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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and
Respondent,

v.

MALCOLM JOSEPH
MOORE,

Defendant and
Appellant.

B281598

(Los Angeles County
Super. Ct. No. BA445023)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dennis J. Landin, Judge. Affirmed.

Alan E. Spears, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

After trial, Malcolm Joseph Moore was convicted of assault with a deadly weapon. (Pen. Code, § 245, subd. (a)(1).) The trial court found true allegations he had suffered two prior “strike” convictions (Pen. Code, §§ 667, subds. (a)(1), (b)-(i), 1170.12, subd. (b)) and served five prior prison terms (Pen. Code, § 667.5, subd. (b)). The court dismissed one of the two prior strikes, stayed the prison term enhancements, and sentenced appellant to 11 years in state prison. Appellant appealed the judgment.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), appellant’s counsel filed an opening brief requesting this court review the record and determine whether any arguable issues exist on appeal. We have reviewed the entire record and find no arguable issue. We affirm.

BACKGROUND

Around 8:20 a.m. on January 13, 2016, victim James Lowers walked into a 7-Eleven convenience store. He noticed appellant, who was complaining about the cost of lottery tickets. Appellant appeared agitated and left the store without buying anything.

Lowers bought some items and exited the store. Outside, he encountered appellant, who was turned away and talking into his cell phone. Lowers tried to walk past him, first on the right and then on the left. Each time, Lowers said, “Excuse me.” Still on his cell phone, appellant did not acknowledge him. When Lowers attempted to pass again, they bumped elbows.

A confrontation ensued. Appellant turned around and said, “Mother fucker, don’t bump into me. I’ll fuck you up.” Believing the comment was a threat, Lowers turned back to

him and said, “‘Nigga, you need to get off the phone and pay attention to what you doing, man.’ I said, ‘excuse me,’ three times. I said, ‘Get off the phone.’” Appellant responded, “Don’t call me a nigger,” and Lowers said, “Come on. Don’t come with that shit, bitch. I didn’t come at you like that.”

Appellant reached into his pocket and Lowers said, “Oh, damn, it’s like that that fast? If you reaching for something, it better be big.” Appellant said, “It’s real big,” and he pulled out a folding knife. He placed the tip to Lowers’s throat and cut Lowers’s skin. He then stepped back.

Lowers went to his car. Appellant got into a green Toyota parked directly next to him. Lowers walked to the front of appellant’s car to record the license plate, and appellant drove forward and across a sidewalk to exit the parking lot. Lowers recorded appellant’s license plate and called the police. Lowers later identified appellant in a photographic lineup.

The responding police officer interviewed Lowers and photographed a cut on his neck. The officer testified cars did not typically drive over the sidewalk to exit the parking lot.

In his defense, appellant testified he went to the 7-Eleven that morning to buy cigars. Inside the store, he picked up a coffee stirrer to pick his teeth. Once outside, he made a call to see about a painting project. As he talked on the phone, he moved to allow someone to pass in front of him. When he moved, Lowers bumped him.

Appellant said, “[A]t least you could say is, ‘Excuse me.’” Lowers turned around and got into appellant’s face, calling him “punk” and “nigger[]” and saying he would “whoop [his] ass” and throw him through a window. Appellant tried to go around Lowers, and Lowers stepped in front of him. Appellant

said, “Let me go, man. I have COPD. I can’t do too much.” Lowers continued to block appellant’s path and said, “You need something big to get me out of your face.” Appellant responded, “Let me go” and put the coffee stirrer against Lowers’s neck to get him to move.

Appellant went to his car, but before he could get his keys out, Lowers went to the car and said, “Nigga, you think you run from this ass whooping?” Appellant said, “Look, man, you bumped me. I should be mad. Why you mad? Let me go. Let me go. I got things to do today. Please let me go.” Lowers pounded on and kicked appellant’s car, and appellant drove away.

Appellant admitted he had previously been convicted of a number of felony burglaries involving breaking into cars, stealing wallets and purses, and using the stolen checks and credit cards. He claimed he had a drug habit and was “more than likely” high during these incidents.

DISCUSSION

We appointed counsel to represent appellant on this appeal. After review of the record, appellant’s court-appointed counsel filed an opening brief asking this court to review the record independently pursuant to *Wende, supra*, 25 Cal.3d at page 441. On September 28, 2017, we advised appellant he had 30 days to submit any contentions or issues he wished us to consider. Appellant did not file a supplemental brief.

We have examined the entire record. We are satisfied no arguable issues exist and appellant’s counsel has fully satisfied his responsibilities under *Wende*. (*Smith v. Robbins* (2000) 528 U.S. 259, 279-284; *Wende, supra*, 25 Cal.3d at p. 441; see *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

WE CONCUR:

RUBIN, J.

GRIMES, J.