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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

CESAR CAMPOS,

Defendant and Appellant.

B286855

(Los Angeles County
Super. Ct. No. BA453152)

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Dabney, Judge. Affirmed but remanded for limited proceedings.

Jennifer Hansen, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant Cesar Campos appeals his conviction, following a jury trial, of one count of possession of a firearm by a felon (Pen. Code, § 29805). The trial court sentenced defendant to the upper term of three years in prison, with credit for 64 days in custody (32 days actual plus 32 days credit). A timely notice of appeal was filed.

Defendant's appointed counsel on appeal filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) requesting this court independently review the record on appeal for any arguable issues. Having done so, we affirm the judgment in all respects. We do, however, remand this matter for the limited purpose of a recalculation of actual custody days.

BACKGROUND

1. Prosecution

On December 24, 2016, defendant approached Victor Pineda outside a liquor store in Los Angeles County, pulled out a gun, and demanded that Pineda turn over his shoes and his beanie. Pineda complied. Defendant dropped one of the shoes before walking away. The interaction between defendant and Pineda was captured on surveillance video from the liquor store, but there was no audio recording. Pineda called 911 and reported that a Hispanic man pointed a gun at him and stole his shoe.

At various times that evening, defendant went into the liquor store to buy beer. At one point in the evening he walked in carrying a shoe while laughing. Defendant later discarded the shoe outside the store. Police responded to the store as a result of Pineda's call. Officers were directed to defendant. He was arrested without incident. A handgun was recovered nearby, partially wrapped in a glove. There were no fingerprints or DNA

recovered from the gun. Defendant was interviewed hours later and exhibited signs of intoxication.

2. Defense

Defendant testified and admitted that he started drinking beers and tequila early in the day on December 24 while watching football with friends. He admitted drinking 24 beers and 10 to 15 shots of tequila over a nine-hour period. He claimed he had no recollection of the incident with Pineda, but he did not dispute that the video depicted him taking Pineda's shoes and holding a gun. Defendant testified that the gun was not his; he believed that one of the men drinking with him handed him the gun. Defendant acknowledged, and the court took judicial notice of, defendant's prior misdemeanor conviction for violating Penal Code section 273.5 in 2007.

Dr. Jack Rothberg testified as a defense expert witness to the impact of excessive alcohol consumption on the body. He opined hypothetically that someone who consumed 24 beers and 10 to 15 shots could be so impaired that they might not be able to form an intention, even though they committed an act.

DISCUSSION

We appointed counsel to represent defendant on this appeal. After reviewing the record, defendant's appointed counsel filed an opening brief asking this court to review the record independently pursuant to *Wende, supra*, 25 Cal.3d at page 441.

In a letter dated April 2, 2018, counsel advised defendant of the nature of his *Wende* brief; she further advised her client that he had the right to file a supplemental brief within 30 days of counsel filing his opening brief. Defendant did not file a supplemental brief.

We have examined the entire record. We are satisfied no arguable issues exist and that defendant's appellate counsel has fully satisfied her responsibilities under *Wende*. (*Smith v. Robbins* (2000) 528 U.S. 259, 279-284; *Wende, supra*, 25 Cal.3d at p. 441; see *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

We note, however, that there is an apparent clerical error in the number of days of custody awarded. The trial court awarded defendant 32 actual custody days. The probation report shows that defendant was in custody for 12 days after being arrested. Defendant was then free on bail until the jury reached its verdict on October 3, 2017; he was remanded into custody on that date. Defendant was sentenced on October 26, 2017, giving him an additional 24 days in custody. Thus, it appears from the record that defendant has a total of 36 days. We remand this matter for the trial court to recalculate defendant's actual days in custody and corresponding days of conduct credit.

DISPOSITION

This matter is remanded for the limited purpose of recalculating defendant's actual days in custody and his corresponding days of custody credit. The judgment is affirmed in all other respects.

ROGAN, J.*

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.

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