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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

BYRON BONNELL,

Defendant and Appellant.

A132941

(Alameda County  
Super. Ct. No. C160274)

Defendant Byron Bonnell appeals after his probation was revoked and he was sentenced to prison. His counsel has filed an opening brief raising no issues and asking this court for an independent review of the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant has been informed of his right to personally file a supplemental brief, but he has not done so.

Pursuant to a negotiated disposition, defendant pled no contest to unlawfully driving or taking a motor vehicle. (Veh. Code, § 10851, subd. (a).) On February 25, 2009, the trial court placed him on five years probation.<sup>1</sup>

The District Attorney petitioned to revoke probation on March 17, 2011, alleging defendant had committed carjacking (Pen. Code,<sup>2</sup> § 215), and assault with a deadly weapon (§ 245, subd. (a)(1)), and inflicted injury on a cohabitant (§ 273.5, subd. (a)).

<sup>1</sup> Defendant appealed, and on October 8, 2010, we remanded the matter for the trial court to clarify its intent in imposing a probation revocation fee, and otherwise affirmed the judgment. (*People v. Bonnell*, A124660, Nonpub. Opn., Oct. 8, 2010.)

<sup>2</sup> All undesignated statutory references are to the Penal Code.

The victim of the crimes, Carrie Mason, testified at a preliminary hearing in a separate criminal case against defendant. According to Mason, she had been living with defendant, and arranged to meet him on February 27, 2011, in order to discuss problems in their relationship. Defendant approached her car quickly, looking angry. He opened the car door and pulled Mason out of the car, then got into the driver's seat. Mason tried unsuccessfully to remove the keys from the ignition so defendant could not take her car. As she was being pulled out, Mason released the hood, then went to the front of the car, opened the hood, and "pull[ed] switches and tops" to try to keep the car from moving. As she did so, holding onto the grill, the car began to move quickly in reverse, then went backwards and forwards. The third time the car reversed, Mason slipped off and hit the ground. The car continued to reverse, then "disappeared from the scene."

A hearing on the alleged probation violation took place in this case on June 13 and 14, 2011. James Beal, an inspector from the Alameda County District Attorney's office, testified about his unsuccessful efforts to serve Mason with a subpoena to appear in court. He went to her last known address three times, and to two other possible addresses, but could not find her or receive information on her whereabouts. He checked an online database and found her social security number, but the state Employment Development Division had no records of anyone with that number. The court found the prosecution had exercised due diligence to find Mason and admitted the transcript of the preliminary hearing into evidence. (Evid. Code, §§ 240, subd. (a)(5), 1291.)

The trial court found defendant had violated his probation. The probation officer recommended that probation be restored and modified to include a 90-day jail term. The trial court, however, sentenced defendant to the upper prison term of three years, calculated 343 days of custody and conduct credit, reaffirmed fines and fees already imposed, and imposed fines pursuant to sections 1202.44 and 1202.45.

There are no meritorious issues to be argued.

### **DISPOSITION**

The judgment is affirmed.

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RIVERA, J.

We concur:

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RUVOLO, P. J.

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SEPULVEDA, J.