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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIO CESAR GARCIA,

Defendant and Appellant.

2d Crim. No. B237746
(Super. Ct. No. 2011005126)
(Ventura County)

Julio Cesar Garcia appeals from a conviction after jury trial of one count each of second degree robbery (Pen. Code, § 211),¹ criminal threats (§ 422) and battery (§ 243, subd. (e)(1)). The felony information alleged that he committed these offenses while released on bail in two other pending cases (Nos. 2010020113 and 2010032933). (§ 12022.1, subd. (b).) After appellant waived jury, the trial court found the on-bail allegations to be true.

The trial court sentenced appellant to the middle term of three years on the robbery count. The court granted appellant's motion to reduce the remaining two counts to misdemeanors, and imposed a one-year jail sentence on each count, to run concurrently with the prison sentence, plus two years for the on-bail enhancements. In the other two cases, appellant pled guilty to one count of second degree burglary of a

¹ All statutory references are to the Penal Code.

motor vehicle (§ 459) and one count of brandishing a weapon (§ 417). The trial court sentenced him to eight months (one-third the middle term) on each count, to run consecutively to the five years imposed in the present case, for a total sentence of six years four months.

The trial court imposed the minimum statutory restitution fines in each case (§§ 1202.4, subd. (b), 1202.45), and awarded appellant a total of 327 days custody credit, consisting of 283 actual custody credit and 44 days good conduct credit. Appellant filed a timely notice of appeal from the judgment in the present case.

On February 3, 2011, Maria Navarette and her daughter Beatrice Valencia encountered appellant, a former boyfriend of Navarette, while they were walking through an alley on the way to a store to buy soda. Appellant asked Valencia if he could speak privately with her mother. After Valencia left the alley, appellant asked Navarette for money. Navarette denied having any money. Appellant, a Colonia Chiques gang member, pulled out a knife and threatened to "break" or "burn" her or to kill her. When Navarette continued to refuse to give him money, appellant knocked her down and took \$500 in cash plus her cell phone. Navarette demanded her money back. When appellant refused to return it, she scratched him in the face. During the altercation, Navarette sustained a knee abrasion.

At some point, Navarette started screaming and called out to her daughter, who ran into the alley. Valencia saw appellant apparently punching her mother, who was on the ground with appellant on top of her. As Valencia approached, appellant helped Navarette back to her feet. Appellant and Navarette continued to argue over the money, which appellant refused to return. Appellant told them that if they called the police, "[y]ou know what's gonna happen." He said he would "come back and kill" Navarette or her children. Valencia thought this was a legitimate threat. Appellant left before the police arrived.

When Officer Roberto Valenzuela arrived at the scene, he found Navarette crying and very distraught, with an abrasion on her knee. She did not show any signs of being under the influence of alcohol. After Navarette and Valencia gave recorded

statements, they assisted the officers in trying to locate appellant's home, but they were unable to find it.

Officer Valenzuela interviewed appellant several days later, on February 9, 2011. During the interview, appellant "spontaneously" admitted he had returned the cell phone to Navarette and said that Navarette "was going to drop the charges anyways"

Navarette and Valencia subsequently recanted their stories to the district attorney. At trial, they denied much of what they had earlier told the police. Navarette testified that she had been drinking all afternoon with a friend and had gone home to look for money to buy more wine. She stated she had no money on her at all because she had spent her entire monthly income on rent and groceries.

Navarette testified that when she encountered appellant in the alley, she asked him for money. When he refused to give her any, she threatened to call the police and accuse him of assault. Navarette stated she fell down because she had been drinking and that she lost her balance when she tried to scratch appellant's face. She said all appellant did was help her up. Navarette testified she instructed her daughter to call the police only because she was angry appellant would not give her any money and because he was controlling her life.

Navarette also denied that appellant had a knife. She said she lied about appellant taking money and her cell phone. She claimed she misplaced the cell phone and found it several days later on the floor in her room.

Valencia testified that she also lied to the officers about what had occurred. She said that when she returned to the alley she could not see anything clearly because of her poor eyesight. Valencia testified that at the time of her initial interview, she believed her mother was telling the truth and that, as a result, she wanted to get appellant arrested. Valencia did state that her mother is "not much of a drinker" and that the last time she saw her mother drink alcohol was in 2000.

The trial court admitted the women's earlier recorded interviews as evidence. The court clerk played the CD recordings for the jurors and also provided them with transcripts.

We appointed counsel to represent appellant in this appeal. After examining the record, counsel filed an opening brief raising no issues and requesting that we independently examine the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

On May 15, 2012, we advised appellant in writing that he had 30 days within which to personally submit any contentions or issues he wished to raise on appeal. Appellant did not respond.

Having examined the entire record, we are satisfied that appointed counsel has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 123-124; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Charles W. Campbell, Judge
Superior Court County of Ventura

Linda L. Currey, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.