

Filed 11/1/17 P. v. Lopez CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ERNIE LOPEZ,

Defendant and Appellant.

B276537

(Los Angeles County
Super. Ct. No. LA082529)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard H. Kirschner, Judge. Affirmed.

Julia J. Spikes, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Ernie Lopez appeals the judgment entered following a jury trial in which he was convicted of two counts of making criminal threats (Pen. Code,¹ § 422, subd. (a); counts 1 and 2) and one count of eluding a police officer with wanton disregard for safety (Veh. Code, § 2800.2; count 3). In bifurcated proceedings, the trial court found true two prior serious felony conviction allegations (§ 667, subd. (a)), and two prior strike conviction allegations (§§ 667, subd. (d); 1170.12, subd. (b)).

The trial court exercised its discretion to dismiss one of the strike priors pursuant to section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, on the ground that the offense was remote in time. The court imposed an aggregate sentence of 9 years in state prison. On count 1, criminal threats, the court sentenced appellant to the midterm of 2 years, doubled to 4 years for the prior strike conviction, plus 5 years for the prior serious felony conviction. The court imposed concurrent 4-year terms (the midterm of 2 years, doubled) for each of the remaining two counts. Appellant received 416 days presentence custody credit, consisting of 208 days actual custody plus 208 days conduct credit.

The court further ordered restitution and parole revocation fines under sections 1202.4 and 1202.45 (stayed), a \$30 criminal conviction assessment for each count (Gov. Code, § 70373), and a \$40 court security fee for each count (Pen. Code, § 1465.8).

Appellant filed a timely notice of appeal from the judgment. We appointed counsel to represent appellant on appeal. After examination of the record, counsel filed an opening brief raising

¹ Undesignated statutory references are to the Penal Code.

no issues and asking this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Appellant did not file any supplemental brief of his own.

FACTUAL BACKGROUND

On January 3, 2016, approximately 10:50 a.m., Rodney Dowell and Felicia Schrier pulled into the parking lot of a paint store on Haskell Avenue in Los Angeles. As they backed into a parking space, they noticed appellant leaning or sitting on the bumper of a black Mercedes with the trunk open. Appellant raised his shirt to reveal a black object tucked into his waistband, which Dowell took to be a handgun. Dowell could see the butt of the gun clearly against appellant's skin. Dowell and Schrier remained in their vehicle, and appellant said, " 'You don't know what the fuck you're doing. You're a fucking faggot. I'm going to shoot you.' " Appellant then began to ramble incoherently as he got into the driver's seat of the Mercedes. With tires spinning, appellant abruptly backed out of the parking space, positioning his vehicle in front of and perpendicular to Dowell's car. Appellant then gestured toward Dowell and Schrier with his thumb and forefinger simulating the shooting of a gun. Appellant sped out of the parking lot, turning left to head north before making a U-turn and stopping in the middle lane facing south. Dowell and Schrier left immediately, calling the police as they drove to another paint store.

Phillip Sellers and his partner, police officers in the City of Los Angeles Patrol Division, responded to the radio call about the incident. Officer Sellers saw appellant driving a car on Haskell Avenue which matched the description of the suspect vehicle. As the two vehicles passed each other traveling in opposition directions, appellant leaned out of the window and gave the officers "the finger." Officer Sellers made a U-turn to follow the

Mercedes northbound on Haskell Avenue. Appellant began slowing and accelerating, weaving, and abruptly changing lanes into oncoming traffic. Appellant accelerated to approximately 60 miles per hour and turned right onto Parthenia. At this point, Officer Sellers activated his lights and siren, but appellant continued to accelerate, leading the officers on a high-speed chase through residential neighborhoods and on and off the freeway.

Several other police units and a police helicopter joined the pursuit, during which appellant drove in excess of 100 miles per hour at times, crossed multiple lanes of traffic causing other cars to make evasive maneuvers, and ran multiple red lights. Appellant did not slow or stop in response to the police lights and sirens or when specifically commanded to do so by police. At some point during the chase, appellant called police communications and told them to order the officers to “back off,” or this would not “end well.”

Eventually, appellant ran a red light and collided with another vehicle. As appellant’s car fishtailed, officers successfully executed a “PIT” (pursuit intervention technique) maneuver to end the pursuit. Appellant refused to get out of the car, and over the next 20 minutes, yelled profanities at the officers, demanded that they shoot him, “flipp[ed]” them off, was constantly on and off his cell phone, reached into various compartments of the car, and repeatedly put his windows up and down, finally leaving them up. It took the officers of the SWAT team at least an additional 20 minutes to persuade appellant to exit the vehicle, after which he was arrested without incident. The entire standoff lasted between 45 minutes and an hour.

Appellant testified on his own behalf. He denied seeing or threatening Dowell or Schrier on January 3, 2016, but claimed he had seen each of them a few times in the parking lot of his

apartment building. He also denied having any weapon that day, or even owning a gun.

Appellant explained that he fled from the police because he was afraid for his life. He recounted several occasions on which he had been stalked and threatened by police, and by Officer Sellers in particular. Appellant also described an earlier incident in which he had been placed in custody, taken to a hospital, tied down “like an animal,” and injected with drugs against his will.

During the police chase on January 3, 2016, appellant called 911 and spoke with police on the phone because he did not know if the officers pursuing him that day were legitimate, or whether he would be taken and drugged again. Appellant admitted that he offered the police a million dollars to shoot him because he would rather die than go to the hospital again or go to jail for a crime he did not commit. Appellant testified that he was distraught over how the police had been “stalking” him and destroying his life.

DISCUSSION

We have examined the entire record and are satisfied that defendant’s attorney has fully complied with her responsibilities, and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.