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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN REYES,

Defendant and Appellant.

B237351

(Los Angeles County
Super. Ct. No. BA377395)

APPEAL from a judgment of the Superior Court of Los Angeles County, Leslie A. Swain, Judge. Affirmed.

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

No appearance for Plaintiff and Respondent.

Defendant Jonathan Reyes appeals from the judgment entered following his conviction by jury of second degree robbery and attempted second degree robbery, with the finding that he personally used a firearm during the commission of the offenses.¹ (Pen. Code, §§ 211, 664, 12022.53, subd. (b).) We affirm.

STATEMENT OF FACTS

At about 9:30 p.m. on October 23, 2010, Jose Castaneda, Emmanuel Perez, and some female friends were walking in the area of 54th Street and 2nd Avenue in Los Angeles. A Nissan Altima parked in a nearby alley and a male passenger exited. The driver remained by the side of the car. The passenger walked over to the group, placed a gun against Perez's temple, and said, "Give me what you got." The gunman, who was wearing a black jacket with a "Raider" logo, searched Perez's pockets and removed \$25.² The gunman returned to the car and it left the location.

Los Angeles Police Department Sergeant Andrew Hudlett was driving in the area of 54th Street and 2nd Avenue. He was flagged down by Castaneda and Perez. They told him they had just been robbed at gunpoint by two male Hispanics. They stated the robbers fled through the alley in a Nissan Altima. Hudlett drove down the alley and noticed two male Hispanics in a Nissan Altima that was stopped at a light. Hudlett requested backup and stopped the Nissan. Defendant, who was the passenger, and the driver were removed from the vehicle.

¹ Defendant did not appear after the first day of trial and the court determined he had voluntarily absented himself from the proceedings. The court issued an arrest warrant and the remainder of the trial was conducted without defendant being present. He was arrested on the warrant and in custody when the jury announced its verdict.

² Castaneda testified he was in custody pursuant to a body attachment that was issued following his failure to obey the subpoena requiring his presence in court. At trial, Castaneda stated he did not see property taken from Perez and nothing was taken from him. Castaneda acknowledged that on the night of the robbery, he told police that the gunman had taken money from Perez and him. Castaneda said he later found his money and neglected to inform police.

Castaneda and Perez were taken to where the two suspects were being detained. Castaneda identified defendant as the robber with the gun.³ He also recognized the Nissan as the vehicle used in the robbery. Perez identified defendant as the person who put a gun to his head and demanded money. At trial, Perez insisted that he did not see the gunman's face. He stated that he relied solely on the clothing that the suspect was wearing. According to the officer who spoke to Perez at the showup, at no time did Perez say that his identification of defendant was based on defendant's clothing. Perez identified a second male as the lookout. He also saw the Nissan at the location of the showup and told police it was the car used in the robbery.⁴

Inside the Nissan, police found a Raider's jacket and a loaded .25 caliber pistol. Defendant had \$76 on his person.

Officer Robert Smey interviewed defendant. After waiving his *Miranda*⁵ rights, defendant told the officer that he was driving with a friend. The friend handed him a gun and defendant used it to rob several people. Defendant denied taking money from the victims. He stated that he took metallic tanks filled with nitrous. Defendant provided a handwritten statement, which was received into evidence.

DISCUSSION

After reviewing the record, defendant's court-appointed appellate counsel filed an opening brief and requested that this court independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Counsel declared that she had informed defendant of the nature of the brief filed, advised him that he could file a supplemental

³ Castaneda did not identify defendant at trial.

⁴ Initially, Perez denied that he identified any one at the showup. He acknowledged that he had been arrested for failing to obey his subpoena and was afraid to testify because someone might retaliate. He did not identify defendant at trial.

⁵ *Miranda v. Arizona* (1966) 384 U.S. 436.

brief, and sent him the appellate record. On August 15, 2012, the court sent defendant a letter advising him that he had 30 days within which to submit any issues that he wanted us to consider. To date, we have received no response.⁶ We have reviewed the record and are satisfied that no arguable issues exist.

DISPOSITION

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.

⁶ On March 27, 2012, we received a letter from defendant. He explained why he did not return to court after the first day of trial and expressed dismay that he had received the maximum sentence. In fact, defendant was not sentenced to the maximum term, as the court imposed a concurrent sentence for the attempted robbery conviction.