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REPORTS**

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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL DWAYNE BAINES,

Defendant and Appellant.

B279941

(Los Angeles County
Super. Ct. No. TA140106)

APPEAL from a judgment of the Superior Court of Los Angeles County, Tammy Chung Ryu, Judge. Affirmed.

Hancock and Spears, Allan E. Spears, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Following a jury trial, defendant Michael Dwayne Baines was convicted of injuring a cohabitant in violation of Penal Code section 273.5, subdivision (a).¹ The trial judge found true allegations that the defendant suffered two prior convictions for robbery in violation of section 211 and a conviction for prohibited possession of a firearm in violation of former section 12316. The judge struck one of defendant's two "strike" offenses and sentenced him to a total of 8 years.

Defendant's appointed appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) requesting we independently review the entire record to determine if there are any arguable issues on appeal. We notified defendant he could independently brief any contentions he wanted to have considered. He filed a letter dated June 28, 2017, and a supplemental brief on July 24, 2017. The combined claims are as follows: (1) evidence of a robbery and attempted carjacking crime should not have been admitted at trial because it had nothing to do with a May 7, 2016, incident of domestic violence; (2) photographs of the alleged victim should not have been admitted into evidence; (3) at his preliminary hearing an officer improperly testified about the contents of a police report; and (4) his trial attorney was ineffective because he did not cross-

¹ Unless indicated otherwise, all statutory references are to the Penal Code.

examine an officer, filed no motions, never visited him, was unavailable by telephone, and did not relay a post-verdict plea agreement. We find no merit to the first three claims and do not reach the fourth.

FACTUAL BACKGROUND

The defendant was charged in a complaint with robbery in the second degree (§ 212.5, subd. (c)), injuring a cohabitant (§ 273.5, subd. (a)), and attempted carjacking (§§ 664/215, subd. (a).) At his preliminary hearing on June 1, 2016, Los Angeles Police Officer Daniel Schiele testified that he had been a police officer for 15 months, had taken a class that taught him how to write reports and testify at a preliminary hearing, and that he was P.O.S.T. certified.² He then testified about what Denise Jenkins, the alleged victim,

² We take this to mean that Officer Schiele completed the Commission on Peace Officer Standards and Training mentioned in Section 872, subdivision (b). That subsection reads, in pertinent part, “[T]he finding of probable cause may be based in whole or in part upon the sworn testimony of a law enforcement officer . . . relating the statements of declarants made out of court offered for the truth of the matter asserted. . . . Any law enforcement officer . . . testifying as to hearsay statements shall either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.”

told him about the events of April 12, 2016, and how defendant injured her. The defendant was held to answer on all charges.

Immediately before trial commenced, the robbery and attempted carjacking charges were dismissed. Ms. Jenkins was the first witness. She denied that the defendant, her fiancé and cohabitant, hit her or harmed her in any manner on April 12, 2016. She claimed that on that day two females came up to her and defendant and attempted to throw gasoline on him and then shoved and pushed her against a wall. When she was asked if she told the police what happened to her regarding these two females, she stated “I was kind of nervous to say anything. Because the girls, they were kind of masculine. So when [the police officer] gave me the paper to sign, I just signed it because I was kind of scared.” She denied telling a responding police officer what the defendant had just done to her. When she was shown a photograph that was taken after the alleged incident, she was not sure if she was the person depicted in it. She was then shown photographs that depicted injuries to her lip, knee and ankle. She stated the injuries were sustained during a fight she had with her sister-in-law the previous day.

The next witness was Officer Schiele. He responded to the location of the above incident at 7:50 a.m. with his partner, Officer Montague. He talked to a witness by the name of Tanya Powell and then Jenkins, who was seated on the curb next to her. Jenkins was crying, visibly distraught

and emotional. Jenkins told him the following: She was walking from her residence to a grocery store when the defendant approached her, taunted her and said “Fuck you, bitch. Why you walking so fast?” The defendant grabbed her purse and punched her in the face. While she was on the ground holding her purse, defendant tried to remove it from her and while doing so dragged her along the sidewalk. He ended up taking her purse and its contents including a cell phone, cash, and bank and ID cards. Officer Schiele also testified that the above mentioned photographs accurately showed the injuries he saw on Jenkins on April 12 and that he was present when Officer Montague took at least one of them.³

The only other testimony that needs to be mentioned to resolve this case has to do with a statement by one of the witnesses that the defendant attempted to get into a car driven by two people who had stopped to the aid Jenkins. Officer Schiele first attributed the statement to Jenkins. During cross-examination he said that both Powell and Jenkins made the statement.

³ The photographs were admitted into evidence without objection.

ANALYSIS

A. Evidence of Robbery and Attempted Carjacking

Evidence concerning the acts and behavior of the defendant before, during and immediately after the infliction of injuries upon Jenkins were highly relevant in light of the charged offense. That the robbery and attempted carjacking charges were dismissed just before the trial began does not change this fact. The defendant's reference to a May 7, 2016 alleged domestic violence incident is perplexing. His trial concerned only the April 12, 2016 incident.

B. Admission of Photographs

It appears that all of the photographs of Jenkins were likely taken the morning of the incident. In any event, the prosecutor correctly laid the foundation for the admission of them. Because they were highly relevant and not unduly prejudicial, it should come as no surprise that defense counsel did not object to their admission into evidence, and their admission was appropriate.

C. Admission of Hearsay Testimony At Preliminary Hearing

There was nothing improper in allowing Officer Schiele to testify about what Jenkins told him regarding the April 12

incident. Because he was P.O.S.T. certified, he was allowed to testify pursuant to section 872, subdivision (b).

D. Ineffective Assistance of Counsel

In his supplemental brief, the defendant concedes that his claim of ineffective assistance of counsel is more appropriately made in a petition for writ of habeas corpus. Given his particular claims, we agree and will therefore not consider this issue.

DISPOSITION

Apart from considering the above issues, we have conducted a review of the entire record of this case, including the transcript of the defendant's request to relieve his trial attorney. We are satisfied that appellant counsel has fulfilled his obligation on appeal of providing a basis for adequate and effective appellate review. The judgment is

affirmed. (*Smith v. Robbins* (2000) 528 U.S. 259, 284.)

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LANDIN, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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