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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

REGINALD VON REED,

Defendant and Appellant.

B238574

(Los Angeles County
Super. Ct. No. BA383185)

APPEAL from a judgment of the Superior Court of Los Angeles County. Leslie A. Swain, Judge. Affirmed.

Reginald Von Reed, in pro. per., and John Raphling, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted defendant Reginald Von Reed of stalking and criminal threats. The trial court found true allegations that defendant had suffered a prior serious felony conviction for purposes of the “Three Strikes” law and Penal Code section 667, subdivision (a)(1), and had served two prior prison terms within the scope of Penal Code section 667.5, subdivision (b). It sentenced him to nine years in prison, consisting of a second strike term of four years for criminal threats, plus a five-year serious felony enhancement.

Defendant’s conviction was based on his course of conduct from March 22 to April 5, 2011, against his former girlfriend (and the mother of his children), Ruby R., who had broken up with defendant and ejected him from her apartment in October of 2010, then rekindled a relationship with her former boyfriend, Andre. (Undesignated date references pertain to 2011.) On the night of March 21, someone drove a plant stake through Ruby’s bedroom window. She and Andre boarded up the window. On the morning of March 22, defendant knocked out the board and threw two or three rocks through the hole in the window. Ruby was angry and afraid, and her mother called 911. The next day, as Ruby walked her son to school, defendant ran up and grabbed her mobile phone from her. Later, she found that all four tires on her car had been flattened. After she repaired them, she found them flattened again. Defendant phoned her and admitted flattening the tires “again.” The parties stipulated that two police officers responded and saw three deflated tires on Ruby’s car.

Defendant also called Ruby’s mobile phone repeatedly and left numerous messages. Ruby played some of the messages for the police, who recorded them. The recordings of these messages were played at defendant’s trial. In one of the messages played for the jury, defendant said, “Okay, I got yo’ ass, bitch. Fuck you up, bitch. I’ll fuck yo’ ass up, you fuckin’ bitch!” Ruby was frightened by this message, which she interpreted as a threat to harm her. Ruby and her children moved into a motel for 10 days. On April 5, she returned to her apartment to get something and discovered that it had been ransacked. Her sofa had been slashed, and furniture, windows, her children’s

aquarium, and family pictures had been smashed. There was glass and blood everywhere. The police arrested defendant, who had fresh cuts on one hand and blood on his jeans and shoes. After defendant's arrest, there were no further acts of vandalism to Ruby's car or apartment.

Defendant filed a timely appeal. We appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. Defendant filed a supplemental brief raising numerous points, which we now address.

Defendant argues that numerous witnesses committed perjury, the damage to Ruby's apartment was "staged," he still lived in the apartment and had bills in his name, the police report does not match unspecified transcripts, he never received photographs or minute orders, Andre's and Ruby's statements to the police conflicted, a police officer took the case to destroy defendant's character and obtain "revenge for womans [sic] rights," the prosecutor removed 16 pages from the preliminary hearing transcript, two voice mails were "not the same as his attorney's," he was never interviewed by law enforcement, and Ruby was coerced into testifying because she had "other matters with the law" and was in danger of losing her children. None of these points is supported by the appellate record.

Defendant also argues that "no-body could say who took the photo's" of Ruby's vandalized apartment. This is not true; one of the responding officers testified that Officer Collier took them.

Defendant also complains that Andre did not testify. Defendant does not explain why this was error or how such purported error prejudiced him.

Defendant argues the trial court erred by failing to instruct the jury on late disclosure of the voice mail recordings, which the police had apparently forgotten about and the prosecutor did not know existed. They were rediscovered and turned over to the defense on September 21. Defendant did not seek a continuance. Jury selection began on September 26 and the defense rested on October 5. The court denied defendant's

request to instruct the jury on the belated disclosure because there was no showing of prejudice or misconduct by the prosecutor or police. The message upon which the prosecutor relied as the threat supporting the charges was transcribed in the police report that the defense had possessed throughout the proceedings. Penal Code section 1054.5, subdivision (b), permits, but does not require, the trial court to instruct the jury on delayed disclosure. Under the circumstances of this case, we cannot say the trial court abused its discretion by declining to so instruct. In addition, defendant has failed to show he was prejudiced by the absence of such an instruction.

Defendant argues the trial court should have given CALJIC instructions on how to evaluate witnesses' testimony. The court did not err. It gave CALCRIM Nos. 226, 315, 316, and 318.

Defendant argues his trial attorney rendered ineffective assistance by failing to file a motion asking the court to instruct upon late disclosure of the voice mail recordings and by failing to cross-examine witnesses. Neither of these arguments are true. Defendant also argues counsel was ineffective because he did not claim that the officers committed perjury. Because the record does not support the perjury claim, it also fails to support this ineffective assistance claim. Defendant also argues his attorney missed a court appearance and "sent Ms. Baessier [*sic*] to stand in for him." The record reveals Ms. Baessler represented defendant at the preliminary hearing only. Thereafter, Mr. Kitahara was assigned to represent defendant, and no other attorney ever stood in for him at any time during proceedings in this case.

Defendant argues that the counts should have been severed because he had not confessed. No authority supports his contention.

Defendant argues there were references to his gang membership. There were not. He argues there were references to him not being afraid of police. Ruby made such a statement, but it was immediately stricken upon defense objection. He argues he was denied his right to be present "when decisions to impanel dual juries were discussed and

made.” There were no such discussions or decisions, and the record reveals no proceedings were conducted in defendant’s absence.

Defendant argues that Ruby’s testimony was, without more, insufficient to support his convictions. Defendant’s convictions were supported by the testimony of Ruby, Ruby’s mother, Officers Gutierrez and London (who responded to three 911 calls by Ruby and her mother), the parties’ stipulation regarding the observation of Ruby’s tires by Officers Bracamontes and Williams, the recordings of the messages defendant left on Ruby’s phone, and the recordings of 911 calls made by Ruby and her mother. Viewing the evidence in the light most favorable to the judgment, substantial evidence supports defendant’s criminal threats and stalking convictions.

Defendant also argues his “strike prior should have been stayed, due to the fact it was a 25 year old prior and [he] was just a youth.” The trial court denied defendant’s motion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, after applying the proper standards and considering all of the pertinent facts, including the age of the strike prior, which occurred 22 years before sentencing in this case, and defendant’s lengthy record of convictions between the strike prior and the current offenses. Defendant had seven misdemeanor convictions and seven felony convictions in between his strike prior and the current offenses, with no significant period in which he was free of both custody and crime. He was on probation at the time he committed the current offenses. We further note that the strike prior was a conviction, not a juvenile adjudication. We cannot conclude the trial court abused its discretion by concluding defendant did not fall outside the spirit of the Three Strikes law.

Defendant also claims his appellate attorney rendered ineffective assistance by failing to raise the claims defendant set forth in his supplemental brief. None of the claims defendant has raised have merit, and his appellate attorney was not ineffective for failing to raise them.

We have examined the entire record and are satisfied that defendant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

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MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.