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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

EDGAR MORELOS,

Defendant and Appellant.

B277736

(Los Angeles County
Super. Ct. No. KA112003)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Mike Camacho, Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Edgar Morelos appeals from the judgment entered following his conviction by jury of one count of throwing an object at a vehicle (Veh. Code, § 23110, subd. (b)), and one count of assault on a peace officer (Pen. Code, § 241, subd. (c)).¹ His counsel filed an opening brief that raised no issues and requested independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

On March 30, 2017, we sent defendant a letter informing him of the nature of the brief that had been filed and advising him that he had 30 days to file a supplemental brief setting forth issues he wished this court to consider. Defendant has not filed a response with the court. However, we note for the record that counsel's opening brief states that since counsel's last communication with defendant, "he has been released from custody and has not provided a new address." Counsel states therefore he was unable to advise defendant of the filing of the *Wende* brief. Similarly, the court's March 30, 2017 notice to defendant was sent to his last known address in custody. Defendant had an obligation to advise the court of any changes of address that occurred while his appeal was pending. (Cal. Rules of Court, rule 8.32.) Defendant failed to do so. As such, we will proceed with a substantive disposition of defendant's appeal.

I. Background

On April 21, 2016, defendant was charged in a five-count information.² Count one alleged that on March 7, 2016,

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

² One count was subsequently stricken and the four remaining counts were renumbered for the purposes of trial and

defendant made criminal threats against Serena Moreno in violation of section 422, subdivision (a). Counts two and three alleged that on March 5, 2016, defendant committed two acts of throwing an object at a vehicle or occupant of the vehicle with intent to do great bodily injury, in violation of Vehicle Code section 23110, subdivision (b). Count four alleged that on March 7, 2016, defendant committed battery upon a peace officer, Angelessa Flores, in violation of section 243, subdivision (b). The information also specially alleged that defendant was convicted of two prior felonies pursuant to section 667.5, subdivision (b). Defendant entered a plea of not guilty and denied the special allegations.

At trial, the prosecution presented evidence that on March 5, 2016 at around 12:45 p.m., officer Carmen Chice of the Baldwin Park Police Department (BPPD) responded to a call regarding a person in distress in the elevator at a Metrolink station. She saw an individual, whom she recognized as defendant, lying on the floor of the elevator. Defendant was wearing a black jacket and green camouflage pants; he appeared to be sleeping. Chice attempted to rouse defendant and he yelled at her to go away. Chice explained that if defendant came out of the elevator and showed her he was okay, she would cancel the call to the fire department paramedic. Defendant complied. Although Chice asked the police dispatcher to cancel the paramedics, a fire truck arrived on the scene. According to Chice, defendant “yelled that we were using the fire department to follow him and harass him.” Defendant walked past the fire engine and flipped them off, shouting obscenities. As he was

verdict forms. For ease of reference, we identify the counts herein as they were numbered for trial.

leaving, he also told Chice, “you woke me up, now I’m mad, I’m gonna go fuck with somebody.”

Around 1:00 p.m. that day, firefighters from a Los Angeles County Fire Department (LAFD) station in Baldwin Park were heading to a medical call. LAFD specialist Gus Martinez testified that as he drove his fire engine down the street, approaching an intersection near the same Metrolink station, he saw a man run into the middle of the street with his right arm raised. It appeared the man was holding a heavy, black, metal object in his fist and “was getting ready to throw something at us.” Martinez ducked and swerved across the center line of the road to “get out of the way” of the man and the object. He did not see whether the man threw anything and did not hear anything hit the truck. Martinez then continued to drive toward the original call, but waved down a nearby police officer and informed him of the incident.

LAFD paramedic Brent Gannan also responded to the call on March 5, 2016. He was the passenger in his paramedic vehicle, travelling behind (but out of sight of) the fire engine driven by Martinez. As his vehicle approached the same intersection, a man “stepped into the road . . . and threw something at our rig.” The man was yelling at them and then threw a “dark object” at the vehicle. Gannan’s partner, who was driving, testified that the man was wearing green and black clothing. Both paramedics heard the object hit the side of the vehicle; based on the sound, Gannan stated he thought it would be “like throwing a piece of branch” rather than something harder, such as a rock. The paramedics continued to drive toward their call, stopping a few seconds later to explain what had happened. The officer responded: “You too?”

None of the firefighters observed any damage to a vehicle or was able to identify the suspect.

BPPD sergeant Joshua Hendricks responded to a call regarding the incident. Near the same intersection, he saw a man wearing a black jacket and green camouflage pants, fitting the description he received. He identified this individual as defendant at trial. Sergeant Hendricks detained defendant and placed him in handcuffs; he also told defendant that he was not under arrest but merely detained.³ According to Hendricks, defendant became agitated, stating “you can’t detain me. I know my rights.” Defendant told Hendricks that he “only threw a straw at the firefighters to scare them for harassing me.”

Serena Moreno, who worked at the jail in the BPPD, testified that on March 7, 2016, defendant told her he was hungry and then became angry when she said she could not feed him right away. Moreno stated defendant threatened her, saying “just watch, when I get out of here I’m gonna go and get you.” Later the same day, jailer Angelessa Flores heard defendant yelling, then heard water being thrown out of his cell. As she approached, she saw defendant’s hand extending out of the food flap in the cell door, holding a cup. Defendant said “come over

³ At this point, police officers had not advised defendant of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436. The court overruled defendant’s objection to the use of his statements made during his conversation with Sergeant Hendricks, finding that even assuming defendant was in custody, his statements were volunteered and not made in response to any interrogation, and thus their use did not violate *Miranda*. (See, e.g., *People v. Mayfield* (1997) 14 Cal.4th 668, 732, overruled on another point in *People v. Scott* (2015) 61 Cal.4th 363, 390.)

here, I have a surprise for you bitches.” Defendant then threw water at Flores, hitting her back and ear.

The jury found defendant not guilty on counts one and two and guilty on count three. On count four, the jury found defendant guilty of the lesser-included misdemeanor offense of assault on a peace officer in violation of section 241, subdivision (c). Defendant waived his right to a jury trial on the prior conviction allegations and later admitted them. Defendant moved to modify the verdict to reduce the offense in count three to a misdemeanor pursuant to section 1181, subdivision (b), arguing that the evidence at trial was sufficient only to sustain a conviction on the lesser-included offense of throwing an object at a vehicle, a misdemeanor. The trial court denied the motion but struck defendant’s prior prison term allegations in the interest of justice. The court sentenced defendant to the mid-term of two years in state prison on count three and three months in county jail on count four, to be served concurrently. Defendant timely appealed.

II. *Wende* review

We have independently reviewed the entire record. We are satisfied that no arguable issues exist and defendant has received effective appellate review of the judgment entered against him. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-279; *People v. Kelly* (2006) 40 Cal. 4th 106, 123-124.)

DISPOSITION

The judgment is affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.