store surveillance cameras, and began to observe them via store security cameras. The loss prevention officer saw Pyers take a Nintendo DS in a security container, crouch down, open the security container, remove the Nintendo DS, and conceal it in her purse. Defendant stood about one foot away from Pyers while she took the Nintendo DS. After Pyers placed the empty security container back on the bottom shelf, defendant nudged it further back with his foot. The couple then left the store without paying for the Nintendo DS and drove off

in a black Honda Accord. At the time of trial, the jurors watched the store security camera recording of the incident.

The same day, April 25, 2009, defendant and Pyers returned to the Fry's Electronics store in Campbell during the evening hours. At that time, a loss prevention officer saw the couple approach the iPod display while he was walking the sales floor. He observed defendant hand three iPod security containers to Pyers, who opened them, removed the iPods, and placed them in her purse. Defendant then returned the empty security containers to the shelf. As the couple were engaged in removing the iPods, another loss prevention officer began to surveil them via store security cameras. During the trial, the jurors viewed the surveillance video footage.

When defendant and Pyers left the store without paying for the iPods, a loss prevention officer detained Pyers outside the store. Defendant was not detained because he did not leave with store merchandise. He asked for the keys to the black Honda Accord, which were in Pyers' possession. The loss prevention officer refused to give the car keys to defendant and told him to leave the premises. Subsequently, store personnel searched Pyers' purse and recovered four iPods with a total value of $1,039.96.

Police officers from the City of Campbell responded to the Fry's Electronics store on April 25, 2009 after they were called by a loss prevention officer. The loss prevention officers had handcuffed and searched Pyers, recovering from her shirt a magnetic key used to open the clamshell-type security containers. After obtaining the keys to the black Honda Accord from the loss prevention officer, police officers searched the car in the store parking lot. The items recovered in the search included a DMV registration indicating that defendant was the registered owner of the car; two citations in defendant's name; a digital scale made to look like an iPhone; and a small baggie containing 0.012 grams of methamphetamine, which the officer testified at trial was a usable amount.

A police officer called defendant that night and told him to pick up his car keys at the Campbell Police Department. When defendant arrived, he was arrested, placed in a holding cell, and read his rights under *Miranda v. Arizona* (1966) 384 U.S. 436. The police officer noticed that defendant had symptoms indicating that he might be under the influence of methamphetamine. The officer also heard defendant yelling back and forth with Pyers, who had been placed in a nearby holding cell. Defendant at least twice yelled out that he was sorry.

**B. *Procedural Background***

The original complaint was filed on April 28, 2009, and an amended complaint was filed on May 6, 2009. The amended complaint charged defendant with three counts of second degree burglary (§§ 459, 460, subd. (b); counts 1, 2 & 6), grand theft (§§ 484, 487, subd. (a); count 3); possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a); count 4); and petty theft with a specified prior conviction (§ 666; count 7). The amended complaint also included the special allegation that that defendant had a served a prior prison term (§ 667.5, subd. (b)).

After a preliminary hearing held on August 12, 2009, defendant was held to answer all charges in the amended complaint. The information filed on August 20, 2009, charged defendant with two counts of second degree burglary (§§ 459, 460, subd. (b); counts 1 & 2); grand theft (§§ 484, 487, subd. (a); count 3); possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a); count 4); petty theft (§§ 484, 488; count 6) and petty theft with a specified prior conviction (§ 666; count 7). The information also included the special allegation that defendant had served a prior prison term (§ 667.5, subd. (b)).

On August 18, 2010, the trial court heard and denied defendant's *Marsden* motion. (*People v. Marsden* (1970) 2 Cal.3d 118.) On December 9, 2010, the trial court issued its order denying defendant's motion to suppress evidence under section 1538.5. The matter proceeded to a jury trial that began on March 30, 2011. The trial court granted the

People's motion to amend the information and ordered (1) the date of count 7 to read April 23, 2009; (2) count 6 was dismissed; and (3) count 7 was renumbered count 5. During the trial, the People's request to dismiss count 5 was granted.

The jury returned verdicts of guilty on all counts on April 7, 2011. Defendant waived his right to a jury trial on the special allegation that he had served a prior prison term (§ 667.5, subd. (b)) and on April 7, 2011, the trial court found the allegation to be true.

At the sentencing hearing held on July 8, 2011, the trial court found that defendant had overcome the presumption that he was ineligible for probation because, among other things, defendant had waived 273 days of custody credit and was willing to participate in a rehabilitation program. The court placed defendant on formal probation for three years with various terms and conditions (including a substance abuse treatment program as directed by the probation officer), imposed a one-year county jail sentence pursuant to the waiver of custody credits, and suspended the imposition of a prison sentence.

The trial court ordered defendant to pay a $220 restitution fine (§ 1202.4, subd. (b)(2)) and suspended the imposition of a $220 parole revocation restitution fine (§ 1202.45). The court also ordered payment of a crime prevention fee of $10 (§ 1202.5), a drug program fee of $150 (Health & Saf. Code, 11372.7), a criminal laboratory analysis fee of $50 (Health & Saf. Code, § 11372.5), an AIDS education fine of $70 (Health & Saf. Code, § 11377, subd. (c)), a court security fee of $120 (§ 1465.8, subd. (a)(1)), a criminal conviction assessment fee of $120 (Gov. Code, § 70373), a criminal justice administration fee of $129.75 each to the City of San Jose and the City of Campbell (Gov. Code, § 29550.2), a presentence investigation fee of $200 (§ 1203.1b); a supervised own recognizance fee of $100 (Santa Clara County Code, § A28-6), and a probation supervision fee of $100 per month (§ 1203.1b).

Additionally, the trial court ordered defendant to register as a narcotics offender (Health & Saf. Code, § 11590) and to stay 100 yards away from all Fry's Electronics stores within Santa Clara County.

**C. *Appeal***

Defendant filed a timely notice of appeal on September 6, 2011. Having carefully reviewed the entire record, we conclude that there are no arguable issues on appeal. (*People v. Wende*, *supra*, 25 Cal.3d at pp. 441-443.)

## III. DISPOSITION

The judgment is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P. J.

WE CONCUR:

_____
MIHARA, J.

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DUFFY, J.*

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*Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.