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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO RODRIGUEZ,

Defendant and Appellant.

B275246

(Los Angeles County
Super. Ct. No. BA436917)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Douglas Sortino, Judge. Affirmed.

Maura F. Thorpe, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Following a court trial, defendant and appellant Ricardo Rodriguez was found guilty of assault by means likely to produce great bodily injury, assault with a deadly weapon, and mayhem, with great bodily injury enhancement findings (Pen. Code, §§ 245, subd. (a)(4); 245, subd. (a)(1); 203, 12022.7)¹ He was sentenced to a state prison term of eight years. We affirm.

FACTUAL SUMMARY

Viewed in accordance with the usual rules of appellate review (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence established the following.

1. *Prosecution evidence.*

On May 27, 2015, Moses B. had been living across the street from defendant Rodriguez for more than 25 years. Rodriguez was about 60 years old and Moses B. was five years older. Moses B. considered Rodriguez to be a fairly friendly neighbor. On that day, Rodriguez was drinking alcohol in his yard and invited Moses B. to come over and drink with him. Moses B. did so and they sat in chairs in Rodriguez's front yard and drank and talked. At some point, Rodriguez said people in the neighborhood had been calling him names. He also complained that Moses B.'s grandchildren had been laughing at him. Nevertheless, according to Moses B., Rodriguez was not angry or yelling at him, and they were having a convivial time. Moses B. told Rodriguez that if there was a problem with Moses B.'s grandchildren he would talk to them. At one point, Rodriguez went inside and, after hearing a noise, Moses B. went

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

in and found Rodriguez on the floor. Moses B. helped Rodriguez up and they returned to the front yard.

Moses B. testified that subsequently, completely out of the blue and when he had turned his head to look at something in the street, Rodriguez hit him in the head with something solid and blunt like a bottle. Moses B. fell to the ground and Rodriguez started kicking him in the ribs. Moses B. lost consciousness and remembered nothing further until he woke up in the hospital.

Another long-time neighbor, Veronica Fisher, lived next door to Moses B. and across the street from Rodriguez. When she heard screaming in Spanish, Fisher opened her front door and saw Moses B. unconscious on the ground with Rodriguez kicking him in the face. Rodriguez kicked Moses B. in the face four to six times. With her father's help, Fisher pushed Rodriguez away from Moses B. Fisher then ran to get Moses B.'s wife and, when they returned, Rodriguez appeared not to recognize them and told them to get out of his yard. Rodriguez then ran off down the street, returning a few minutes later with his daughter who worked at a restaurant close by. Rodriguez tried to approach Moses B. again, but his daughter said, " 'Daddy, no. Daddy, no.' "

Rodriguez's daughter testified that her father had rapped on the window of the restaurant where she worked. She went outside and found him stumbling and slurring his words. Rodriguez gestured for her to follow him and led her back to their yard, where she saw Moses B. lying on the ground. When Rodriguez kicked Moses B. in the stomach, she shoved him away. She testified that Rodriguez was usually not a heavy drinker.

Los Angeles Police Department Officer Francisco Diaz arrived on the scene as fire department personnel were attending to Moses B. Diaz saw large amounts of blood and many alcohol

bottles in the yard. When Rodriguez came out of his house, Diaz found him to be extremely intoxicated. Rodriguez had blood stains on his pants and shoes. Rodriguez also had a loaded handgun in his pants pocket.

Francisco Macias, who had worked as a Los Angeles Police Department officer for 19 years, interviewed Moses B. in the hospital and testified that the assault “was probably one of the worst ones I’ve seen.” Moses B. said he believed Rodriguez had hit him with a bottle.

Due to the injuries inflicted by Rodriguez, Moses B. had to have surgery on his face, which included an implant into his cheekbone and the repair of his right eye socket. He spent two months in a wheelchair, his right cheekbone was disfigured, his vision is now impaired and he walks with a cane.

2. Defense evidence.

An expert toxicologist testified that Moses B.’s blood alcohol level indicated he would have suffered a loss of critical judgment, impaired balance and comprehension, and exaggerated emotional responses during the incident.

3. Trial outcome.

The trial court concluded the prosecution had failed to prove that Rodriguez was guilty of either aggravated mayhem (§ 205) or carrying a loaded firearm in public (§ 25850), and acquitted him on those charges. The court held that the evidence easily proved the other charges, given the severe and lasting injuries Moses B. had sustained. The court found Rodriguez initially hit Moses B. in the head with a liquor bottle that was found with blood on it, that “it was likely two blows [were struck] before [Moses B.] passed out. [¶] [W]hat followed . . . was a savage beating . . . directed largely at [Moses B.’s] head and face.”

Moses B.'s face had "clearly been disfigured," and he had also suffered a "disabled leg" and a "disabled eye." The court found "that in no way did [Moses B.] provoke this attack either through words or conduct of any kind."

Having concluded that the aggravating sentencing factors outweighed the mitigating factors, the trial court determined the appropriate sentence was the high term of eight years on the mayhem charge, with sentencing on the other two counts stayed under section 654.

DISCUSSION

We appointed counsel to represent Rodriguez on appeal. After reviewing the record, counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441. We directed counsel to send the record on appeal and a copy of the opening brief to Rodriguez, and notified Rodriguez that he had 30 days within which to personally submit any contentions or issues he wished us to consider. No supplemental brief was filed.

We are satisfied that appellate counsel has fully complied with her responsibilities and that no arguable appellate issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 278 [120 S.Ct. 746]; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

DISPOSITION

The judgment is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

GOSWAMI, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.