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THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. KIMBERLEY BROOKS, Defendant and Appellant.	A135204 (San Francisco County Super. Ct. No. 216000)
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Following a jury trial, appellant Kimberley Brooks was convicted of four misdemeanor counts of contempt of court for violating a restraining order. (Pen. Code,¹ § 166, subd. (a)(4).) Appellant’s court-appointed counsel has briefed no issues and asks this court to review the record as required by *People v. Wende* (1979) 25 Cal.3d 436. We have done so and find no issues that merit further briefing.

FACTUAL AND PROCEDURAL BACKGROUND

The victim in this case, whom we shall refer to as Jane Doe, met appellant in 2001 at a lesbian prospective mom’s group function. Doe and appellant saw each other on a regular basis at events and social gatherings over the course of the following two years. Doe described their relationship as one in which they would speak occasionally and sometimes share a ride after a function.

After Doe gave birth to a daughter in 2003, Doe became more concerned about appellant’s behavior. Appellant began giving gifts to Doe that she considered

¹ All further statutory references are to the Penal Code unless otherwise specified.

inappropriate in light of the fact Doe barely knew appellant. Appellant then began showing up unannounced at Doe's house. Doe also received a lot of emails from appellant. Doe eventually told appellant to stop emailing her but appellant persisted in emailing and calling Doe.

In one particular incident on May 19, 2008, appellant showed up at Doe's house and said she wanted to talk. Doe confronted appellant and told her to stay away. Appellant responded, "I would hate for something to happen to those beautiful kids of yours." Appellant reported the incident to the police. Appellant continued to make calls to Doe and send her text messages after the encounter.

Following the incidents in May 2008, appellant was charged with stalking and other crimes arising from her interaction with Doe. In early September 2008, she pleaded guilty to one count of stalking with the understanding her sentence would be suspended and she would be placed on probation. (§ 646.9, subd. (a).) While she was on probation, appellant attempted to contact Doe and showed up at Doe's home unannounced in April 2009. The court revoked appellant's probation and sentenced her to prison. On December 7, 2009, the trial court issued a criminal protective order directing appellant to avoid contact with Doe until December 2019.

Doe was afraid of appellant and changed her lifestyle as a result, including taking martial arts classes, enrolling her children in different schools, and moving to a new residence before appellant was released from prison. Appellant was released from prison on April 11, 2010.

On May 8, 2011, Doe received two calls from a number she recognized as being associated with appellant. Appellant left two voicemail messages. In the first voicemail, appellant stated, "I'm so sorry. I expected a little more *basso profundo*. Pardon me. Pardon me profusely." In the second voicemail, appellant stated, "Yeah, I got a design for you, *so profundo*. *Basso profundo*. And 16 and a half months. Thanks ever so." Doe called the police. While the police were at Doe's home, Doe received another call, which the police officer answered. The officer told the caller there was a restraining order against appellant, that she was under threat of arrest, and that she must stop calling.

While the police were at her home, Doe received an email from a sender identified as the “Turnip Fairy,” whom Doe knew from prior experience to be appellant. The email read: “Call the police. I do not care. I already look and feel like shit. Being in jail can’t be worse and I usually know people there. Happy Mother’s Day. K.” After the police left, Doe received another call from appellant, who left a third voicemail message in which she said, “Any O, any A, patch me through, really. Patch me through to the police. I really want you to. Why don’t you? Thanks. Fuck you.” Appellant fled with her children to a hotel to avoid appellant.

In a first amended information filed January 20, 2012, the San Francisco County District Attorney charged appellant in count one with felony stalking. (§ 646.9, subd. (a).) The district attorney further alleged the violation was committed while a restraining order was in effect (§ 646.9, subd. (b)) and after appellant had been previously convicted of stalking (§ 646.9, subd. (c)(2).) In counts two through five of the information, appellant was charged with four misdemeanor counts of contempt of court for violating a restraining order. (§ 166, subd. (a)(4).) As to each of the misdemeanor counts, it was alleged that appellant had suffered a prior conviction for stalking. (§ 646.9, subd. (c)(2).) The district attorney further alleged that appellant had served a prior prison term within the meaning of section 667.5, subdivision (b).

Appellant moved *in limine* under *Miranda v. Arizona* (1966) 384 U.S. 436 to exclude a statement she made to the police while in custody on May 13, 2011. The trial court granted the motion to exclude the statement as to the prosecution’s case in chief. However, because the court concluded the statement to the police was made voluntarily, the court determined that the statement could potentially be used as rebuttal impeachment evidence if appellant testified at trial.

Appellant also moved before trial to challenge the charged prior conviction as unconstitutional, arguing that her plea was involuntary because she was purportedly induced to plead guilty simply to get out of jail despite not having committed the crime. In addition, appellant testified that the elements of stalking had never been explained to her and that she pleaded guilty because her attorney told her to do so. The trial court

denied appellant's motion, finding that appellant's plea in the earlier case was knowing, intelligent, and voluntary.

Appellant testified in her own defense at trial. She confirmed she had left the three voicemail messages and sent an email to Doe on May 8, 2011. Appellant claimed she was drunk as well as despondent and depressed when she made the calls and sent the email. The district attorney introduced portions of appellant's custodial police interview for the purpose of impeaching appellant's testimony that she was so intoxicated she was unable to recall what she said to Doe.

Following trial, the jury found appellant guilty of the four misdemeanor counts of contempt of court for violating a restraining order. The jury was deadlocked on the stalking count. The stalking charge was set for retrial but was ultimately dismissed at the request of the prosecution pursuant to section 1385.

In a bifurcated bench trial held on March 19, 2012, the trial court found the allegation of a prior stalking conviction to be true as to each of the misdemeanor counts. Because appellant had not been convicted of a felony in the instant case, the court disregarded the charged sentence enhancement under section 667.5, subdivision (b). The court sentenced appellant to serve a sentence of two years in county jail, composed of the maximum of one year for one contempt count, with a consecutive term of one year on a second contempt count. The court ordered the sentences on the remaining two contempt counts to be served as concurrent one-year terms.

The court imposed an aggregate restitution fine of \$480 (§ 1202.4, subd. (b)(1)), a booking fee of \$135 (Gov. Code, § 29550.2), a court operations fee totaling \$160 (§ 1465.8, subd. (a)(1)), and a Government Code operations fee in the aggregate amount of \$120 (Gov. Code, § 70373, subd. (a)). Appellant received 312 days of actual custody credit. The court reserved the issue of victim restitution.

Appellant filed a timely notice of appeal.

DISCUSSION

Appellant's counsel filed a brief identifying no potentially arguable issues and asking this court to independently review the record under *People v. Wende, supra*,

25 Cal.3d 436. Appellant was afforded an opportunity to file a supplemental brief with this court but did not do so. We have reviewed the entire record and conclude no issue warrants further briefing.

DISPOSITION

The judgment is affirmed.

McGuiness, P.J.

We concur:

Pollak, J.

Siggins, J.