

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM HOHN BUSCH,

Defendant and Appellant.

D059923

(Super. Ct. No. SCN282768)

APPEAL from a judgment of the Superior Court of San Diego County, Richard E. Mills, Judge. Affirmed.

A jury convicted William Hohn Busch of making a criminal threat (Pen. Code, § 422),¹ resisting an executive officer (§ 69) and misdemeanor battery on an officer (§ 243, subd. (b)). In a separate proceeding, Busch admitted he had served a prior prison sentence within the meaning of section 667.5, subdivision (b). The trial court sentenced Busch to three years eight months in prison.

¹ All further statutory references are to the Penal Code.

FACTS

On the afternoon of July 26, 2010, park ranger Todd Stepien observed Busch and another man drinking beer at a picnic bench in Grape Day Park in Escondido. Drinking in public is a violation of the city's Municipal Code. Before approaching Busch and the other man, Stepien radioed for police assistance. Officers William Havens and Michael Cable arrived separately and contacted Busch and the other man. At that point, Stepien walked over to the picnic bench.

Havens obtained Busch's California identification card and handed it to Stepien, who had indicated he wanted to write a citation for drinking in public. As Stepien was writing the citation, Havens asked the police dispatcher to run a wants and warrants check on Busch. Busch told Stepien to "watch your back." After receiving a radio communication that Busch was on parole, Havens handcuffed him.

Havens then phoned Busch's parole agent and informed her of the drinking in public citation. The parole agent asked Havens to arrest Busch for a parole violation; one of Busch's parole conditions was to abstain from drinking alcohol. When Havens told Busch that he was going to be arrested, Busch lunged at Stepien and spat on him. Busch's spit landed on Stepien's forearm and shorts.

Officers Havens and Cable took Busch to the ground to subdue him. Havens placed a spit mask on Busch. After initially struggling, Busch calmed down and said he would cooperate, but failed to do so after the officers allowed him to stand up. Havens and Cable unsuccessfully tried to place the handcuffed, but combative Busch into the

backseat of a police car. Additional officers arrived on the scene, and a police custody van with a maximum restraint chair was requested. It took six to eight officers to secure Busch in the restraint chair.

While Busch was being transported in the custody van, he threatened Haven's life as well as the lives of members of his family. At trial, Havens testified that he was not afraid Busch would carry out the threats immediately because he was in custody, but he was still somewhat fearful.

Two or three days after Busch was arrested, Havens found out more information about Busch by looking at the jail information management system. The system included information that Busch was administratively segregated in the jail because of assaultive conduct, he was a gang member, he was a psychiatric inmate and, at one point, he was required to have leg and waist shackles in the common areas of the jail. At trial, Havens testified that upon learning this additional information, his fear for his and his family's safety was heightened.²

DISCUSSION

Appointed appellate counsel has filed a brief setting forth evidence in the superior court. Counsel presents no argument for reversal, but asks that this court review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible, but not arguable,

² The trial court instructed the jury that the information from the jail management system might not be accurate and was only being admitted to explain Haven's state of mind. The jury was not to consider the information for any other purpose.

issues: (1) whether the trial court erred by denying Busch's motion to suppress evidence on the basis of an illegal detention and/or illegal arrest; (2) whether the court erred by denying Busch's *Pitchess* (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531) motion; (3) whether the court erred by denying Busch's motion to suppress his statement on the basis of a *Miranda* (*Miranda v. Arizona* (1966) 384 U.S. 436) violation; (4) whether the court erred by not excluding hearsay testimony concerning Busch's background and by denying Busch's motion for a mistrial based on the admission of that testimony; (5) whether the court erred by denying Busch's motion to dismiss based on the government's failure to preserve the identity of an eyewitness; (6) whether the court erred by denying Busch's motion to dismiss for vindictive prosecution; (7) whether the court's failure to accurately and completely read various jury instructions constitute prejudicial error; (8) whether there was substantial evidence to support each of the guilty verdicts returned by the jury; (9) whether the court erred by not staying the sentence for the resisting an executive officer count under section 654; and (10) whether the court was required to determine Busch's ability to pay the booking fee before it was imposed.

We granted Busch permission to file a brief on his own behalf. He has responded.

Busch claims he did not drink alcohol on July 26, 2010, and the park ranger and police officers did not perform any tests or present independent evidence to support their statements that Busch was drinking or intoxicated. Busch points to a lack of a field sobriety test and collection of the nearby alcoholic beverage bottles for fingerprinting or DNA testing to determine if Busch had been drinking. Busch also faults the officers for not determining if the other man there had been drinking rather than he.

To the extent Busch is arguing there is not substantial evidence that he had violated the municipal code by drinking in public, he is mistaken. Park ranger Stepien testified he saw Busch drink from a beer bottle, and Officer Havens testified that Busch's eyes were bloodshot and watery and his speech was slightly slurred. The testimony of only one witness can prove any fact. The lack of independent evidence referenced by Busch is irrelevant.

To the extent Busch is arguing that his detention and arrest were illegal, he is mistaken as well. The testimony by Stepien and Havens was sufficient to establish at least probable cause that Busch had been drinking in public and in violation of the law; therefore, the police legally detained Busch. Havens legally arrested Busch—at the request of the parole agent—because Busch violated his no drinking parole condition.

Busch also claims he was pretextually arrested because he had previously been accused of being a gang member and/or a "Skin Head." However, Busch fails to make any showing that either Stepien or Havens were aware of such accusations at the time of the detention and arrest.

Contrary to Busch's assertion, his constitutional rights to due process and equal protection of the law were not violated by his arrest and the efforts of the officers to restrain him following the arrest.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the possible issues referred to by appellate counsel, has disclosed no reasonably arguable appellate issues. Competent counsel has represented Busch on this appeal.

DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

HUFFMAN, Acting P. J.

McDONALD, J.