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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

SCOTT CHRISTOPHER
WILLIAMS,

Defendant and Appellant.

B271921

(Los Angeles County
Super. Ct. No. TA137591)

THE COURT:*

Scott Williams appeals from the judgment following a jury trial which resulted in his conviction of two counts of attempting to dissuade a witness from testifying. (Pen. Code, § 136.1, subd. (a)(2).)¹ We appointed counsel to represent him on this appeal.

* ASHMANN-GERST, Acting P.J. HOFFSTADT, J. GOODMAN, J.†

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

¹ All further statutory references are to the Penal Code.

Counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and requested this court to independently review the record on appeal to determine whether any arguable issues exist.

We sent a notice to defendant, advising him he had 30 days in which to personally submit any contentions or issues which he wished us to consider. He has submitted a supplemental brief containing two such contentions. He contends there is insufficient evidence to support two convictions for violating section 136.1, subdivision (a).² He also contends the maximum sentence for a section 136.1, subdivision (a) violation is one year, and so the trial court erred in using two years as the base term for his sentence. There is sufficient evidence to support both convictions. The trial court did not err in sentencing defendant.

BACKGROUND

Defendant was arrested for inflicting corporal injury on his girlfriend India Ali. Ali was pregnant with their child at the time. While in county jail on this domestic violence charge, defendant made well over one hundred calls to Ali. The calls were recorded.

In a July 1, 2015 phone call, defendant told Ali “I’m just saying I need you to have my back, man. Shit, go to the police station or don’t come to court or just say it was a misunderstanding.” When Ali did not agree to do

² Defendant has attached a prison document to his letter brief which shows that he was convicted of two counts of violating section 136.1, subdivision (a)[01], and refers to this subdivision throughout his brief. The prison document is inaccurate. The verdict forms and the abstract of judgment in this case show that defendant was convicted of violating section 136.1, subdivision (a)(2). For purposes of this appeal, there is no relevant difference between the two subdivisions. Subdivision (a)(1) applies to anyone who “prevents or dissuades” a witness or victim while subdivision (a)(2) applies to anyone who “attempts to prevent or dissuade” a witness or victim. The punishment is the same for both. (§ 136.1, subd. (a).)

this, defendant mentioned that the pink slip for her car “is in jeopardy over this.” Ali had used her car to help defendant post bail in another case. He also said, “You didn’t have to come call and tell the police and snitch on me.” At trial, Ali explained that it was bad to be considered a snitch because “snitches get stitches.”

In a July 2, 2015, phone call, defendant attempted to convince Ali to give him a pass, not come to court and press charges, and not be a snitch or a rat. When she did not agree, defendant said, “I know where your sister live at, your momma live at.” He also claimed he knew where her best friend Coco lived. Ali replied that he did not know where her sister lived. Defendant replied, “Yes, I do. I did investigation.” Ali understood these statements as a threat to scare her. Defendant also told Ali she would lose her car if he did not get out of jail.

The jury found defendant guilty of the count 1 charge of attempting to dissuade a witness on July 1, 2015, and the count 2 charge of attempting to dissuade a witness on July 2, 2015. The jury deadlocked on the count 3 charge of inflicting corporal injury on a girlfriend. The trial court granted the defense motion to dismiss the charge. The trial court found true the allegations that defendant had suffered a prior serious felony conviction within the meaning of section 667, subdivision (a) and the Three Strikes law (§§ 667, subds. (b)-(i) & 1170.12). The court also found true the allegation that defendant was released on bail in another case when he committed the offenses in this case within the meaning of section 12022.1.

The court sentenced defendant to a total of nine years in state prison, consisting of the midterm of two years for the count 1 conviction, doubled to four years pursuant to the Three Strikes law, plus a five-year enhancement

term for the section 667, subdivision (a) allegation. The court imposed a concurrent two-year term for the count 2 conviction.

DISCUSSION

A. Sufficiency of the Evidence

Defendant contends that he only told Ali to lie in the July 1 telephone call, and so he could only be convicted of the count 1 charge of violating section 136.1, subdivision (a). He contends the count 2 conviction based on the July 2 telephone call must be reversed for insufficient evidence.

“When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.)

Section 136.1 punishes any person who “[k]nowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.” (§ 136.1, subd. (a)(2).) Dissuade means to “persuade (someone) not to take a particular course of action.”³ Nothing in section 136.1, subdivision (a) requires proof that a defendant sought to have a witness lie.

The recordings show that during the July 2 telephone call, defendant first attempted to persuade Ali to “give him a pass” and told her she was not the type of person to be “come to court and press charges” or to be a snitch. When Ali did not agree, defendant made direct and indirect threats in an attempt to persuade her not to continue with the case. Thus, he attempted to “dissuade” her from being a witness against him. That is all the statute

³ <https://en.oxforddictionaries.com/definition/dissuade>

requires. Thus, there is substantial evidence to support defendant's count 2 conviction for violating section 136.1, subdivision (a)(2) on July 2.

B. Defendant's Sentence

Defendant contends the maximum term for each of his section 136.1, subdivision (a) convictions is one year in state prison, and so the midterm of two years selected by the court for those convictions was not authorized. Defendant has misread section 136.1.

Section 136.1, subdivision (a) provides for punishment "by imprisonment in a county jail for not more than one year *or* in the state prison." (Italics added.) The "one year" in this phrase applies to imprisonment in county jail. It does not apply to imprisonment in state prison.

Defendant was charged with and convicted of two felony violations of section 136.1, subdivision (a). Since section 136.1 does not specify the term of imprisonment in state prison for a felony conviction, the term of imprisonment is determined by section 18. That section provides that when punishment for a felony is not otherwise provided, the felony is "punishable by imprisonment for 16 months, or two or three years." (§ 18, subd. (a).) Thus, the trial court correctly selected two years as the base term.

C. Independent Review of the Record

Having considered defendant's contentions of error and conducted our own examination of the record, we are satisfied defendant's attorney on appeal has complied with the responsibilities of counsel and no arguable issue exists. (*Wende, supra*, 25 Cal.3d at p. 441; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-282; *People v. Kelly* (2006) 40 Cal.4th at 106, 122-124.)

DISPOSITION

The judgment is affirmed.

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