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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

REYNALDO CORONA-ARELLANO,

Defendant and Appellant.

A130904

(San Mateo County Super. Ct.
Nos. SC071516A & SC071515A)

Appellant, Reynaldo Corona-Arellano, appeals from the judgment entered after his plea of no contest. His counsel raises no issues and asks this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). In accordance with *Wende* and *Anders v. California* (1967) 386 U.S. 738, appellant was provided the opportunity to file a supplemental brief and elected to do so. The contentions raised in his supplemental brief have also been reviewed and considered.

BACKGROUND

Appellant and the victim, “Jane Doe,” were living together at a residence in East Palo Alto at the time in which the events here took place. The two had known one another for six years and were romantically involved for much of that time. Although the

two were never married, they had a three-year-old child together and at times, even referred to one another as husband and wife.

Jane Doe alleged that on the evening of June 27, 2010, she returned from work to find appellant drinking beer at the couple's home. At this time, their residence was also being shared by appellant's mother and at least one other family member. Jane Doe testified that upon arriving, she went to lie down in her room with the couple's three-year-old son. According to Jane Doe's testimony, the child was present for the entire episode. Sometime thereafter, appellant entered the room and the two began to argue over his failure to adequately watch the children. The confrontation escalated and according to Jane Doe's testimony, appellant insulted her, "slapped" her, and squeezed her neck with two hands for "maybe half a minute." Consequently, she received a "scratch" on the right side of her neck, had trouble breathing, and suffered neck pains for two days thereafter.

Jane Doe also testified that appellant repeatedly threatened to kill her during the confrontation. At one point, appellant made such a threat while pointing a rifle in her direction. Jane Doe initially testified that the rifle was loaded, but when asked a second time, she replied that she did not recall seeing appellant load the rifle. The two began to struggle over the rifle; Jane Doe's daughter observed the struggle and called to appellant's mother to intercede. His mother joined the struggle and eventually managed to wrest the gun from him, apparently ending the altercation between Jane Doe and appellant.

Jane Doe left the home with a female friend. After appellant had also left the residence someone contacted the police. Officer Huan Nguyen of the East Palo Alto Police Department responded to the call. At the preliminary hearing Officer Nguyen testified that he photographed and collected a rifle and approximately 12 rounds of ammunition from a bedroom in the home. The officer also spoke to a 10-year-old female child who was unrelated to either appellant or Jane Doe. She told the officer that she had

witnessed appellant's mother take the gun from appellant and had also heard him threaten to kill Jane Doe.

The police were unable to locate appellant and a warrant was issued for his arrest. Jane Doe assisted the police in their effort to locate appellant. Under the guidance of a detective, Jane Doe continued to communicate with appellant through text messages; and when appellant sent a text message requesting that she meet him, she agreed and informed the police of the time and place of the meeting.

Officer Delbert Thomas arrested appellant on the outstanding warrant for the charges resulting from the assault on Jane Doe. Thomas testified that after he transported appellant to the San Mateo County Jail, he informed appellant that he would conduct a search. The search of appellant yielded "a baggy containing a white powdery substance" that was subsequently confirmed to be "0.14 grams of cocaine salt."

Appellant was charged in two separate informations, which were ultimately sentenced together after appellant changed his plea. The information filed August 11, 2010, charged appellant with one count of violating Health and Safety Code section 11350, subdivision (a) for possession of cocaine. (Case No. SC071516.) In case No. SC071515, the district attorney filed an amended information on August 30, 2010, that charged appellant with three counts stemming from the assault on Jane Doe. Count one, charged appellant with the assault on Jane Doe under Penal Code¹ section 245, subdivision (a)(1), with allegations that he used a gun in the offense within the meaning of section 12022.5, subdivision (a), which rendered the charge a serious felony under section 1192.7, subdivision (c)(8) and a violent felony under section 667.5, subdivision (c)(8) Count two charged him with criminal threats against Jane Doe under section 422, and included the same aggravating factors charged in count one. (§§ 12022.5, subd. (a), 1192.7, subd. (c)(8) & 667.5, subd. (c)(8).) However, count two also charged that it

¹ Further section references are to the Penal Code unless otherwise indicated.

qualified as a serious felony under section 1192.7, subdivision (c)(8) and subdivision (c)(38). Count three charged appellant with misdemeanor battery on a spouse/cohabitant/mother of his child under section 243, subdivision (e)(1).

Appellant was held to answer after a preliminary hearing on both informations and, through an interpreter, pled not guilty to all charges. On September 27, 2010, appellant filed a *Marsden* motion with the court. (*People v. Marsden* (1970) 2 Cal.3d 118.) The motion was referred to Judge Robert Foiles in Department 21 and upon consideration, was denied.

On October 1, 2010, the court convened for change of plea proceedings. Following the court's indication that the sentence would be four years and four months in prison, appellant plead no contest to two counts. In case No. SC071515, he plead no contest to count two, making criminal threats pursuant to section 422. He also admitted the special allegations under sections 12022.5 and 1192.7, subdivision (c)(38). In case No. SC071516, appellant entered a no contest plea to the single count, possession of a controlled substance. (Health & Saf. Code, § 11350, subd. (a).) The district attorney dismissed the remaining counts and allegations.

The Probation Department prepared its report in advance of sentencing. The report recommended against probation. Pursuant to the California Rules of Court, rule 4.414² the report considered the facts related to the crime. The report concluded that the crime was "serious" based on the fact that the defendant could have seriously injured or killed the victim, the crime was witnessed by children and because it inflicted physical pain and emotional trauma. The report also considered and identified aggravating factors under rule 4.421, including that appellant's crime involved great violence, a threat of serious bodily injury, a weapon, and that it was inflicted upon defenseless women and children. The Probation Department also concluded that appellant failed to take

² Further rule references are to the California Rules of Court.

responsibility for his actions, based on his stated belief that he did not really hurt Jane Doe.

The report did note that “[appellant] repeatedly said he loved and missed his girlfriend and his children” and “was extremely contrite.” In addition, the report indicated that appellant lacked a history of serious or violent crime. But ultimately, the report failed to identify any mitigating circumstances pursuant to rule 4.423.

The sentencing hearing was held on November 23, 2010. The court recognized that appellant had taken legal responsibility for his actions, but was troubled by the fact that he had not taken moral responsibility for his conduct towards Jane Doe. The court denied probation based on its finding that the crime was a “very serious offense” pursuant to rule 4.414. The court did acknowledge appellant’s limited criminal record and ultimately sentenced appellant to low terms for both of the counts. In case No. SC071515, the court sentenced him to 16 months in state prison for making of criminal threats. (§ 422.) Consecutive to that sentence, the court imposed a three-year term for the use of a firearm in the commission of a felony. (§ 12022.5.) In case No. SC071516, the drug possession case, appellant was given 16 months in prison, to run concurrent to the sentence imposed in the first case. Appellant was awarded 128 credits for actual time and 19 credits for good time for a total of 147 days credit towards his sentence.

Appellant filed a timely notice of appeal and on June 17, 2011. The court consolidated the appeal of both cases. After reviewing the record, appointed counsel informed appellant that she intended to file a *Wende* brief and that he would be given the opportunity to supplement it with his own brief. Counsel filed the *Wende* brief on September 8, 2011 and appellant filed the supplemental brief with this court on October 17, 2011. This court accepted both briefs and has taken into consideration the matters raised by appellant’s supplemental brief.

DISCUSSION

Our independent review of the record and the supplemental brief reveals no arguable issues.

DISPOSITION

Accordingly, the judgment is affirmed.

Lambden, J.

We concur:

Kline, P.J.

Richman, J.

People v. Corona-Arellano (A130904)