

APPELLATE DIVISION
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
04/27/2022 at 10:00:00 AM
Clerk of the Superior Court
By eClerk, Deputy Clerk

THE PEOPLE,

Plaintiff and Respondent,

v.

XINGFEI LUO,

Defendant and Appellant.

30-2021-01216615

(Super. Ct. No. 19CM06724)

OPINION

Appeal from a judgment of the Superior Court of Orange County,
Central Justice Center, Robert A. Knox, Judge. Affirmed.

The Law Office of Robert L. Bullock and Robert Livingston Bullock,
under appointment by the Appellate Division of the Superior Court of
California of Orange County, for Defendant and Appellant.

None for Plaintiff and Respondent.

* * *

Defendant Xingfei Luo appeals her convictions for vandalism causing
damage under \$400 (Pen. Code, § 594, subds. (a)-(b)(2)(A); count 1);¹ violation
of a protective order (§ 273.6, subd. (a); count 2); and disorderly conduct –
unlawful dissemination of private videos and recordings (§ 647, subd.
(j)(4)(A); count 3). Her appointed counsel filed a brief setting forth the facts

¹ All further statutory references are to the Penal Code unless otherwise
indicated.

of the case, raising no issues, and requesting that we independently review the entire record. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*); *Anders v. California* (1967) 386 U.S. 738 (*Anders*).) Defendant exercised her “right in a *Wende* appeal to file supplemental contentions” (*People v. Kelly* (2006) 40 Cal.4th 106, 120 (*Kelly*)) by filing a request for new counsel and a supplemental brief with a supporting declaration and exhibits. We have examined the record in accordance with our obligations under *Wende* and *Anders* and find no arguable issues on appeal. We therefore affirm the judgment and deny defendant’s request for appointment of new counsel.

BACKGROUND

The victim was the sole witness at trial.

In August 2018, the victim met defendant on a dating app, and they began communicating online about every other day. After their first date, the victim sent defendant nude photos of himself. After a second date, the victim told defendant they “should take it easy” and meet other people.

A few days later, the victim learned from friends that one of his photos from the dating app had been posted on Facebook under a fake profile. He searched and found other photos of himself—including a nude photo he had sent only to defendant—on other websites. The nude photo was also part of a YouTube video about the victim, with comments that he was a liar and a serial cheater. Over defense objection, the prosecution introduced several screenshots and photos from social media sites showing images and statements posted online about the victim. One screenshot, taken by the victim’s friend from the Facebook messenger app, shows a photo of the victim

without any clothes on—the same photo the victim had sent only to defendant.

Around that time, defendant texted the victim, “Never met an asshole that’s worse than u. You will soon become famous coz I will put all your stuff on social media.” Two days later defendant texted, “You wanted to play me but u picked the wrong girl to cheat. You need to suffer for what I have suffered.” When the victim texted defendant that he would contact the police, defendant responded, “Call the police for what? [¶] Did I tell u that I have a law degree?” She later texted, “Your best solution is to sincerely apologize to me. The only thing the police will do is to laugh at you.” She also texted, “Next week u will have new surprise. I won’t stop until I get my dignity back.”

On September 18, 2018, defendant arrived uninvited at the victim’s house, knocking on the front door for 5 to 20 minutes. The victim told defendant to “get out” and videotaped portions of their conversation. In the video, when the victim asked defendant whether she had posted “shit” about him, defendant replied, “I was emotional.” Defendant refused to leave until the police arrived, about 40 to 45 minutes later.

The next day, the victim found scratches on his front door, which were not there before defendant arrived. At trial, the prosecution introduced a video still showing defendant knocking on the door with a metal key in the same area the victim later found scratches. The victim spent a few hundred dollars to repair the door.

On September 28, 2018, the victim obtained a temporary restraining order (TRO) against defendant.

At the October 19, 2018 hearing on the domestic violence restraining order (DVRO hearing), the victim obtained a permanent restraining order

against defendant, which required defendant to stay away from the victim, not to contact him, stay away from his Facebook page, not post online about him or his company, and remove online content defendant had posted about him. Defendant was served with the TRO and the permanent restraining order.

After October 2018, the victim continued to see his name or likeness on about 20 “cheater type” websites. He also received between 10 and 20 harassing phone calls and calls from people informing him something new had been posted online.

A jury found defendant guilty on all counts. The trial court suspended sentence on counts 1 and 3. As to count 2, the court placed defendant on 3 years of informal probation on condition that she serve 30 days in county jail, with 8 days’ credit and the remainder stayed on condition she complete a Batterers’ Treatment Program and 8 hours of community service; pay victim restitution; and pay various fines and fees. The court also issued a criminal protective order prohibiting defendant from contacting the victim.

DISCUSSION

In her supplemental brief, defendant raises five issues for our consideration: (1) *Brady*² violations; (2) prosecutorial error; (3) ineffective assistance of counsel; (4) “sloppy police work”; and (5) violation of defendant’s speedy trial rights. We address—and reject—each issue in turn.

First, defendant complains the prosecutor violated *Brady* by failing to disclose three pieces of allegedly favorable evidence: two police department documents and the victim’s criminal record. Defendant does not identify

² *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*).

anything in either of the police department documents that could reasonably have resulted in a different outcome at trial. Defendant contends a reference to “a terrorism report” in one of the documents could have been used to impeach the victim’s credibility. Nothing in the document supports defendant’s unsupported claim the victim was the source of the reference to “a terrorism report” in that document. Indeed, it appears more likely that phrase refers to section 422, a reference to which appears on the same line of the document, and to the former description of charges pursuant to section 422 as “making terrorist threats.” (See *People v. Crayton* (2002) 28 Cal.4th 346, 351 [describing § 422 as “making terrorist threats”].) Defendant contends the second document supports her contention she knocked on the victim’s door rather than scratched it. This argument ignores other evidence introduced at trial that the victim found scratches on his door the day after defendant repeatedly knocked on it. The victim’s criminal record reflects he was convicted more than ten years before the trial of misdemeanor violations of contracting without a license and advertising as a contractor without a license. Defendant does not identify any relevance of these old convictions to the charges at trial and we cannot discern any. In sum, defendant has not demonstrated prejudice from the People’s alleged failure to disclose these materials. (See *Strickler v. Greene* (1999) 527 U.S. 263, 281-282 [*Brady* violation requires prejudice resulting from withholding of evidence].)

Second, defendant contends the prosecutor committed error by eliciting testimony about defendant’s admissions at the DVRO hearing and referring to that testimony during closing and rebuttal arguments. This claim is forfeited because defendant failed to object in the trial court. (*People v. Centeno* (2014) 60 Cal.4th 659, 674.)

Third, defendant argues trial defense counsel rendered ineffective assistance, citing ten instances: (1) stipulating to facts of the protective order and failing to request jury instructions on whether defendant and the victim were in a dating relationship; (2) failing to move to exclude defendant's testimony in the DVRO hearing; (3) failing to investigate the facts, the law, and potential defenses; (4) failing to call any defense witnesses; (5) inadequately cross-examining the victim; (6) failing to object on Evidence Code section 352 grounds; (7) failing to object to the trial court's denial of a juror's hardship request; (8) failing to object to prosecutorial misconduct; (9) failing to prepare for trial in a timely manner and to file a motion to dismiss; and; (10) waiving time for sentencing and improperly admitting defendant's guilt in the sentencing brief. Most of these instances (Nos. 1, 4, 5, 7, 8, 9 and 10) fail because defendant has not shown the record contains "affirmative evidence that counsel had 'no rational tactical purpose' for an action or omission." (*People v. Mickel* (2016) 2 Cal.5th 181, 198.) Item Nos. 2 and 6 fail because counsel did object, albeit unsuccessfully, to the introduction of defendant's testimony at the DVRO hearing and to several exhibits on Evidence Code section 352 grounds. Item No. 3 fails in this direct appeal because defendant relies on a declaration submitted with her supplemental brief on appeal, which is evidence outside the record.

Fourth, defendant complains of "sloppy police work," arguing the police should have more fully investigated the victim's claims. The record does not support this contention.

Fifth, defendant argues her federal, state, and statutory speedy-trial rights were violated by the trial court's orders continuing her trial several times. As the trial court noted, however, defendant consistently entered general or statutory time waivers from August 2019, when she was

arraigned, to June 2021, a month before trial. (See *People v. Seaton* (2001) 26 Cal.4th 598, 634 ["Each time the trial court continued the case, [defendant] either sought the continuance or personally 'waived time': that is, he formally and knowingly relinquished his right to a speedy trial for the period covered by each continuance."].)

Our independent review of the record has not disclosed an arguable issue. Accordingly, we affirm the judgment.

DISPOSITION

The judgment is affirmed.



Nathan R. Scott
Presiding Judge



John C. Gastelum
Judge



Melissa R. McCormick
Judge

008a
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE

MINUTE ORDER

DATE: 02/25/2022

TIME: 01:16:00 PM

DEPT:

JUDICIAL OFFICER PRESIDING: Appellate Panel

CLERK: Michael Porter

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: 30-2021-01216615-CL-MC-CJC CASE INIT.DATE: 08/19/2021

CASE TITLE: **People of the State of California vs. Luo**

CASE CATEGORY: Civil - Limited CASE TYPE: Misc Complaints - Other

APPEARANCES

There are no appearances by any party.

Appellate Panel Judge(s):

Hon. Nathan R. Scott, Presiding Judge

Hon. John C. Gastelum, Judge

Hon. Melissa R. McCormick, Judge

Trial Court Case Number: 19CM06724

Appellant's application for certification for transfer is denied.

DATE: 02/25/2022

MINUTE ORDER

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DEPT:

APPENDIX B

Calendar No.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re XINGFEI LUO

on Habeas Corpus.

G061132

(Super. Ct. Nos. 19CM06724;
30-2021-01216615)

O R D E R

THE COURT:*

The petition for a writ of habeas corpus, motion to transfer and consolidate the appeal in case 30-2021-01216615 with the petition in case number G061132, and motion for appointment of counsel are DENIED.

O'LEARY, P. J.

* Before O'Leary, P. J., Bedsworth, J., and Sanchez, J.

APPENDIX C

**Additional material
from this filing is
available in the
Clerk's Office.**