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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN A. BAILEY,

Defendant and Appellant.

G052435

(Super. Ct. No. 13HF0477)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Cheri T. Pham, Judge. Affirmed.

Thomas K. Macomber, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

1. Introduction

Stephen A. Bailey (Defendant) appeals from the judgment entered following a jury verdict convicting him of counts 2 (assault with force likely to cause great bodily injury) and 7 (misdemeanor aggravated trespass to a dwelling) as charged by information. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), setting forth the facts of the case and requesting that we review the entire record. Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), appointed counsel provided issues to assist us in conducting our independent review. Defendant was granted 30 days to file written arguments in his own behalf, but did not file anything.

We have examined the entire record and counsel's *Wende/Anders* brief. After considering the entire record, we have found no reasonably arguable issue. (*Wende, supra*, 25 Cal.3d 436.) We therefore affirm.

2. Background

An information, amended by interlineation, charged Defendant with the following eight counts:

Count 1: Harassing victim and making a credible threat (stalking) between January 2 and February 7, 2013. (Pen. Code, § 646.9, subd. (a).)

Count 2: Assault with force likely to cause great bodily injury on or about January 9, 2013. (Pen. Code, § 245, subd. (a)(4).)

Count 3: Kidnapping on or about January 15, 2013. (Pen. Code, § 207, subd. (a).)

Count 4: False imprisonment by violence on or about January 15, 2013. (Pen. Code, §§ 236, 237, subd. (a).)

Count 5: Forcible oral copulation on or about January 16, 2013. (Pen. Code, § 288a, subd. (c)(2).)

Count 6: First degree residential burglary on or about February 4, 2013.
(Pen. Code, §§ 459, 460, subd. (a).)

Count 7: Aggravated trespass of a dwelling on or about February 4, 2013.
(Pen. Code, § 602.5, subd. (b).)

Count 8: Domestic violence battery on or about February 4, 2013. (Pen. Code, § 243, subd. (e)(1).)

The information also alleged two prior serious and violent felony convictions (Pen. Code, §§ 667, subds. (d), (e)(2)(A), 1170.12, subds. (b), (c)(2)(A)) and two prior serious felony convictions (*id.*, § 667, subd. (a)(1)).

A jury convicted Defendant of counts 2 and 7 and acquitted him of counts 1, 3, 4, 6, and 8. The jury was unable to reach a verdict on count 5, and that count was dismissed on the prosecution's motion. Following a bench trial, the court found true the allegation that Defendant had a prior serious and violent felony conviction in the United States District Court for the District of Connecticut for kidnapping in violation of 18 United States Code section 1201(a)(1). The court found not true the other prior conviction allegations.

The trial court sentenced Defendant to the upper term of four years on count 2. That term was doubled pursuant to Penal Code section 667, subdivisions (d) and (e)(2)(A) and Penal Code section 1170.12, subdivisions (b) and (c)(2)(A), based on the prior serious and violent felony conviction. On count 7, Defendant was sentenced to a jail term of one year concurrent. The court ordered a 10-year criminal protective order pursuant to Penal Code section 136.2, subdivision (i)(1). Defendant was awarded credit of 920 days of actual time served and 920 days of local conduct for a total of 1,840 days of credit for time served.

3. Relevant Facts

The facts related to counts 2 and 7, for which Defendant was convicted, are as follows.

a. *Count 2 (January 9, 2013)*

Defendant met Jenny P. in July 2012 at a coffee club in Laguna Beach. By the end of the month, their relationship had become sexual. Jenny broke off the relationship at the end of December. She did not believe that Defendant understood she had broken off the relationship because “he kept coming back.” But she “kept allowing him to come back.”

On January 9, 2013, Jenny and Defendant exchanged text messages. The last message sent by Defendant was “take care. I will see you around town. Laguna Beach is a very small town.” Jenny had been at the post office, and, when she returned home, Defendant was in a car parked in front of her house. As soon as Jenny parked her car and got out, Defendant was “in [her] face” and yelling. He was loud, angry, and hostile. Jenny invited him into her home to talk. Inside, Defendant continued to yell at Jenny that she “betrayed him.” She sat on her couch and said she was dating other people. Defendant lunged at Jenny, grabbed her neck with both hands, and lifted her from the couch.

Jenny blacked out. When she came to, Defendant was standing with both arms raised. He grabbed Jenny by the vest and tank top and threw her across the room. As Jenny lay in a fetal position, Defendant stood over her and said he was going to kill her, that “[i]f he couldn’t have me, nobody fucking was going to have me.” She thought he would carry out his threat.

Jenny walked into the bedroom. Defendant followed her. He dropped to his knees, put his arms around her legs, and started crying. He apologized and asked her not to call the police.

b. *Count 7 (February 4, 2013)*

On February 4, 2013, Defendant knocked on Jenny's door. When Jenny opened the door and saw him, she screamed and tried to shut it. Defendant shoved his foot in the door and forced his way inside. He walked straight to Jenny's telephone and used it to call his phone so that he would have her number. Jenny stomped on the floor to summon help from her downstairs neighbor and told Defendant he had better leave because the police were coming. He tried to hug her, but she stood with her arms down, and he left. Jenny ran downstairs to her neighbor's home, where she stayed until the police arrived.

4. Discussion

We have reviewed the record in accordance with our obligations under *Wende* and *Anders*, and we find no arguable issues on appeal. Defendant himself has not filed a supplemental brief raising any issues for our review. (*People v. Kelly* (2006) 40 Cal.4th 106, 110, 120, 124.) Counsel has suggested four issues to assist us in our review. None has merit.

5. Disposition

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

THOMPSON, J.