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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.

ANTONIO L. FLORES,

Defendant and Appellant.

B243960

(Los Angeles County
Super. Ct. No. BA385517)

APPEAL from a judgment of the Superior Court of Los Angeles County, Victor Greenberg, Judge. Affirmed.

James C. Huber, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Antonio Flores appeals from the judgment entered after his jury conviction of corporate injury to his spouse under circumstances involving domestic violence. His appointed counsel filed a *Wende* brief. (*People v. Wende* (1979) 25 Cal.3d 436.) On March 22, 2013, we directed counsel to send the record and a copy of counsel's brief to defendant and notified defendant of his right to respond within 30 days. After granting defendant's request for an extension, we received no further response.

We briefly describe the facts and procedural history of the case, the crime of which defendant was convicted, and the punishment imposed. (*People v. Kelly* (2006) 40 Cal.4th 106, 110.)

Defendant and the victim were married and had two children together, but had been separated since 2009. On May 25, 2011, the victim presented at a hospital with a deep cut on the top of her head, which required twelve staples to close, and bruises on the left side of her face. She initially claimed to have fallen down stairs and was reluctant to implicate her husband. Eventually, she told hospital staff her husband hit her on the head with a weapon. She told a police officer her husband hit her in the face during an argument, tried to choke her, and threw a bag containing unidentified items at her, causing her head injury. Two weeks later, she contacted police to withdraw the charges, claiming defendant did not hit her and her injury was accidental.

Defendant was charged with "corporal injury to a spouse/cohabitant/child's parent" with an allegation of great bodily injury inflicted under circumstances involving domestic violence. (Pen. Code, §§ 273.5, subd. (a); 12022.7, subd. (e).) A prior misdemeanor domestic violence conviction under Penal Code section 273.5, subdivision (a) was alleged for purposes of subdivision (e).

At the jury trial, evidence of several prior instances of domestic violence by defendant against the same victim was admitted under Evidence Code section 1109. The evidence included taped 911 calls in two prior incidents. The court denied defendant's motion to exclude this evidence under Evidence Code section 352.

The victim testified that on the evening of the day of the charged incident, defendant went to her house to visit the children and got upset at her for coming home

late from work. They argued. He choked her, and she poked him in the eye. When defendant left the house, the victim followed and threw an unopened plastic toy gun box after him. He then turned around in anger and threw a cloth bag containing items the victim could not identify. Scared, the victim ran back up her front porch steps, fell, and felt her head bleeding. She was not sure whether defendant hit her with the bag or whether she hit her head on furniture on the porch. The victim was impeached with her various prior inconsistent statements about the incident.

The prosecution argued the evidence supported a conviction on either one of two theories: that defendant hit the victim, causing the injury directly, or that she hurt herself while trying to escape from him, making the injury the natural and probable consequence of his actions. The jury found defendant guilty as charged and found the enhancement allegation to be true. The court found the prior conviction allegation to be true. Defendant was sentenced to the middle term of four years, plus four additional years for the injury enhancement. He was given 34 days in custody credits, and was charged various fines and fees.

We have examined the record and are satisfied that defendant's appointed counsel has complied with his responsibilities and that no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.