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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.

DEANDRE STONE,

Defendant and Appellant.

B271313

(Los Angeles County
Super. Ct. No. TA137320)

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

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted defendant Deandre Stone of four counts of possession for sale of various controlled substances and two counts of possession of a firearm by a felon. The court sentenced defendant to a total term of 15 years in state prison. We have conducted an independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and conclude that no arguable issues exist. We therefore affirm.

FACTUAL AND PROCEDURAL SUMMARY

Defendant was charged by information with possession for sale of cocaine base (Health & Saf. Code, § 11351.5; count 1), possession for sale of cocaine (Health & Saf. Code, § 11351; count 2), possession for sale of methamphetamine (Health & Saf. Code, § 11378; count 3), possession for sale of marijuana (Health & Saf. Code, § 11359; count 4), and possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1);¹ counts 5-6). The information alleged defendant was personally armed with a firearm as to counts one through three (§ 12022, subd. (c)) and committed counts one through four for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(A)). Six prior convictions were alleged under section 667.5, subdivision (b). It was further alleged under Health and Safety Code section 11370.2, subdivision (b) that defendant suffered a prior conviction of possession for sale of cocaine base in April 2002. Defendant admitted the prior convictions, and the court granted his motion to bifurcate the trial of these priors from the charged offenses.

At trial, the prosecution called several Los Angeles Police Department (LAPD) officers to testify regarding the execution of a search warrant on May 26, 2015 at an apartment on Broadway in South Los Angeles. Officers used a battering ram to open the

¹ Undesignated section references are to the Penal Code.

front door and entered the apartment quickly to prevent the destruction of evidence. Brandon Wardlow was lying on the living room couch and defendant was in the kitchen when the officers entered.

In the kitchen, officers discovered and seized: nine bindles of powder cocaine weighing just over five grams in gross, 123 individually-wrapped rocks of cocaine base weighing 49.83 gross grams, 14 bindles of larger individually-wrapped rock cocaine weighing 14.95 gross grams, 62 bindles of individually-wrapped rock cocaine weighing 110 gross grams, three bindles of methamphetamine weighing slightly over 17 gross grams, a glass jar of marijuana weighing 821 gross grams, a heat-sealed plastic bag of marijuana weighing 125 gross grams, and 16 bindles of marijuana in a Ziplock bag weighing 27.48 gross grams. Officers found \$922 on the kitchen counter and \$410 on defendant's person. Three digital scales were also discovered during the search.

In a hallway closet, approximately 40 feet from the kitchen, officers discovered an unloaded pump-action shotgun with six rounds of ammunition in a duffel bag next to it. In the living room, a video surveillance system had been set up to display live footage from at least three directions. When searching the defendant, one of the officers found a set of keys, which included a key to the front door of the apartment, in addition to a car key to a vehicle registered to defendant that was parked outside. During a search of the vehicle, officers found a loaded semiautomatic pistol in the glove compartment.

An LAPD officer testified as an expert on narcotics, opining based on the prosecutor's hypothetical that defendant had dominion and control over the items seized during the search and

possessed the narcotics for the purpose of sale. The parties then stipulated as to the contents of the seized narcotics based on an analysis by a qualified criminalist. Defendant further admitted and stipulated that he is both a convicted felon within the meaning of section 29800 and that he suffered a prior felony conviction for possession for sale of cocaine base (Health & Saf. Code, § 11351.5) in April 2002.

Wardlow testified under a grant of immunity. He stated that when the officers entered the apartment, defendant was in the kitchen counting money. He testified that he had witnessed defendant selling marijuana from the apartment on two occasions. Wardlow also stated that several members of the Broadway Gangster Crip gang had come in and out of the apartment.

The prosecution's final witness, an LAPD detective assigned to a gang unit who participated in the search, testified as a gang expert. The detective stated that, in his opinion, defendant is a member of the Broadway Gangster Crip gang based on prior interactions with defendant, the location of the apartment, defendant's tattoos, and a hypothetical presented by the prosecutor mirroring the facts of the search. The court excluded certain aspects of the detective's testimony regarding a prior incident in 2000 under section 352 of the Evidence Code.

Defendant exercised his constitutional right not to testify. The defense filed a motion for acquittal under section 1118.1, arguing that the prosecution failed to present sufficient evidence to support the arming enhancement under section 12022 and failed to establish the elements of the sentencing enhancement under Health and Safety Code section 11370.2. The court denied both motions. Defense counsel made an oral motion under

section 1118.1 for acquittal of the gang enhancement allegation (§ 186.22, subd. (b)(1)(A)). The court granted the motion, finding insufficient evidence to support the gang allegation. The court then reviewed the jury instructions with the parties. The prosecution clarified that the arming enhancement under section 12022 was alleged only with respect to the shotgun, and the court modified the instruction accordingly.²

The jury found defendant guilty on all counts and found true, as to counts one through three, that defendant was personally armed with a firearm (§ 12022, subd. (c)). The court sentenced defendant to an aggregate term of 15 years in state prison. The court imposed the high term of four years for count 1 and the high term of five years for the firearm enhancement. The court imposed a consecutive one-year term on count 2 (one-third the midterm), and consecutive eight-month terms on counts 3, 4, and 6 (one-third the midterm on each count). The court imposed

² The court gave the following arming enhancement instruction based on CALCRIM No. 3131: “A person is armed with a firearm when that person carries a firearm or has a firearm available for use in either offense or defense in connection with the crimes charged; and, two, knows that he or she is carrying a firearm or has it available for use. The People allege that the defendant was armed with the following firearm as it applies to count one through three, a shotgun.” (See *People v. Bland* (1995) 10 Cal.4th 991, 997 [defendant is armed within the meaning of § 12022 if he or she has specified weapon available for use, either offensively or defensively]; see also *People v. Delgadillo* (2005) 132 Cal.App.4th 1570, 1572-1573, 1575 [sufficient evidence to apply firearm enhancement when guns were found in defendant’s bedroom and drug manufacturing equipment and ingredients were found in the trunk of his car and in the locked bed of his truck parked nearby].)

five-year firearm enhancements as to counts 2 and 3, but stayed their execution under section 654. On count 5, the court selected the three-year upper term and imposed the sentence, but stayed its execution under section 654. The court imposed an additional three years pursuant to Health & Safety Code section 11370.2 and struck the remaining prison prior convictions that were alleged under section 667.5, subdivision (b). The court awarded defendant 149 days of presentence custody credit and ordered him to pay various fines and fees.

This timely appeal followed.

DISCUSSION

Defendant's court-appointed counsel filed a no-issue brief under *Wende, supra*, 25 Cal.3d 436. We notified defendant of his right to respond, but received no response. Having examined the entire record, we are satisfied that no arguable issues exist in the appeal before us. (*People v. Kelly* (2006) 40 Cal.4th 106, 110; *Wende*, at p. 443.)

DISPOSITION

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.