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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.

JEROME DEAN,

Defendant and Appellant.

B286700

(Los Angeles County  
Super. Ct. No. BA455465)

APPEAL from a judgment of the Superior Court of Los Angeles County. Craig Richman, Judge. Affirmed.

Andrea Keith, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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## INTRODUCTION

Defendant Jerome Edwards Dean appeals the judgment following his convictions of corporal injury to his girlfriend (Pen. Code, § 273.5), dissuading a witness by force or threat (Pen. Code, § 136.1, subd. (c)(1)) and misdemeanor criminal contempt (Pen. Code, § 166). He admitted a prior strike conviction (Pen. Code, §§ 667, subds. (b) – (j), 1170.12) and a five year serious felony prior (Pen. Code, § 667, subd. (a)(1)). His sentence on this case and a consolidated case was 14 years in state prison.

Appointed counsel on appeal filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm.

## DISCUSSION

On April 12, 2017, an information was filed based on (1) defendant's July 18, 2016, assault of his then girlfriend, B.J., an attack that caused facial and head injuries, and (2) threats and other communications defendant had with B.J. while defendant was both in and out of custody prior to trial. Defendant waived a preliminary hearing.

Before the jury was sworn, two issues occupied the court's attention. First, the court heard a motion under *People v. Marsden* (1970) 2 Cal.3d 118. Defendant complained that his lawyer felt the case not winnable and that defendant and counsel did not see eye to eye. The trial court asked defendant a few questions, gave him an opportunity to speak further, and correctly denied the motion. (*People v. Dickey* (2005) 35 Cal.4th 884, 922 [disagreement over trial tactics does not require substitution of counsel]; *People v. Hines* (1997) 15 Cal.4th 997, 1026 [counsel's "negative attitude toward defendant's case" did support appointment of new counsel].)

The second issue was prompted by victim B.J.'s initial refusal to comply with a subpoena for her attendance at trial. The court held a series of pretrial conferences with counsel on whether her absence had been procured by defendant and thus hearsay evidence should be permitted under the forfeiture by wrongdoing doctrine. (Evid. Code, § 1390.) Before the trial court could make its final ruling, B.J. walked into the courtroom, submitted to the court's jurisdiction, and fully testified. The issue became moot.

At trial, the jury heard the following. On July 18th, B.J. was returning home from a date with another man following her breakup with defendant earlier in the day. When she arrived home, defendant was waiting outside her house, angry. She ran into the house; defendant followed her, they argued, and he demanded she accompany him to his car. When she refused, he flashed a semiautomatic weapon in his waistband, and she complied out of fear. In the car, they fought verbally and physically. At one point, she pulled the car's rear view mirror off of its moorings. Defendant yelled, "You fuckin' bitch. That is going to cost me \$300 to fix." Defendant grabbed the mirror and struck her in the face and head. Defendant drove away with B.J. in the car and continued to hit her. She jumped out at the intersection of 5th and Wall streets in downtown Los Angeles; an unknown citizen called 911; and the police and an ambulance arrived shortly thereafter. Eventually she was taken to the hospital.

B.J.'s description of the assault came in at trial in the form of testimony by Los Angeles Police Officer Joseph Sanchez who had interviewed B.J. while she was being treated in the ambulance. As we shall see, B.J. changed her story more than

once, but this is the version that the jury essentially accepted in reaching its verdict. B.J. had several cuts on her face and severe swelling on her forehead following the attack. People's 1 was a photograph taken at the hospital which showed B.J. with a bloody face and a neck brace. It took B.J. two months to recover from her injuries.

At trial B.J. told a completely different story. She was in the vicinity of 5th and Wall on the night in question, walking home after she had left a gathering of friends. She encountered four young women who were Crips gang members. B.J. and defendant were members of the Swans, a Bloods gang. The four women attacked B.J., causing the injuries she suffered. She admitted telling Officer Sanchez that she was assaulted by defendant but said that was a lie. She was upset with defendant because he had refused to pick her up from her friend's house that night, causing her to walk home, and creating the opportunity for the attack by Crip females.

Later in her testimony she described an interview she had with Detective DeLariva. She told the detective that she had made up the story about defendant assaulting her because she was upset with defendant, defendant had cheated on her, he had given her a sexually transmitted disease, and she was pregnant with his child. She also said she was coming down from having ingested ecstasy.

Testimony about the dissuading a witness and criminal contempt counts came in the form of transcripts of conversations between B.J. and defendant while defendant was in custody, the testimony of B.J. and Detective DeLariva, and other evidence. This evidence supported the prosecution argument that defendant had threatened B.J., tried to convince her not to come

to court, and had violated a restraining order prohibiting defendant from contacting B.J. For example, DeLariva testified that on December 5th, he received a call from B.J., who was crying. She said that defendant had threatened her and robbed her of her phone. DeLariva and another officer went to B.J.'s home where she told them that she had been driving with defendant in his car (he was not in custody), and defendant displayed a gun and threatened to kill her if she came to court. Police offered to relocate her at the time. In contrast, when B.J. reported testified about her meeting with the officers, she acknowledged that she told them some of what DeLariva had reported to, but again said she was lying. The true facts were that she was upset with defendant for breaking up with her and seeing someone else. She then "socked" defendant.

The jury found defendant guilty of corporal injury to a girlfriend, dissuading a witness and contempt of court. Defendant was acquitted of kidnapping (Pen. Code, § 207) and carrying a loaded firearm in public (Pen. Code, § 25850). Defendant admitted the prior strike and the five year prior.

The trial court selected the dissuading a witness as the base term, and sentenced defendant to 11 years, comprised of the three year midterm, doubled for the prior strike, plus five years for the prior serious felony. The court added a one year consecutive sentence on the corporal battery count, representing one-third the midterm, and struck the prior strike. Defendant received concurrent 364 days on the misdemeanor contempt charge.

At the time of sentencing, defendant had another case pending (BA452344) which both sides agreed to be called. Defendant entered a plea of no contest to a violation of Health

and Safety Code section 11370.1, subdivision (a), possession of a controlled substance while armed. He was given an additional two years, comprised of one-third the midterm doubled for the prior strike. The court also imposed a 10-year protective order and made other sentencing orders.

Defendant timely appealed, and we appointed appellate counsel. On March 20, 2018, appellate counsel filed a *Wende* brief, identifying no issues cognizable on appeal and asking the court to conduct an independent review of the record. Counsel also stated she had sent a letter so advising defendant of the filing of the *Wende* brief and of defendant's right to file a supplemental brief. On March 22, 2018, this court sent defendant a letter advising him that a *Wende* brief had been filed and that he had 30 days to submit a brief or letter raising any issues he wished us to consider. Defendant did not file a supplemental brief.

We have examined the entire record and are satisfied that defendant's attorney has fully complied with her responsibilities and that no arguable issues exist.

#### **DISPOSITION**

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

ROGAN, J.\*

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