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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL DAVID ESPINOZA,

Defendant and Appellant.

B283851

(Los Angeles County
Super. Ct. No. YA080598)

APPEAL from an order of the Superior Court of
Los Angeles County, Alan B. Honeycutt, Judge. Affirmed.

Marta I. Stanton, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Manuel David Espinoza appeals from the denial of his motion for a finding of factual innocence pursuant to Penal Code section 851.8.¹ We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background

In September 1995, victim Katrina S. attended a party where she became intoxicated. She left the party with a male individual whom she brought home. Shortly thereafter, two other men came to her door and were let in by the first man. All three men appeared to know each other. Feeling uneasy, the victim asked the three men to leave, at which time they refused. When the victim attempted to call for help, one of the men ripped the phone from the wall. Another produced a handgun, pointing it at the victim's head. Each of the three men forcibly raped the victim before leaving. The victim reported the rape to the police that night and submitted to a sexual assault exam.

In February 2003, the victim's rape kit was finally processed with samples being submitted for DNA testing. In July 2003, a DNA mixture containing a male profile was identified and uploaded to the Combined DNA Index System. In July 2010, the defendant's DNA profile was identified as a potential source of the male DNA in the mixture. Analysis of the defendant's DNA, the victim's DNA, and the male DNA profile from the mixture concluded that it was one billion times more likely that the source of the male DNA profile from the mixture was from the defendant versus another contributor.

¹ All further undesignated statutory references are to the Penal Code.

In March 2011, the defendant was charged with forcible rape. At the May 2011 preliminary hearing, the victim was unable to identify the defendant but maintained that none of the three rapists had permission to have sexual intercourse with her. In September 2011, the People discovered additional notes from the victim's sexual assault exam which indicated that the victim told the doctor that she had consensual sex with one of the three men who came to her home on the night in question. Although the victim denied making this statement, the prosecution announced unable to proceed to trial. The charges against the defendant were dismissed pursuant to section 1385.

II. Procedural background

In March 2011, the defendant was charged with forcible rape while acting in concert (§ 264.1) and oral copulation by acting in concert with force (§ 288a, subd. (d)).

In May 2011, the defendant was held to answer for the forcible rape after a preliminary hearing. The oral copulation charge was dismissed.

In September 2011, the People announced unable to proceed and the case against the defendant was dismissed pursuant to section 1385.

In May 2017, the defendant filed a motion for a finding of factual innocence pursuant to section 851.8, subdivision (c).

In June 2017, the court heard the motion and denied it, finding reasonable cause existed to believe that the defendant was guilty of rape as charged in the information.

In July 2017, the defendant timely filed a notice of appeal.

In October 2017, court-appointed counsel for the defendant filed an opening brief and requested the court to conduct an

independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

In December 2017, the defendant filed a supplemental letter brief, raising the same issues brought in the original motion below.

DISCUSSION

After review of the record, appellant's court-appointed counsel filed an opening brief which raised no issues and which asked this court to conduct an independent review of the record, under *People v. Wende, supra*, 25 Cal.3d at page 441. By letter dated October 27, 2017, we advised appellant that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. Defendant filed a supplemental brief.

Exercising our independent review and considering the record de novo, we conclude that the record supports the trial court's denial of defendant's motion for a finding of factual innocence. (See generally *People v. McCann* (2006) 141 Cal.App.4th 347, 357.) We are therefore satisfied that appellant's attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The order is affirmed.

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DHANIDINA, J.*

WE CONCUR:

EDMON, P. J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.