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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. SOMEPHONE SIACKSORN, Defendant and Appellant.	C049116 (Super. Ct. No. 03F07736)

A jury convicted defendant Somephone Siacksorn of possession of cocaine base for sale (Health & Saf. Code, § 11351.5--count one), possession of methamphetamine for sale (Health & Saf. Code, § 11378--count two) and possession of marijuana for sale (Health & Saf. Code, § 11359--count three). In bifurcated proceedings, the court found a strike prior (robbery) (Pen. Code, §§ 667, subds. (b)-(i), 1170.12) and a prior prison term allegation (Pen. Code, § 667.5, subd. (b)) to be true.

Sentenced to state prison for an aggregate term of 11 years, defendant appeals, contending (1) the trial court erroneously denied his suppression motion (Pen. Code, § 1538.5) and (2) the trial court's imposition of the upper term for possession of cocaine base for sale contravenes *Blakely v. Washington* (2004) 542 U.S. 296 [159 L.Ed.2d 403] (*Blakely*). We affirm the judgment.

FACTS AND PROCEEDINGS

On September 10, 2003, a search of defendant's residence yielded 40 bags of methamphetamine totaling 10 grams, 27 individually wrapped pieces of cocaine base totaling 36 grams, and 19 bags of marijuana totaling 13.5 grams. Officers also found a digital scale, a razor blade, packaging material, $954 (primarily in $20 bills), and slips of paper on which were written defendant's name and cell phone number. The cell phone itself was found in a shed on the property. Three surveillance cameras were found attached to the outside of the house with television monitors in defendant's bedroom.

Defendant admitted to officers that he sold rock cocaine and marijuana. He said that sometimes people knocked on his bedroom window and he would make the sale through a hole in the window screen. Defendant explained he was being evicted and so he gave his drug customers the slips of paper setting forth his name and phone number.

DISCUSSION

I

Knock and Announce

Defendant first contends that his suppression motion was erroneously denied, arguing that the officers failed to comply with knock-notice provisions. We disagree.

Given the manner in which we resolve this issue, we need not burden this opinion with a detailed recitation of the manner by which law enforcement officers gained entry to defendant's residence, except to note that it was pursuant to search warrant, the validity of which defendant does not challenge.

The United States Supreme Court recently held in *Hudson v. Michigan* (2006) 547 U.S. ___ [165 L.Ed.2d 56] (*Hudson*) that the exclusionary rule is inapplicable as a remedy for a violation of the "knock and announce" rule because the interests protected by the rule have nothing to do with the seizure of evidence. (*Id.* at p. ___ [165 L.Ed.2d at p. 66].) Under the California Constitution (art. I, § 28, subd. (d)), federal constitutional law governs our law of search and seizure. (*In re Lance W.* (1985) 37 Cal.3d 873, 886-887; see also *People v. Camacho* (2000) 23 Cal.4th 824, 830.) Given the Supreme Court's decision in *Hudson*, defendant's motion to suppress was properly denied. (See also *In re Frank S.* (2006) 142 Cal.App.4th 145.)

II

The Sentence to the Upper Term

In sentencing defendant to state prison, the trial court imposed 10 years on count one, that is, the upper term of five years, doubled for the strike prior, finding in aggravation: defendant's conviction of other crimes for which a consecutive sentence could have been imposed; defendant's planning and sophistication; defendant's parole status as a parolee at the time of the offenses; and defendant's prior unsatisfactory performance while on probation or parole. The court imposed concurrent six-year terms (upper terms of three years, doubled) for counts two and three. The court imposed a one-year enhancement for the prior prison term.

Defendant contends the imposition of the upper term on each count contravenes *Blakely*. He acknowledges that the California Supreme Court decided contrary to his claim in *People v. Black* (2005) 35 Cal.4th 1238 (*Black*) but argues *Black* was wrongly decided and that this court should follow *Blakely*. This court is bound by *Black* (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455). We reject defendant's contention.

In any event, we point out that not only does the holding in *Black* defeat defendant's claim of error, that claim fails because the trial court imposed the upper term due to the fact that defendant had been "convicted of other crimes which could result in consecutive sentencing." The rule of *Blakely* does not apply to the use of prior convictions to increase the penalty for a crime. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490

[147 L.Ed.2d 435, 455].) Since one valid factor in aggravation is sufficient to expose defendant to the upper term (*People v. Cruz* (1995) 38 Cal.App.4th 427, 433), the trial court's consideration of other factors, in addition to defendant's prior convictions, to impose the upper term did not violate the rule of *Blakely*.

DISPOSITION

The judgment is affirmed.

HULL, J.

I concur:

MORRISON, J.

I concur in the opinion except for part II, where I concur in the result.

SIMS, Acting P.J.