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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHNNY VENTURA,

Defendant and Appellant.

B239686

(Los Angeles County  
Super. Ct. No. PA070491)

APPEAL from a judgment of the Superior Court of the County of Los Angeles, David B. Gelfound, Judge. Affirmed and remanded with instructions.

Dawn S. Mortazavi, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, Daniel C. Chang, Deputy Attorney General, for Plaintiff and Respondent.

**INTRODUCTION**

Following a trial, a jury found defendant and appellant Johnny Ventura (defendant) guilty of assault by means likely to produce great bodily injury. On appeal, his appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) requesting that this court independently review the entire record to determine if there are any issues, which if resolved in defendant's favor, would require reversal or modification of the judgment. Accordingly, we notified defendant that he could brief any grounds of appeal, contentions, or arguments he wanted us to consider.

In a response, defendant submitted a supplemental brief contending that: (i) the trial court erred when it denied the jury's request during deliberations to review a police report that was not in evidence; and (ii) there was insufficient evidence to support the jury's finding that defendant inflicted great bodily injury on the victim. In addition to defendant's supplemental brief, the parties, at our request, submitted letter briefs on two issues: whether the trial court correctly calculated defendant's custody credits when it sentenced defendant in this case and in two probation violation cases and whether the abstract of judgment correctly reflected the trial court's oral pronouncement of sentence as it related to the imposition of court operations assessments and criminal conviction assessments.

Based on our review of defendant's supplemental brief, the parties letter briefs, and the entire record, we hold that the trial court did not err by denying the jury's request to review the police report that was not in evidence and that the jury's finding that defendant personally inflicted great bodily injury on the victim was supported by substantial evidence. We further hold that the trial court correctly calculated defendant's custody credits, that the abstract of judgment must be corrected to reflect the trial court's oral pronouncement of sentence imposing court operations and criminal conviction assessments, and that there are no other arguable issues on appeal. We therefore affirm the judgment of conviction and remand with instructions to correct the abstract of judgment.

## **FACTUAL BACKGROUND<sup>1</sup>**

In response to screams from defendant's girlfriend, the victim, William Story, intervened in an altercation between defendant and another man in the hallway outside Story's apartment. After exchanging words with Story, defendant hit Story six times in the temple and eyes. Story's neighbor intervened and defendant eventually left the scene.

When the police arrived, Story refused medical attention. Later that morning, when Story blew his nose, his left eye "popped out" of his eye socket. An ambulance transported Story to the hospital where he underwent an MRI. Story's left orbital bone was broken. Story had problems with his vision for two months after the altercation.

## **PROCEDURAL BACKGROUND**

In an amended information, Los Angeles County District Attorney charged defendant with assault by means likely to produce great bodily injury in violation of Penal Code section 245, subdivision (a)(1).<sup>2</sup> The District Attorney alleged that defendant inflicted great bodily injury on the victim, Story, within the meaning of section 12022.7, subdivision (a). Defendant pleaded not guilty and denied the special allegation.

Following trial, a jury found defendant guilty as charged and found true the allegation that he personally inflicted great bodily injury on the victim. The trial court sentenced defendant to the middle term of three years, plus a consecutive three-year term pursuant to the true finding on the section 12022.7, subdivision (a) allegation, for a total sentence of six years. The trial court awarded defendant 244 days of actual custody

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<sup>1</sup> Because defendant's contentions on appeal do not challenge the sufficiency of the evidence as to any issue other than the jury's finding that defendant inflicted great bodily injury on the victim, there is no need for a detailed factual statement except as to that issue.

<sup>2</sup> All further statutory references are to the Penal Code unless otherwise indicated.

credit and 36 days of conduct credit for a total award of 280 days of custody credit for this offense.

In addition to sentencing defendant in this case, the trial court also sentenced defendant in two probation violation cases in which sentence had previously been suspended and probation had been granted. In case number PA062145, the trial court sentenced defendant to a three-year sentence to run concurrently with the six-year sentence in this case and awarded defendant 360 days of custody credit for time served as a condition of probation in that case, and an additional 244 days of actual custody credit for time served prior to sentencing for the probation violation based on his conduct in this case, as well as 36 days of conduct credit, for a total award of custody credit of 640 days for this offense.

In case number PA065413, the trial court sentenced defendant to a three-year sentence to run concurrently with the six-year sentence in this case and awarded defendant 365 days for time served as a condition of his probation in that case, and an additional 244 days of actual custody credit for time served prior to sentencing for the probation violation based on his conduct in this case, as well as 36 days of conduct credit, for a total award of custody credit of 645 days for this offense.

## **DISCUSSION**

### **A. Police Report**

During deliberations, the jury sent a note to the trial court stating, “We the jury would like to know if we can see the Police Report from 01/31/11 [the date of the assault]?” The trial court responded in writing, “No. The police report is not evidence in this case.”

Defendant contends that the trial court erred by not allowing the jury to review the police report. According to defendant, the report would have shown that Story and his neighbor were lying about certain facts during their testimony and therefore would have adversely affected their credibility.

Story testified that he was interviewed by the police on the morning of the January 31, 2011, assault and that he had read the police reports about the incident. He was also cross-examined concerning whether the reports contained any inaccuracies. But the reports were not introduced into evidence. Thus, it would have been improper for the trial court to have allowed the jury to review the requested report. Moreover, defendant's trial counsel agreed with the trial court's proposed response to the jury, and did not state or imply that the jury should be allowed to review the report. Based on the record, no error occurred concerning the police report.

**B. Sufficiency of Evidence in Support of Finding on Great Bodily Injury Allegation**

Defendant contends that the evidence did not support the jury's true finding on the allegation that he personally inflicted great bodily injury on Story. Defendant bases his argument on a medical report in evidence that purportedly described Story's injuries as minor.

The medical report in issue is not in the record, but even assuming that it described Story's injuries as minor, Story testified that his eye came out of the socket, that he had a broken orbital bone, and that he had vision problems for two months. That testimony described "great bodily injury," i.e., "significant or substantial physical injury . . . that is greater than minor or moderate harm." (*People v. Wyatt* (2012) 55 Cal.4th 694, 702.) Therefore, even if the medical report, which was in evidence, read as defendant characterizes it, the jury's true finding suggests that the jurors believed Story's description of his injuries, a credibility determination that the jury was entitled to make. Therefore, Story's testimony about his injuries was sufficient to support the true finding on the great bodily injury allegation.

### **C. Custody Credits**

Following our review of the record, we requested that the parties submit letter briefs on whether the trial court correctly calculated defendant's custody credits, including whether defendant was entitled to custody credit in his two probation violation cases for time served in custody prior to sentencing based on his arrest in this case. We have reviewed the letter briefs concerning the trial court's calculation of defendant's custody credits and conclude that the trial court accurately calculated those credits. (See *People v. Johnson* (2007) 150 Cal.App.4th 1467, 1485 [defendant entitled to credit for time spent in presentence custody on a probation violation if the conduct resulting in the violation is the “dispositive” or “but for” cause of the presentence custody].)

### **D. Assessments**

During its oral pronouncement of sentencing in the two probation revocation cases (case numbers PA062145 and PA065413), the trial court appeared to impose in both cases a court operations assessment pursuant to Penal Code section 1465.8 and a criminal conviction assessment pursuant to Government Code section 70373. The abstract of judgment, however, does not reflect that those assessments were imposed in each of the two probation revocation cases, but rather reflects that those two assessments were only imposed in the case that is the subject of the appeal. Accordingly, we requested letter briefs on whether the abstract of judgment should be corrected to show that court operations assessments and criminal conviction assessments were imposed in all three cases as reflected in the reporter's transcript for the sentencing hearing and, if the abstract of judgment should be corrected to reflect the imposition of the two assessments in each case, what the amounts of the assessments should be in each case.

We have reviewed the parties letter briefs on the assessments issue and conclude that the abstract of judgment should be corrected to show that a \$30 Government Code section 70373 criminal conviction assessment was imposed in case numbers PA062145 and PA065413 and that a \$20 Penal Code section 1465.8 court operations assessment

was imposed in case number PA062145 and a \$40 Penal Code section 1465.8 court operations assessment was imposed on case number PA065413.

**E. Conclusion**

In addition to considering defendant's submission and the letter briefs of the parties, we examined the entire record to determine if there are any other arguable issues on appeal. Based on that independent review, we have determined there are no other arguable issues on appeal. We are therefore satisfied that defendant's appointed counsel has fully satisfied her responsibilities under *Wende, supra*, 25 Cal.3d 436.

**DISPOSITION**

The judgment of conviction is affirmed, and the matter is remanded to the trial court to correct the abstract of judgment to reflect the assessments specified in this opinion.

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MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.