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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.

TROY HOWARD PEPPIN,

Defendant and Appellant.

B269498

(Los Angeles County  
Super. Ct. No. SA089036)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark Young, Judge. Affirmed.

Karen Hunter Bird, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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A jury convicted defendant and appellant Troy Peppin of infliction of corporal injury on his girlfriend with a finding that he inflicted great bodily injury under circumstances involving domestic violence. (Pen. Code, §§ 273.5, subd. (a); 12022.7, subd. (a).)<sup>1</sup> The trial court sentenced Peppin to an aggregate term of six years in state prison comprised of the mid-term of three years for the base crime plus three years for the great bodily injury enhancement. Peppin's appointed counsel on appeal filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm the judgment.

## FACTS

### *The Injury Offense*

Linda L., the victim, met Peppin in mid-2013, and they began a regular dating relationship in May 2014. At about the same time, Linda offered to help out Peppin by letting him stay with her for a few days. "He ended up staying." In August 2014, Linda was pregnant by Peppin.

On August 2, 2014, Linda picked up food for Peppin on her way home from her work as an esthetician. When Linda arrived home at the couple's apartment, Peppin got upset because he did not like the food. He stated: "I f----- hate [their] food." Peppin took the food and threw it on the furniture in the couple's apartment. Peppin and Linda then started arguing, and Peppin said he thought Linda no longer loved him and was going to abandon him. When Linda tried to leave, Peppin stopped her. Throughout the incident, Peppin was behaving "erratic" and "angry" and "weird." He was "crying" and "pacing around." Eventually, he left the apartment.

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<sup>1</sup> All further undesignated section references are to the Penal Code.

Linda slept on and off until Peppin woke her up around three o'clock the next morning. Peppin began throwing objects and cursing, and then grabbed Linda by the head and threw her over an ottoman and onto the hard wood floor. Peppin got on top of Linda and started pounding her head on the floor at least five times. When Linda was able to get to the couch to lie down, Peppin approached her on the couch, put his knee on her stomach, and said, "I should kill this baby right now."

Peppin then walked to the kitchen, returned shortly thereafter, and knocked Linda off the couch back onto the floor. Peppin again pounded Linda's head on the floor, and, at some point, Linda saw Peppin's face "fade[] away."<sup>2</sup>

When Linda regained consciousness, she was on the couch and Peppin was sitting near her. He helped Linda to her feet, and she then left the apartment through the front door and ran down the hallway. Peppin followed Linda and told her that she should come back to the apartment because someone would be calling the police. Eventually, the police responded to the scene, and an ambulance arrived and transported Linda to the hospital.

Meanwhile, while they were waiting for help to arrive, Peppin and Linda talked about a story they would tell the police. They agreed to report that they were walking their dog and a homeless woman approached them and asked to use their phone, and that when they allowed her into their apartment, she attacked them.

A police officer who responded to the scene observed that Linda seemed to be "out of it" and "incoherent."

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<sup>2</sup> A neighbor heard a woman screaming during the attack.

An emergency room physician treated Linda for head injuries, including cerebral hemorrhaging and a broken nose, caused by trauma.

### ***The Criminal Case***

In March 2015, the People filed an information charging Peppin with a violation of section 273.5. Further, the information alleged that Peppin had personally inflicted great bodily injury in circumstances involving domestic violence pursuant to section 12022.7, subdivision (e).

On May 8, 2015, the case was called for trial. The trial court denied Peppin's motion to dismiss the case pursuant to section 995 based on the preliminary hearing transcript.

During a hearing on May 11, 2015, the trial court granted prosecution motions pursuant to Evidence Code section 402 to exclude information about Linda's obtaining an abortion after the incident, and about Linda losing custody of her three-year-old child. The court denied a prosecution motion under Evidence Code section 402 to exclude any mention of self-defense in opening statements.

On May 12 and 13, 2015, witnesses testified for the prosecution. That evidence established the facts summarized above. Further, during Linda's direct testimony, she recounted that there had been a prior domestic violence incident in July 2014, during which both she and Peppin had been arrested. Peppin presented no witnesses in his defense, but three defense exhibits used during cross-examination of Linda, consisting of photographs showing marks and scratches on Peppin from the July 2014 incident, were introduced.

At the start of the morning court session on May 15, 2015, the trial court denied Peppin's request to instruct the jury on self-

defense with CALCRIM No. 3470, ruling that the defense had failed to provide “substantial evidence of self- defense.”<sup>3</sup> The cause was submitted to the jury at 12:04 p.m., and the jury then immediately recessed for lunch. The jury resumed deliberations at 1:35 p.m. At 2:50 p.m., the jury informed the court that it had reached a verdict. The jury returned a guilty verdict as noted above.

On June 1, 2015, Peppin filed a motion to substitute private counsel in place of the Public Defender’s Office, and for a continuance of sentencing to allow an opportunity to file a motion for new trial. In November 2015, Peppin (by his newly retained private counsel) filed a motion for new trial on the ground of ineffective assistance of counsel for failure to introduce evidence in support of the self-defense claim. On November 9, 2015, the trial court denied Peppin’s motion for new trial.

On November 9, 2015, the trial court sentenced Peppin as noted above.

Peppin filed a timely notice of appeal.

### **DISCUSSION**

We appointed counsel to represent Peppin on appeal. Appointed counsel filed an opening brief pursuant to *Wende*, *supra*, 25 Cal.3d 436, requesting independent review of the record on appeal for any arguable issues. We notified Peppin by letter that he could submit any claim, argument or issues that he

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<sup>3</sup> We note that Linda testified that when she first arrived at the apartment with the food, she noticed that Peppin had all of his teeth. However, when she was in the hospital, she noticed that he was missing some teeth or a veneer. There were also the defense exhibits from the July 2014 incident showing Peppin had suffered injuries.

wished our court to review. Peppin has not filed any claims or arguments.

We have independently reviewed the record on appeal, and find that appointed counsel has fulfilled her duty, and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d 436, *People v. Kelly* (2006) 40 Cal.4th 106.)

**DISPOSITION**

The judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.