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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIO JUAN BUTKOVIC,

Defendant and Appellant.

H038437

(Monterey County

Super. Ct. No. SSC120026)

Defendant Mario Juan Butkovic was charged with sale of a controlled substance while armed with a firearm (Health & Saf. Code, § 11379, subd. (a); Pen. Code, § 12022, subd. (c) - count one), possession of a controlled substance for sale while armed with a firearm (Health & Saf. Code, § 11378; Pen. Code, § 12022, subd. (c) - count two), possession of a controlled substance while armed with a firearm (Health & Saf. Code, § 11370.1, subd. (a) - count three), possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1) - count four), and possession of ammunition by a felon (Pen. Code, § 30305, subd. (a)(1) - count five). The trial court denied defendant's *Pitchess*¹ motion and his motion to suppress evidence pursuant to Penal Code section 1538.5. Defendant pleaded no contest to counts one, three, and five in order to receive a stipulated sentence of three years and eight months. Counts one and four were dismissed. The trial court

¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

sentenced defendant to a term of three years and eight months in state prison. Defendant filed a timely notice of appeal.

I. Statement of Facts

At approximately 1:00 a.m. on January 22, 2012, Monterey County Sheriff Deputy Rafael Garcia was patrolling the outskirts of Greenfield. After he observed a vehicle make a U-turn and pull off to the side of the road, he decided to make a welfare check. He explained that “they were on the county road, which was late at night and there’s no street lights, like within city limits, it’s a dark area and they were off on the shoulder. I didn’t know what was wrong with them.” Deputy Garcia had not observed a Vehicle Code violation or anything that indicated that the vehicle was having a problem. Deputy Garcia parked his patrol car approximately one car length behind the vehicle and activated his spotlight.

Defendant was seated in the driver’s seat and codefendant, Kelly Hernandez, was seated in the passenger seat. Velasco Valdez was standing outside the passenger side of the vehicle. As Deputy Garcia was walking toward the vehicle, he saw Valdez reach into the vehicle with cash in his hand, make eye contact with him, and lower his hand. After Deputy Garcia spoke with Valdez for about a minute, he noticed a piece of plastic on the ground. Based on his training and experience, he determined that the piece of plastic was a bindle of what appeared to be methamphetamine. In his opinion, he had interrupted a hand to hand drug transaction. Deputy Garcia then called for backup in order to conduct further investigation.

While Deputy Garcia was waiting for backup, he noticed the odor of marijuana coming from within the vehicle. After Deputies Maria Garcia and Nicholas Kennedy arrived on the scene, defendant and Hernandez were ordered out of the vehicle. The deputies then searched the vehicle. They found a gun, which defendant admitted

belonged to him. The deputies also found a bag containing 1.5 grams of methamphetamine and another bag containing 10 bindles of methamphetamine. There was no marijuana in the vehicle, but Valdez had marijuana on his person.

II. Discussion

Appointed appellate counsel has filed an opening brief which states the case and the facts but raises no issues. Defendant was notified of his right to submit written argument on his own behalf but has failed to avail himself of the opportunity. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal.

III. Disposition

The judgment is affirmed.

Mihara, J.

WE CONCUR:

Premo, Acting P. J.

Grover, J.