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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.

CHRISTIAN LEON,

Defendant and Appellant.

B281582

(Los Angeles County  
Super. Ct. No. VA 142712)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, John A. Torribio, Judge. Affirmed.

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Emily Lowther Brough, under appointment by the Court  
of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.  
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A jury found defendant and appellant Christian Leon guilty of one count of willfully injuring a victim with whom he formerly had a dating relationship, in violation of Penal Code section 273.5, subdivision (a),<sup>1</sup> and one count of assault with a deadly weapon, in violation of section 245, subdivision (a)(1). Leon's appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) raising no issues on appeal and requesting that we independently review the record. We have done so, and we affirm.

Late in the evening on August 27, 2016, two firefighters responded to a 911 call in Whittier. As they were preparing to leave the scene, one of them heard a woman's voice yelling, "He has a knife." Both firefighters saw a woman they identified as Alejandra R. run away from Leon, who was holding a box cutter. Leon pursued the woman, grabbed her, fell on top of her, and made punching or stabbing motions with his right arm. One of the firefighters jumped on Leon's back and attempted to subdue him. With the help of a bystander who also saw Leon attack Alejandra R., the firefighter managed to pull Leon away from Alejandra R.

Alejandra R. testified that she had dated Leon for two years but broke up with him approximately two weeks before the attack. She saw him on the night of August 27 and told him to go away. He went to his car and got a box cutter out of it. Alejandra R. testified that she yelled for help when she saw Leon cut himself with the box cutter. He hugged her, she lost her balance, and he fell on top of her. She denied telling a sheriff's deputy that he made stabbing motions at her.

Blake Proctor, a Los Angeles County Sheriff's deputy, testified that he interviewed Alejandra R. after taking Leon into custody on the night of the incident. According to Proctor, Alejandra R. told him that she told Leon to leave and to stop

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<sup>1</sup> Unless otherwise specified, subsequent statutory references are to the Penal Code.

bothering her, and that as she was walking away, Leon grabbed her by the legs and tackled her. Alejandra R. told the sheriff's deputy that Leon started making stabbing motions at her while holding a box cutter, and that Alejandra R. cut her finger while attempting to grab Leon's hand. In addition to the cut finger, photographs showed that Alejandra R. suffered a scraped knee from the incident.

An information charged Leon with injuring a person with whom he once had a dating relationship, in violation of section 273.5, subdivision (a) (count 1), assault with a deadly weapon, in violation of section 245, subdivision (a)(1) (count 2), and stalking, in violation of section 646.9, subdivision (a) (count 3). At the close of evidence, the trial court dismissed the stalking charge on grounds of insufficient evidence.

The jury found Leon guilty of both of the remaining two charges. With respect to count 1, the jury also found true an allegation, pursuant to section 12022, subdivision (b)(1), that Leon used a deadly and dangerous weapon in committing the offense.

The trial court sentenced Leon to the low term of two years on count 1, with an additional one-year enhancement for the weapon allegation. The court also imposed the low term of two years on count 2 but stayed the sentence pursuant to section 654.

We appointed counsel to represent Leon in the matter. After examining the record, counsel filed a *Wende* brief raising no issues on appeal and requesting that we independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) On October 13, 2017, we sent a letter to Leon and to counsel. In the letter, we directed counsel to immediately send the record on this appeal and a copy of the *Wende* brief to Leon and informed Leon that he had 30 days to submit by letter or brief any ground of appeal, contention or argument he wished us to consider. Leon filed a brief on December 22, 2017.

We have reviewed the entire record on appeal and determined that substantial evidence supports Leon's convictions. (See *People v. Johnson* (1980) 26 Cal.3d 557, 578 [substantial evidence is that which is "reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt"].) We are satisfied that Leon's counsel has fully complied with her responsibilities and that no arguable appellate issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

In his brief, Leon contends that the prosecutor violated his 14th Amendment right to due process by knowingly presenting false evidence and failing to correct it. Leon is correct that "a presentation to a fact-finder of false testimony knowing it to be false . . . results in the reversal of a conviction if 'the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury.'" (*Dow v. Virga* (9th Cir. 2013) 729 F.3d 1041, 1047, quoting *Giglio v. United States* (1972) 405 U.S. 150, 154.)

Nevertheless, Leon's claim fails because he has not identified any testimony that the prosecution knew to be false. He points out that witnesses testified that they saw Leon making stabbing motions while holding a box cutter, but that Alejandra R. suffered only a cut to her finger. But this does not show that the witnesses were lying. Instead a jury could reasonably infer, as the trial court stated while explaining why it selected the low term for Leon's sentence, that Leon's "intent was to intimidate and to scare, but not to harm."

Leon also points to several instances in which witnesses testified about what they "assumed" was happening, or what "appear[ed]" to be happening. In some instances, such as when a witness testified that Alejandra R. "was fearing for her life," trial counsel objected to the testimony as speculative, and the court correctly sustained the objection. In other instances, witnesses

testified about what they perceived, and the testimony was admissible in spite of the witnesses' use of words such as "assumed" and "appear[ed]." If there were any instances in which the trial court failed to exclude inadmissible testimony, the errors did not prejudice Leon. Certainly, at no point did the admission of testimony rise to the level of a due process violation.

Ultimately, Leon's claim boils down to an argument that the evidence against him was not believable because there were too many disagreements and inconsistencies in the witnesses' statements. That is an argument for the jury, and indeed, it was a central theme in trial counsel's defense of Leon. The jury rejected these arguments, and we may not revisit them on appeal.

### **DISPOSITION**

The judgment of the trial court is affirmed.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.