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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DESHON E. MARMAN,

Defendant and Appellant.

A171840

(City & County of San Francisco
Super. Ct. No. CRI23009181)

MEMORANDUM OPINION¹

In 2024, a jury convicted Deshon E. Marman of resisting arrest and simple battery — as the lesser included offense of sexual battery — and acquitted him of several other counts. The trial court sentenced him to an aggregate term of one year, six months in county jail with credit for time served, and it stayed all fines and fees. Marman appealed, and his counsel filed a brief asking this court to review the record to determine whether there are arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) We have reviewed the record, found no issues, and affirm.

In February 2023, K.M. — a tenant residing at a single-room occupancy building — told the property manager that another tenant had sexually

¹ We resolve this case by memorandum opinion (Cal. Stds. Jud. Admin., § 8.1) and only recite facts necessary to resolve the limited issue before us.

assaulted her. K.M. gave the manager the man's description, his unit number, and the time and place of the incident. After reviewing surveillance footage, the manager was able to confirm K.M.'s account and identify Marman, who was wearing a ski mask during the incident. K.M. could not identify Marman. Police officers arrived, viewed the footage, and spoke with K.M. and the manager. She reported having been sexually assaulted but indicated she was unable to identify her attacker; the manager identified the man as Marman. The officers went to Marman's unit and asked him to come outside and talk. He told them to get a warrant, and the officers left.

The next day, officers returned to the building regarding a report of Marman's sexual assault of a different victim, B.H. After unsuccessful attempts to get him to exit his unit, officers tried to knock down the door with a battering ram but only succeeded in "creating a softball-sized hole in the door." Marman threw light bulbs at the officers through the hole and — when they looked in the hole — they saw him holding a kitchen knife. A hostage negotiation team was summoned, but it too was unsuccessful in persuading him to come out. (At some point during the incident, officers obtained a warrant.) Finally, officers deployed a flash-bang and pepper ball, heard movement inside the unit, and saw a hand holding a knife protrude through the hole. Officers launched a foam projectile at Marman's hand, causing him to drop the knife. After officers deployed additional pepper balls, Marman fled through a rear window and leapt over a fence, but he ultimately surrendered and was arrested.

In June 2023, the prosecution filed a complaint charging Marman with two counts of sexual penetration (Pen. Code, § 289, subd. (a)(1)(A), counts 1-2; undesignated statutory references are to this code), assault with intent to commit a felony (§ 220, subd. (a)(1), count 3), false imprisonment (§ 236,

count 4), two counts of exhibiting a deadly weapon (a knife) to a police officer to resist arrest (§ 417.8, counts 5-6), resisting arrest (§ 148, subd. (a)(1), count 7), assault with a deadly weapon (§ 245, subd. (a)(1), count 8), and sexual battery (former § 243.4, subd. (e)(1), count 9). (Counts 1-4 and 8 related to B.H., and count 9 related to K.M.) In July 2024, Marman sought new counsel pursuant to *People v. Marsden* (1970) 2 Cal.3d at page 118; after a closed hearing, the trial court denied his request. Also, the prosecution dismissed counts 1 through 4 and 8 pursuant to section 1385 due to the unavailability of B.H. A second amended information charged Marman with two counts of exhibiting a deadly weapon (a knife) to a police officer to resist arrest (counts 1-2), resisting arrest (count 3), and sexual battery (of K.M.) (count 4).

On July 30, 2024, the matter was set for pretrial motions and jury selection, but Marman refused to come to court.² The trial court expressed its intent to admonish him of his right to be in court, and it issued tentative rulings on various motions in limine. Marman again refused to appear on July 31, August 1, and August 5, and each time he was admonished pursuant to section 1043, subdivision (f)(1).

On August 6, Marman was again absent. After being admonished about his right to be present, he said he was “ ‘too sick’ ” to come to court. (Capitalization omitted.) Trial counsel reported she spoke with him the previous evening, and he expressed a desire to come to court but felt ill. The court ordered a recess and contacted the director of Jail Health Services, who reported Marman had tested negative for COVID and was not sick. After hearing argument from counsel, the court found by clear and convincing

² All subsequent dates are to 2024 unless otherwise indicated.

evidence that Marman was “voluntarily absenting himself,” and the trial proceeded in his absence.

Marman was absent on August 12 and 13. Both times, when admonished, he said he was sick. Both times, the trial court contacted Jail Health Services, and staff reported there was nothing to suggest Marman was ill. And both times, the court found he was voluntarily absenting himself, and the trial proceeded in his absence. On August 14, Marman again was absent, the court determined he was refusing to come to court, and the trial proceeded without him.

The jury convicted Marman of resisting arrest and simple battery (§ 242), the lesser included offense of sexual battery, and it acquitted him of the remaining counts. The trial court imposed an aggregate term of one year, six months in county jail with credit for time served, and it granted Marman’s request to stay all fines and fees.

Counsel filed a *Wende* brief and notified Marman he had a right to file a supplemental brief within 30 days. No supplemental brief was received. We have independently reviewed the record pursuant to *Wende* and conclude there are no meritorious issues to be argued on appeal. We affirm the judgment.

RODRÍGUEZ, J.

WE CONCUR:

TUCHER, P. J.

FUJISAKI, J.

A171840; *People v. Marman*