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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD J. GRAY,

Defendant and Appellant.

B296275

(Los Angeles County
Super. Ct. No. TA146331)

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

Teresa Biagini, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Richard J. Gray attacked his former girlfriend, Jacqueline Alvizo, on two separate occasions, several days apart. A jury convicted him on two counts of assault with a deadly weapon, one count of injuring a person with whom he had a dating relationship, and one count of criminal threats. The trial court sentenced Gray to state prison for 18 years four months. We affirm.

FACTUAL BACKGROUND

I. June 12, 2018 Incident (Counts 1 and 2)

Gray and Alvizo began dating in March 2018. They broke up two months later, in early June.

On June 12, 2018, Alvizo, homeless, lived in her car, then parked in the customer lot of a laundromat at the corner of Figueroa Street and Manchester Avenue. At about 11:00 a.m., Alvizo walked towards the laundromat to change her clothing. Gray walked up, grabbed her cell phone and speaker, and refused to give them back. A bystander came to Alvizo's aid and began to argue with Gray. Police arrived, retrieved the cell phone and speaker from Gray, and returned them to Alvizo; Alvizo declined to press charges. Gray then left.

At about 1:00 p.m., Alvizo leaned into her car to look for clean clothes. At that point, Gray approached her from behind, and asked for sex; Alvizo told him to get away from her. Gray shocked Alvizo on her left cheek with a stun gun.¹ He told Alvizo to call him "El Chapo." When Alvizo refused, Gray kicked her in the mouth; Alvizo responded by calling Gray names. Gray kicked Alvizo again and shocked her several more times: in her right

¹ Alvizo referred to the stun guns as "Tasers" and Gray's use of the guns as "tasing."

side, on her thigh and knee, and on her face. Gray had a total of four stun guns; he tried to shock Alvizo with all of them. Gray pushed Alvizo down onto the seat of her car and continued to shock, kick, and punch her. Alvizo told Gray he was hurting her; she asked him to stop. Gray told her he was going to kill her.

Alvizo bled from her mouth and a wound from a stun gun. As she wiped off the blood, Gray punched her in the face two or three times with his fist. He held the blade of a silver folding knife to her face, grabbed her long hair, cut it off, and told her, "I'll make sure you won't look pretty no more, bitch."

Alvizo exited the car, ran to the laundromat to get help. Gray followed her inside, threatening to kill her. Alvizo called 911 from a pay phone. By the time the police arrived, Gray had left the laundromat; the officers could not find him.

Alvizo had multiple lacerations on her face; she kept wiping the blood from her face. Paramedics treated her at the scene, but she declined to go to the hospital for additional treatment.

The following day, Alvizo went to the police station and spoke with Los Angeles Police Detective Alfredo Reyes. He observed open wounds on her chin and left cheek or neck area. Alvizo told Detective Reyes that her ex-boyfriend, Richard Gray, attacked her with a stun gun and a knife. She identified Gray from a photograph.

II. June 15, 2018 Incident (Counts 3 and 4)

At about 6:00 p.m. on June 15, 2018, Alvizo lay in her car outside the laundromat with her friend, Diamond Johnson, and a man. All three were asleep; Alvizo lay in the backseat; Johnson, in the passenger seat; and the man, in the driver's seat. Gray reached into the car through the broken back door window, unlocked the car, and grabbed Alvizo by her shirt; he held the

blade of the silver folding knife to her head. He told her to sit up and scoot over, and then he tried to kiss her.

Johnson and the man awoke; they told Gray to leave Alvizo alone. Gray told them that if they said anything, he would kill them; he was “not playing with you all.” Gray warned that if they did not “shut up,” he would kill Alvizo. Gray reiterated that if anyone said anything, he would come back to kill all three of them.

Alvizo asked Gray to get her some painkillers, because she was in pain from the wounds he had previously inflicted on her; Gray tried to say he was sorry. In order to get away, Alvizo asked Gray if he had any weed to smoke; she thought he would leave the car and go across the street to buy some, giving Alvizo an opportunity to call the police. Gray said he would get some for her. Gray put the knife away and began to look for his backpack, which he said he had left in the car. Alvizo told him the backpack was not in the car. Gray responded, “My backpack better be here, bitch. If not, I’m going to kill all you too, all you all three.” Alvizo feared for her life the whole time Gray was there.

Gray eventually left, and Johnson called 911. The police arrived a couple of minutes later. Alvizo pointed out Gray, walking nearby, to the police. The officers detained and handcuffed Gray. They conducted a pat-down search and found the folding knife in Gray’s pocket. Alvizo identified him; the officers placed Gray under arrest.

In addition to testimony, the People introduced surveillance video from the laundromat and parking lot, recordings of the 911 calls, as well as police body cam videos.

PROCEDURAL BACKGROUND

The People charged Gray by information, as to the June 12, 2018 incident, with assault with a deadly weapon while on felony probation (Pen. Code,² §§ 245, subd. (a)(1), 1203, subd. (k); count 1) and injuring a person with whom he had a dating relationship, personally inflicting great bodily injury (§§ 273.5, subd. (f)(1), 12022.7, subd. (e); count 2). As to the June 15 incident, Gray was charged with criminal threats (§ 422, subd. (a); count 3) and assault with a deadly weapon (§ 245, subd. (a)(1); count 4). The information alleged, as to all four counts, that Gray personally used a deadly and dangerous weapon (§ 12022, subd. (b)(1)). The information also alleged that Gray had a prior serious felony conviction, constituting a strike (§§ 667, subds. (a)(1), (b)-(j), 1170.12).

Before trial, Gray requested mental health diversion (§ 1001.36). The trial court found the case too serious for mental health diversion and denied his request. The following day, defense counsel informed the court that Gray claimed not to understand the proceedings and was not fit for trial. The trial court noted that Gray made this assertion only after his request for mental health diversion was denied, and Gray's statements in the course of the proceedings indicated "that he knows exactly what's going on." The trial court therefore refused to order an examination into Gray's competency.

Gray also moved to bifurcate trial of the prior conviction allegation. The trial court granted his motion. Gray admitted the prior conviction and stipulated that it could be used to prove the prior conviction element as to count 2.

² All further statutory references are to the Penal Code.

After the People rested their case, the trial court ruled that if Gray testified, evidence that he had battered the mother of his children six months earlier would be admissible under Evidence Code section 1109. The trial court also ruled that the People would be permitted to impeach Gray with his 2017 prior conviction for assault with a deadly weapon, although impeachment would be limited to the date, place, time and charge. The People would be required to prove the prior conviction in a unified trial. Gray told the court he did not want to testify.

Over defense objection, the trial court stated that it would instruct the jury pursuant to CALCRIM Nos. 852A and 852B on evidence of prior uncharged and charged domestic violence. Gray then moved to dismiss pursuant to section 1118.1; the trial court denied the motion. The defense rested, declining to present any evidence or witnesses.

In argument, defense counsel argued that the People did not prove beyond a reasonable doubt that Gray was the person who attacked Alvizo. Alvizo did not initially identify Gray as her attacker when she called 911; she subsequently decided to pin the attacks on him. The surveillance video from the laundromat and parking lot were not clear enough to identify Gray as the attacker. Defense counsel also attacked Alvizo's credibility, arguing that portions of her testimony did not make sense or were lacking in important details.

While the jury deliberated, Gray admitted the prior serious felony conviction. The jury then returned guilty verdicts on all four counts and found true the weapons use and great bodily injury allegations.

At the sentencing hearing, the court denied Gray's motion to strike his prior conviction for all purposes. On count 2, the trial court sentenced Gray to the upper term of five years, doubled as a second strike, plus an additional five years for inflicting great bodily injury and one year for the use of a deadly and dangerous weapon, for a total term of 16 years. On count 4, the trial court imposed a consecutive one-third the middle term of one year, doubled as a second strike, plus four months for the weapon use. The court stayed sentence on the remaining counts and enhancements, for a total term of 18 years and four months.

The court also imposed a \$300 restitution fine (§ 1202.4), a \$300 parole revocation fine (§ 1202.45), a \$40 court security fee for each count (§ 1465.8), and a \$30 criminal conviction assessment for each count (Gov. Code, § 70373). The court found that Gray had the ability to pay the fine and assessments by working in prison.

The court terminated the concurrent probation violation case.

Gray timely appealed.

DISCUSSION

We appointed counsel to represent Gray on this appeal. After review of the record, Gray's counsel filed an opening brief requesting this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. On September 26, 2019, we sent a letter to Gray, advising him that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. We received no response.

We have examined the entire record. We are satisfied that no arguable legal issues exist and that Gray's counsel has fully

complied with his responsibilities. By virtue of counsel's compliance with the *Wende* procedure and our review of the record, we are satisfied that Gray received adequate and effective appellate review of the order entered against him in this case. (*People v. Wende, supra*, 25 Cal.3d at p. 441; accord, *People v. Kelly* (2006) 40 Cal.4th 106, 109-110.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.