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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.

DERRICK SHAWN McGOWAN,

Defendant and Appellant.

B276907

(Los Angeles County  
Super. Ct. No. MA067530)

APPEAL from a judgment of the Superior Court of Los Angeles County. Christopher G. Estes, Judge. Affirmed.

Tracy L. Emblem, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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On January 4, 2016, defendant Derrick Shawn McGowan was charged by information with two counts of attempted second degree robbery (Pen. Code, § 213, subd. (b); counts 1&2),<sup>1</sup> a felony, and one count of possession of a controlled substance (Health & Saf. Code, § 11377), a misdemeanor. As to counts 1 and 2, it was alleged that he had suffered a prior serious felony conviction (§ 667, subd. (a)(1)) that qualified as a strike under the “Three Strikes” law (§§ 667, subds. (a)-(i), 1170.12, subds. (a)-(d)).

After declaring a doubt as to defendant’s mental competency to stand trial, the trial court appointed medical experts to examine him. Counsel stipulated to submit the matter on their reports. The trial court determined defendant was mentally competent to stand trial (§ 1368) and to understand the proceedings taken against him and that he was able to assist defense counsel to conduct his defense.

Prior to trial, defendant failed to appear at a court hearing without sufficient excuse. At another hearing, the trial court removed defendant after he disrupted the proceedings. The hearing resumed in the afternoon, at which time the trial court conducted an in-camera hearing on defendant’s oral motion for new counsel and denied the motion. In open court, the court admonished defendant regarding his behavior and ruled there was “a manifest need for the defendant to be restrained with shackling of the arms crossed.” At a hearing the next day, the court ruled the order for defendant to be shackled “remained in full force and effect.” The following day, outside the presence of prospective jurors, the court admonished defendant not to interrupt court proceedings and that the court “may deem the

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<sup>1</sup> All further section references are to the Penal Code, unless otherwise noted.

defendant to have absented himself from court proceedings if he refuse[d] transport to court.”

Trial by jury began on July 15, 2016. The trial court deemed defendant to have absented himself on that date and on July 18 and 19, 2016, because he had refused to be transported to court. The jury found defendant guilty as charged and the prior serious felony allegation true. The court denied his motion to dismiss the strike allegation (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497).

Defendant was sentenced to prison for a total of 10 years four months, consisting of second strike sentences on count 1, i.e., four years, or double the two-year midterm, and count 2, i.e., 16 months, or double eight months, which is one-third the 24-month midterm, plus the five-year prior serious felony enhancement. On count 3, he was sentenced to a concurrent term of 365 days in jail. Defendant filed a timely notice of appeal.

We recount the evidence pursuant to the usual standard of review. (*People v. Elliott* (2012) 53 Cal.4th 535, 585.) On December 4, 2015, about 5:30 p.m., defendant entered a Bank of America in Palmdale and stood for a few moments before a teller window. Jessica Flores, the teller, told him to stand in the back of the customer line. Defendant angrily refused, placed an empty black bag on the window counter, and handed her a handwritten note that read: “If I dont get 200,000\$ in the bag in 60 sec Im killing your customers.” At the bottom of the note were three sets of writing that were scribbled and underlined. Defendant’s posture was intimidating. After reading the top of the note, Ms. Flores, who felt threatened, immediately reported the robbery to Lupe Arciga, her manager, who was in the back office, and showed her the note. Ms. Arciga did not recall reading the

bottom of the note. After Ms. Arciga proceeded to the customer area, defendant told her very aggressively: “Give me all the money.” He also directed her to use her keys to let him into the back of the bank. Ms. Arciga was “afraid for [her] life, . . . family, and . . . coworkers.” When a security guard showed up, defendant suddenly told Ms. Arciga he wanted to make a withdrawal and, at her request, provided his social security number.

Los Angeles County Sheriff’s Department deputies responded to the 911 call Ms. Flores placed. After defendant was placed in a patrol car and transported to the station, a baggie containing 0.97 grams of methamphetamine was discovered on the rear floorboard on the driver’s side.

At trial, the defense rested without calling any witnesses. Defense counsel argued defendant had no intent to rob; rather, this was simply a “joke gone wrong. He was just playing.” “[A]t one point, [defendant] even provides his social security number” while “trying to play off this joke that went terribly wrong.”

We appointed appellate counsel to represent defendant. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. The brief included a declaration from counsel that she reviewed the record and sent a letter to defendant explaining her evaluation of the record. Counsel further declared that she advised defendant of his right, under *Wende*, to submit a supplemental brief. Defendant did not file any supplemental brief with this court.

We have examined the entire record, consisting of one volume of a clerk’s transcript, two volumes of a reporter’s transcript, plus a sealed in-camera hearing transcript, the trial exhibits, and the file in Los Angeles Superior Court case No. MA067530. We are satisfied appointed counsel fully complied with her responsibilities and that no arguable appellate

issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436.)

**DISPOSITION**

The judgment is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.