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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SALVADOR RAMIREZ CORNEJO,

Defendant and Appellant.

A129919

(Sonoma County  
Super. Ct. No. SCR-555153)

Defendant Salvador Ramirez Cornejo appeals from his conviction upon a plea of no contest to one count of possession of methamphetamine for sale, with one prior conviction of possession for sale of a controlled substance. Defendant's appointed counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, in which he raises no issue for appeal and asks this court to make an independent review of the record. Defendant was informed of his right to file a supplemental brief. We have received no such brief. After independently reviewing the record, we find no error or cause for further briefing and therefore shall affirm.

**BACKGROUND**

On September 2, 2009, defendant was charged by information in case No. 555153 with one count of possession for sale of methamphetamine (Health & Saf. Code, § 11378), one count of transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a)), and one count of misdemeanor possession of marijuana (Health & Saf. Code, § 23222, subd. (b).) The information alleged under the first two counts a prior conviction for a drug offense under Health and Safety Code section 11370.2, subdivision (d) All

offenses were alleged to have occurred on February 5, 2009. Defendant pleaded not guilty and denied the allegations.

In a separate information filed the same day, defendant was charged in case No. 563878 with one count of possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) on March 30, 2009. It was alleged that defendant was released on bail in the first case at the time of this offense within the meaning of Penal Code section 12022.1.

The two cases were consolidated and a consolidated information was filed that recharged all of the same counts and reiterated the allegations.

Defendant filed a motion to suppress the evidence obtained in case number 555153. At the hearing on the motion to suppress, Officer Blake Hulquist testified that on February 5, 2009, he was on patrol in the town of Sonoma when he saw defendant driving a pickup truck on which the month tab for the vehicle registration on the license plate was obscured. He followed defendant for six or seven blocks and noted that defendant was driving 36 miles per hour in a 30-mile-per-hour zone. Hulquist stopped defendant and observed that his eyes were bloodshot and a little watery. He conducted a nystagmus test to determine if defendant had been drinking.<sup>1</sup> Hulquist also observed a plastic baggie on the center console of the pickup truck. It contained what the officer identified as marijuana. Hulquist then called for a canine unit to search the truck. The dog alerted to the center console of the vehicle and upon a further search Hulquist discovered methamphetamine inside the console.

Defendant testified that Hulquist was driving more than a hundred yards behind him. Defendant had pulled into the driveway of his home when Hulquist activated his lights. Hulquist did not mention the license plate but asked him if he had been drinking alcohol.

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<sup>1</sup> Hulquist was not asked and did not testify to the results of this test.

Defendant moved to suppress the marijuana, the methamphetamine, and money that was taken from his pockets when the police searched him and the vehicle incident to arrest. The trial court denied defendant's motion.

On June 18, 2010, defendant pleaded no contest to possession for sale of methamphetamine and admitted the prior drug offense attached to that count. The remaining charges were dismissed and the prosecutor agreed to recommend a maximum sentence of five years.

The trial court sentenced defendant to the low term of two years for the possession for sale offense and a consecutive three years for the prior drug offense. Defendant was ordered to pay a restitution fine of \$1,200 under Penal Code section 1202.4, subdivision (b) and was awarded four days of presentence custody credits.

### **DISCUSSION**

The denial of the suppression motion may be challenged by an appeal from judgment entered after a defendant's guilty or no contest plea. (§ 1538.5, subd. (m).) "An appellate court's review of a trial court's ruling on a motion to suppress is governed by well-settled principles. [Citations.] [¶] In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.] 'The [trial] court's resolution of each of these inquiries is, of course, subject to appellate review.' [Citations.] [¶] The court's resolution of the first inquiry, which involves questions of fact, is reviewed under the deferential substantial-evidence standard. [Citations.] Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. [Citations.] Finally, its ruling on the third, which is a mixed fact-law question that is however predominantly one of law, . . . is also subject to independent review." (*People v. Williams* (1988) 45 Cal.3d 1268, 1301, modified on other grounds by *People v. Guian* (1998) 18 Cal.4th 558.) The trial court must judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence, and draw factual inferences, " 'and the trial court's findings on such

matters, whether express or implied, must be upheld if they are supported by substantial evidence.’ ” (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597.)

A traffic stop is lawful based upon “a reasonable suspicion that any traffic violation has occurred.” (*Brierton v. Department of Motor Vehicles* (2005) 130 Cal.App.4th 499, 510.) Hulquist testified that defendant’s license plate was obscured and that he had been speeding, either of which provided legitimate cause to pull defendant over. After he had legally detained defendant for the traffic violations, Hulquist observed a baggie of marijuana in plain view. “To see what is in plain sight does not constitute an unreasonable search because under such circumstances there is not a search for evidence.” (*Restani v. Superior Court* (1970) 13 Cal.App.3d 189, 198 [officer observed a white tablet in a transparent box in an open shaving kit in the defendant’s vehicle].)

Discovery of the marijuana provided Hulquist with probable cause to search the remainder of the vehicle. “[T]he Fourth Amendment to the United States Constitution permits the warrantless search of an automobile with probable cause.” (*People v. Strasburg* (2007) 148 Cal.App.4th 1052, 1059.) “If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.” (*United States v. Ross* (1982) 456 U.S. 798, 825.) Having discovered marijuana on the center console, “a person of ordinary caution would conscientiously entertain a strong suspicion that even if defendant makes only personal use of the marijuana found in [the passenger area], he might stash additional quantities for future use in other parts of the vehicle . . . .” (*People v. Dey* (2000) 84 Cal.App.4th 1318, 1322.) In *Dey*, the court held that discovery of marijuana provided probable cause to search the remainder of the vehicle. (See also *People v. Strasburg, supra*, at pp. 1059-1060 [“The fact that defendant had a medical marijuana prescription, and could lawfully possess an amount of marijuana greater than that Deputy Mosely initially found, does not detract from the officer’s probable cause” to search the remainder of the vehicle].) The trial court properly denied the motion to suppress.

The probation report states that defendant was granted three years probation in 2003 for possession for sale of narcotics (Health & Saf. Code, § 11379, subd. (a)) and

that in 2004 he was found in violation of probation for failing to report for a scheduled chemical test and for testing positive for methamphetamine. Defendant violated his probation a second time in 2004 by testing positive for methamphetamine use and, on September 17, 2004, his probation was revoked. The court was within its discretion to deny probation in this case.

Penal Code section 11378 provides that on conviction of possession for sale of certain substances, including methamphetamine, the defendant shall be sentenced to imprisonment. Penal Code section 18 provides that where not otherwise specified, felonies are to be punished by 16 months, two or three years' imprisonment. Health and Safety Code section 11370.2, subdivision (c), the enhancement that defendant admitted, provides that where a defendant has previously been convicted of a violation of Health and Safety Code section 11379, he "shall receive, in addition to any additional punishment . . . a full, separate, and consecutive three-year term for each prior conviction . . . ." Finally, the court has broad discretion under Penal Code section 1202.4, subdivision (b)(1) to set a restitution fine between \$200 and \$10,000. The trial court was within its discretion in imposing a fine of \$1,200 in this case.

Defendant was at all times represented by competent counsel. There are no issues that require further briefing.

**DISPOSITION**

The judgment is affirmed.

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Pollak, Acting P. J.

We concur:

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Siggins, J.

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Jenkins, J.