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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM ANTHONY SANTOS,

Defendant and Appellant.

F066530

(Super. Ct. Nos. F12900205 &
F12905844)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Hilary A. Chittick, Judge.

Michael Allen, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Franson, J. and Peña, J.

INTRODUCTION

Appellant/defendant William Anthony Santos was charged and convicted of multiple offenses arising from two separate cases: theft from a Kmart store and beating his girlfriend. The two cases are consolidated in this appeal. His appellate counsel has filed a brief which summarizes the facts with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). We will affirm.

FACTS

Case No. F12900205

On October 15, 2011, defendant and an unidentified woman were walking together in the men's department of the Kmart store in Clovis. They were pushing a stroller. Defendant and the woman took five articles of Dallas Cowboys apparel with an estimated value of \$130. They placed the items inside a backpack and placed the backpack in the stroller. They walked past the cash registers, did not attempt to pay for the items, and left the store.

Art Zamora, the store's loss prevention officer, watched their concealment of the merchandise. He attempted to stop defendant and the woman outside the store. The woman ran away and was not apprehended. Defendant complied with Zamora's request to stop, and he returned to the store. Defendant told Zamora that he wanted the merchandise but he did not want to pay for them.

Clovis Police Officer Rich Collins responded to the store and advised defendant of the *Miranda*¹ warnings. He asked defendant if he wanted to give a statement. Defendant replied: " "No not really. I pretty much came in and did petty theft. That's about it." " Defendant was booked and released.

¹ *Miranda v. Arizona* (1966) 384 U.S. 436

Case No. F12905844

Around noon on August 3, 2012, defendant went to his mother's house in Clovis to meet with his family because his grandfather was dying. Defendant had a verbal disagreement with his mother, Graziela Saucedo, and left.

Defendant drove back to Saucedo's house around 11:30 p.m. He arrived with his girlfriend, Annette H., their 12-day old son, and Annette's young daughter. Defendant asked Saucedo for help to get a motel room for the night.

Defendant left the car and went to the patio to retrieve a bassinet for the infant. Saucedo went to the car and saw bruises on Annette's face and jaw. Annette was crying and distraught and said defendant had just beaten her. She was scared because defendant wanted to take her to a motel room, and she was afraid he was going to kill her. Saucedo grabbed the infant and told Annette to go into the house. Saucedo carried the baby inside, and Annette hid in the bathroom.

A confrontation ensued between defendant and Saucedo in the kitchen. Saucedo was holding the infant, and defendant asked what she was doing. Saucedo testified defendant pushed her and "yanked [the infant's] little arm from me like he was going to take him from me, and I said no." Defendant looked real angry. He lunged at and pushed Saucedo like "he was really going to do something, like I was a man, and I'm his mom."

Another relative took the infant from Saucedo. Saucedo was angry and challenged defendant to hit her: " 'You're not going to do this to me like you do to them. Do it to me.' " Saucedo pushed defendant.

Defendant told Saucedo he had something for her in the car, and said, " 'I'm going to kill you bitch.' " Saucedo told defendant, " 'Go get it then. Go get it, you're so bad. I'm not scared of you.' " Saucedo testified she was afraid for Annette and the children; she was not afraid for herself. The confrontation ended when Saucedo's brother dragged defendant out of the house.

The 911 call

At 11:45 p.m., Saucedo called 911 and told the operator that defendant was intoxicated, he had beaten his girlfriend, and he was “trying to take the baby.” Saucedo said her brother was trying to calm him down. Defendant was “very drunk,” and he “lunged and he hit me” like she was “a man.”

The investigation

Clovis Police Officer Steve Cleaver responded and spoke to defendant outside Saucedo’s house. Defendant said he argued with his girlfriend. Officer Cleaver asked what happened. Defendant replied, “ ‘I’m not going to lie to you. I smacked her.’ ” Defendant thought he used an open hand and said he pushed her around. Defendant said his grandfather was dying, and his girlfriend disrespected him and made him look foolish in front of his family.

Defendant turned and walked toward the house. Officer Cleaver asked defendant not to go back into the house. Defendant kept walking and said he wanted to kiss his infant son goodbye. Cleaver again told defendant to stop, but he ignored Cleaver. Cleaver grabbed defendant’s arm, pulled him back, and placed him in handcuffs.

Defendant shouted the people in the house were “ ‘cop callers’ ” and “ ‘snitches.’ ” Defendant went on a “rant” and said he knew they used drugs because he “serve[d] them up.” Officer Cleaver asked defendant what he meant. Defendant said he sold them “dope, or methamphetamine.”² Defendant said he had methamphetamine and marijuana in his pockets. Cleaver searched defendant and found a baggy of methamphetamine and a quantity of marijuana. The methamphetamine weighed 9.54 grams, and it was packaged consistent with sales.

² Officer Cleaver testified that both Annette and Saucedo were distraught and upset, but they did not appear intoxicated or under the influence of narcotics or alcohol.

The backup officers arrived and took custody of defendant. Officer Cleaver went into the house and spoke to Annette. The left side of her face was swollen near the eye socket. There was redness, discoloration, and early indications of bruising. She had bruises on her arm and shoulder with red finger imprints, as if someone had grabbed her. There was a black mark on her leg that could have been made by the bottom of a shoe. Annette was crying and very distraught.

Annette told Officer Cleaver that defendant punched her in the face near her left eye with a closed fist.³ She said he hit her on the right side of her face with either an open or closed hand. He also kicked her in the leg, and Annette showed Cleaver the black marks that were left on her knee. Annette said defendant grabbed and pinched her back several times and left red marks. Defendant left more marks on her body when he grabbed and squeezed her arm.

PROCEDURAL HISTORY

On November 5, 2012, a first amended information was filed in case No. F12905844, based on the disturbance at Saucedá's house. Defendant was charged with count I, criminal threats against Annette. (Pen. Code, § 422);⁴ count II, criminal threats against Saucedá; count III, corporal injury to a cohabitant, Annette (§ 273.5); count IV, possession for sale of methamphetamine (Health & Saf. Code, § 11378); count V, misdemeanor child endangerment (§ 273a, subd. (b)); and count VI, misdemeanor battery against Saucedá (§ 242). There were special allegations for one prior serious felony enhancement (§ 667, subd. (a)); a prior strike conviction (§ 667, subd. (b)–(i)); four prior prison term enhancements (§ 667.5, subd. (b)); and an on-bail enhancement (§ 12022.1).

³ At trial, Annette refused to testify and said she loved defendant, everybody makes mistakes, and she did not want him sent to prison. The court held her in contempt and admitted Officer Cleaver's testimony about Annette's prior statements.

⁴ All further statutory citations are to the Penal Code unless otherwise indicated.

During defendant's jury trial, the court dismissed count I, criminal threats against Annette. Thereafter, defendant was found not guilty of count II, criminal threats against Saucedo. He was convicted of counts III, IV, V, and VI. He admitted the special allegations.

On November 8, 2012, an amended information was filed in case No. F12900205, charging defendant with count I, petty theft from Kmart with prior theft-related convictions (§ 666). After a bench trial, the court found defendant guilty and defendant admitted the special allegations.

Sentencing

On January 18, 2013, the court conducted the sentencing hearing for both cases. The court dismissed defendant's prior strike conviction in the interests of justice. It denied defendant's request to treat his conviction for petty theft with a prior as a misdemeanor. Defendant was sentenced to an aggregate term of 10 years eight months in the two cases.

On January 22, 2012, defendant filed timely notices of appeal in both cases.

DISCUSSION

As noted above, defendant's counsel has filed a *Wende* brief with this court. The brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on July 2, 2013, we invited defendant to submit additional briefing. To date, he has not done so.

After independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.