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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DMITRY KOGAN,

Defendant and Appellant.

2d Crim. No. B277702
(Super. Ct. No. 2014003101)
(Ventura County)

Dmitry Kogan appeals after a jury convicted him of arson of property of another (Pen. Code, § 451, subd. (d)). The trial court suspended imposition of sentence and placed appellant on three years probation with terms and conditions including that he served 360 days in county jail.

In January 2012,¹ appellant was living in a townhouse complex in Thousand Oaks. Kevin Reid operated a maintenance repair business and often performed jobs for other residents of the complex. On January 5, appellant and Reid argued over Reid's van, which appellant claimed was parked in a manner that partially

¹ All further date references are to the year 2012.

blocked his driveway. Appellant kicked the van and dented it. When Reid took out his cell phone to photograph the damage, appellant grabbed the phone and threw it in the street. Reid retrieved his phone and called the police. Ventura County Deputy Sheriff Patrick Connolly, who responded to the call, warned appellant he might be arrested for vandalism, but no further action was taken on the matter.

In early August, appellant's next-door neighbor, William Stivelman, hired Reid to repair his backyard fence. Appellant sent Stivelman numerous emails regarding Reid and warned that if appellant saw Reid on his property he would "consider that an act of legal war." Stivelman replied that Reid would not perform any more work for him once he had completed the current project.

On August 15, Reid drove his van to the townhouse complex to complete the repairs on Stivelman's fence. After Reid had been working for several hours, appellant sent Stivelman another email about Reid. Around the same time, Reid went to his van, smelled the odor of petroleum, and saw liquid on the back of the van. Stivelman came out of his townhouse and felt a drop of oily liquid fall on his head. He looked up and saw that liquid was dripping from his balcony. He went upstairs to his balcony and discovered a pool of "clear, petroleum distillate" on the corner of the balcony's floor. From the vantage point of his balcony, Stivelman also saw several matches on the roof of Reid's van. There was a group of matches that had burned down to the roof's metal surface. There were also burned matches on the ground near the van. Another repairman who was working at a nearby townhouse also saw burned matches on the ground near the van, a matchbox cover near the van's front door, and a matchbox insert on the roof of the van. Reid suspected appellant of trying to burn his van and called 911. Deputy Connolly was again dispatched to the scene and observed the burned matches and the damage to Reid's van.

Christine Saqui, an arson investigator for the Ventura County Fire Department, inspected the scene and collected evidence. Saqui noted among other things that approximately a quarter of Stivelman's balcony was covered with an oily substance that was also dripping from the railing. She also noted that there were several burned matches on the roof and hood of Reid's van and that the roof was charred.

No one saw appellant at the townhouse complex that day and no one responded when Deputy Connolly and Saqui knocked on his door that evening. A neighbor, however, saw appellant peeking out of his window that evening. The following day, Deputy Connolly and Saqui looked through appellant's windows and saw him sitting on a couch watching television. Appellant ignored their knocks on the front door and acted as if he were "frozen."

Appellant was subsequently determined to be the contributor of DNA found on the matchbox cover recovered from the scene. Reid was ruled out as a possible contributor of the DNA profile obtained from the matchbox, as well as the single source profile obtained from a burned match. Appellant could not be ruled out as a possible contributor of the latter profile.

Saqui opined that someone had intended to set Reid's van on fire and that the flammable liquid on the van likely came from the roof above Stivelman's balcony. Saqui also opined that someone in appellant's townhouse could gain access to the roof by using a ladder from the balcony or the master bedroom window. Saqui concluded that the perpetrator first tried to throw flammable liquid onto the roof of Reid's van and then went downstairs, applied the liquid directly to the van, and threw the matches and matchbox on the roof to start the fire.

Appellant's ex-wife, Laura Kogan, testified in his defense.² Laura claimed that appellant was at his mother's house in Santa Monica when the incident occurred. She also offered a photograph that she purportedly took of Reid's van that day. She disputed Saqui and Deputy Connolly's testimony that they had seen appellant in his townhouse the day after the incident, as well as Saqui's opinion that the roof above Stivelman's unit could be accessed from appellant's unit. Laura also offered that the actual perpetrator may have taken the matchbox appellant used when he smoked on his balcony, which would explain why appellant's DNA was found on the box.

We appointed counsel to represent appellant on appeal. After examining the record, counsel filed an opening brief in which no issues were raised. On April 26, 2017, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. Appellant timely filed a supplemental brief contending that (1) the "delay in prosecuting [his] case prevented [him] from presenting a full defense" and resulted in denial of his right to a fair trial; (2) the chain of custody for the matchbox upon which his DNA was found was "indisputably broken"; (3) his trial counsel failed to sufficiently impeach Reid; (4) counsel should have challenged Saqui's testimony on the grounds that she was not qualified as an expert and her opinions were unsound; and (5) the court violated his rights by allowing his neighbors to testify against him.

None of appellant's contentions raise an arguable issue for review. In his first contention, he complains there was a "spoliation of evidence" because the prosecution waited almost 18 months to charge him with the crime and that as a result of the delay the

² Appellant and Laura were married at the time of the incident but were divorced prior to the trial.

“[d]efense was not given the opportunity to have [an] independent fire investigator examine [the] arson scene.” The allegation of evidence spoliation finds no support in the record. There is also nothing to indicate that the prosecution deliberately delayed charging appellant with the intent to prevent him from fully defending himself, or that the delay had any such effect. Appellant’s second, third, and fifth contentions primarily raise issues of witness credibility, which are beyond the scope of our review. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27 [reviewing courts cannot reevaluate a witness’s credibility].) To the extent his second through fifth contentions fault his trial counsel for failing to sufficiently challenge the evidence offered against him, he fails to demonstrate it is reasonably probable that he would have obtained a more favorable result but for counsel’s purportedly deficient representation. (*Strickland v. Washington* (1984) 466 U.S. 668, 686–687; *People v. Williams* (1997) 16 Cal.4th 153, 215.)

Having reviewed the entire record along with counsel’s opening brief and appellant’s supplemental brief, we are satisfied that appointed counsel has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 443; *People v. Kelly* (2006) 40 Cal.4th 106, 125-126.)

The judgment is affirmed.

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PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

David Worley, Judge

Superior Court County of Ventura

Mark R. Feeser, under appointment by the Court of Appeal,
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.