

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

DEMETROUS ROLAND
STILLMAN,

Defendant and Appellant.

B275481

(Los Angeles County
Super. Ct. No. BA441898)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Perry, Judge. Affirmed.

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

No appearance for Plaintiff and Respondent.

* * * * *

Defendant Demetrous Roland Stillman appeals from a judgment of conviction. On appeal, defendant's counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, stating that no arguable issue exists and requesting that this court independently review the record. We have reviewed the entire record and have considered defendant's supplemental brief. We find no arguable issue. We affirm the judgment.

PROCEDURE

In an amended four-count information defendant was charged with injuring a girlfriend (Manisha B.) after a prior conviction for willful infliction of corporal injury (Pen. Code, § 273.5, subd. (f)(1).)¹ He was charged with battery of Manisha in violation of section 243, subdivision (e)(1). As to the battery, it was further alleged that defendant used a deadly and dangerous weapon, to wit, brass knuckles. Defendant was further charged with possession of ammunition and assault with a deadly weapon. It was further alleged that he suffered a serious and/or violent conviction (discharging a firearm in a grossly negligent manner in violation of section 246.3) and that the prior fell within the ambit of section 667, subdivision (a)(1). Defendant pled not guilty and denied all special allegations. The battery count was dismissed.

Manisha was served for trial, but did not appear. The prosecutor indicated that he intended to proceed without her. Defense counsel responded that he wished to use Manisha's prior testimony from the preliminary hearing, and the parties stipulated that she was unavailable.

No witness testified for the defense.

¹ Undesignated statutory citations are to the Penal Code.

Jurors were instructed to treat Manisha's prior testimony "by the same standards that you apply to a witness who testified here in court." Jurors found defendant guilty of injuring a girlfriend and found that he used brass knuckles and that he previously had been convicted of a crime involving domestic violence.

When a detective testified that Manisha reported she worked as a whore for defendant, her pimp, the trial court immediately stopped the proceedings. The trial court denied defense counsel's motion for a mistrial. The court promptly instructed jurors that it was striking the testimony and that jurors were "not to consider that for any reason. It's not part of the evidence in this case. It's not one of the charges in this case. So you must disregard it."

Jurors found defendant guilty of possession of ammunition by a previously convicted felon. Jurors found him guilty of assault with a deadly weapon. Following a court trial, the court found the prior conviction allegations true. A plea from the prior conviction indicated that defendant personally discharged a firearm, making the prior a strike. (*People v. Golde* (2008) 163 Cal.App.4th 101, 113.) The court struck defendant's prior strike conviction.

Defendant, who was represented by counsel, attempted to file a motion for a new trial in pro. per. The trial court did not consider the merits of defendant's in pro. per. motion prior to sentencing him.

The court sentenced defendant to state prison for 11 years. Defendant timely filed a notice of appeal.

FACTS

On October 28, 2015, a maintenance worker observed a woman screaming in the apartment building where defendant lived. Defendant was hitting Manisha, and she was screaming, “Don’t hit me.” Defendant punched Manisha’s chest. Defendant also grabbed her hair and dropped her on the floor. The maintenance worker testified that there was another adult female inside defendant’s apartment. Defendant told the maintenance worker that his “girl is not going to say anything against me because I love her”

Another witness saw defendant grab Manisha and slam her to the floor.

Manisha’s preliminary hearing testimony was read to jurors. In October 2015, she sometimes lived with defendant, who she was dating. Manisha testified that she could not recall much and “blocked the situation out of my mind.” Manisha previously told police investigating defendant that defendant hit her twice with brass knuckles. She told police that defendant also slammed her to the ground and dragged her by her hair.

In a 911 call, Manisha stated that “Demetrious . . . hit me and dragged me by the hair. Dragged me in the house and hit me with some metal nunchucks that he had.” She later stated that defendant “pulled out a brass chuck knuckles on me. He socked me, he dragged me in the house by my hair and everything. In front of my child.” At the preliminary hearing, Manisha did not testify consistently with her statements to police or her statements in the 911 call. She basically testified only that she could not recall the events.

On December 1, 2015, defendant’s apartment was searched, and ammunition was found.

The parties stipulated defendant previously had been convicted of violating section 273.5 (willful infliction of corporal injury) in February 2011.

DISCUSSION

In a supplemental brief, defendant argued that evidence that he was a pimp and evidence that another woman was in his apartment at the time of the crime should have been excluded and prejudiced him. Defendant also argued that Manisha should have testified at trial; the police officers' pretrial investigation was inadequate; prior to trial the court indicated defendant committed the crime; and the court refused to consider defendant's motion for new trial, which had been filed in pro. per.

We agree that the statement that defendant was a pimp should not have been placed before the jurors. It was not relevant to any charged crime. However, the trial court immediately stopped the proceedings and instructed jurors to disregard the statement. Given these circumstances, defendant fails to show that the trial court abused its discretion in denying his motion for a mistrial. (*People v. Bolden* (2002) 29 Cal.4th 515, 555 ["A trial court should grant a mistrial only when a party's chances of receiving a fair trial have been irreparably damaged, and we use the deferential abuse of discretion standard to review a trial court ruling denying a mistrial."].)

Defendant also fails to show he suffered prejudice from the stricken statement that he was a pimp. The evidence against him was overwhelming. Although Manisha recanted at the preliminary hearing, she previously described defendant hitting her with brass knuckles in a 911 call and to a detective. Additionally, two impartial eye witnesses corroborated her story.

Defendant further fails to show that evidence another woman was present in his apartment prejudiced him. It had no tendency to prove that he committed any charged crime and was not prejudicial to him.

Defendant's argument that the victim should have testified at trial is not cognizable because his counsel stipulated that the victim was unavailable. (See *People v. Robertson* (1982) 129 Cal.App.3d 546, 548.) Moreover, her preliminary hearing testimony was read to jurors, and they heard the inconsistencies defendant emphasizes.

Although defendant believed that police should have conducted a more thorough investigation, he fails to show that the alleged deficiencies resulted in an error requiring the reversal of his criminal conviction.

Defendant states that the court indicated he committed the crime. He cites no record support for his statement, and we find none. The record indicates that the court took care to ensure defendant received a fair trial and instructed jurors on the presumption of innocence.

Finally, defendant correctly points out that the trial court did not consider his motion for new trial filed in pro. per. prior to sentencing him. However, defendant was represented by counsel throughout trial and throughout sentencing. "It is settled that the attorney of record has the exclusive right to appear in court for his client and to control the court proceedings, *so that neither the party himself* [citations], nor another attorney [citations], can be recognized by the court in the conduct or disposition of the case.'" (*People v. Merkouris* (1956) 46 Cal.2d 540, 554-555; see *Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 391 ["A litigant may appear in his own person or by attorney but cannot

do both.”].) Moreover, on appeal defendant fails to argue (or show) that he raised any meritorious claim in his motion for new trial.

We have reviewed the entire record and find no arguable issue on appeal and are satisfied that defendant’s attorney has fully complied with the responsibilities of counsel. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; see *People v. Kelly* (2006) 40 Cal.4th 106, 111; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.