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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

LOUIE DRIVER,

Defendant and Appellant.

B287929

(Los Angeles County  
Super. Ct. No. BA454741)

APPEAL from a judgment of the Superior Court of Los Angeles County, Katherine Mader, Judge. Affirmed.

Lillian Hamrick, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

The Los Angeles County District Attorney charged defendant Louie Driver (defendant) in a three-count information with attempted murder (Pen. Code, §§ 664, 187, subd. (a)),<sup>1</sup> mayhem (§ 203), and assault with a deadly weapon, a knife (§ 245, subd. (a)(1)). In connection with the assault charge, the district attorney alleged defendant personally inflicted great bodily injury on the victim of the crime, Phillip Flowers (Flowers).

The case against defendant was tried to a jury.<sup>2</sup> Flowers testified he lived in a room at the home of Betty Epps (Epps), a frail woman in her 70's who was defendant's grandmother. Flowers was helping Epps while living in the home, including by making her breakfast some days before he went to work.

On February 15, 2017, Flowers encountered defendant (who had recently jumped bail on a criminal charge in Texas) at Epps's home, and defendant told Flowers he wanted him out of the house. Flowers began moving his belongings out of the home, and while in the process of doing so, he went to check on Epps in her bedroom; defendant was present in the bedroom at the time. According to Flowers, he went to help Epps hold on to a plate while she was eating, and when he did so, defendant pulled a folding knife from his pocket, opened it with a clicking sound, and stabbed him (Flowers) in his right cheek. The knife pierced all the way through his cheek, cut his tongue, and broke a tooth. Flowers testified he ran for the front door of the house after being

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<sup>1</sup> Statutory references that follow are to the Penal Code.

<sup>2</sup> Defendant elected to represent himself at trial following what the record demonstrates was a knowing, voluntary, and intelligent waiver of the right to counsel.

stabbed, and before he could escape, defendant cut him with the knife on his left cheek as well. Flowers's stab wound to his right cheek kept him in the hospital for four days, and he continued to suffer lingering effects from the injury at the time of trial.

Defendant testified in his own defense at trial. He admitted he stabbed Flowers (although he said he did so only once, not twice), but he claimed the stabbing was in self-defense. Specifically, defendant testified Flowers "came at me. . . . like he was reaching for something. I don't know if he was pointing at me or telling me, like, in a motion of telling me something or swinging or whatnot. [¶] But the only thing I could think of is I grabbed my knife." Defendant also suggested he was concerned Flowers might be armed because "he had a jacket on" and defendant previously saw some bullets in Flowers's room that he did not believe belonged to Epps or Epps's late husband.<sup>3</sup> Defendant testified that after he stabbed Flowers, he followed Flowers out of the house at a distance, looked to see that Flowers was alright, and went to sleep 20-30 minutes later (such that he did not hear police subsequently knocking on the door).

The jury convicted defendant on the assault with a deadly weapon charge, finding the associated great bodily injury enhancement true, and acquitted defendant on the charge of mayhem. The jury was evenly deadlocked on the attempted murder charge, and the court declared a mistrial and ultimately dismissed the charge. The trial court sentenced defendant to seven years in prison on the assault with a deadly weapon conviction: the upper term of four years plus three years for the

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<sup>3</sup> Flowers testified there was a box of bullets in the room when he moved in and the bullets were not his.

great bodily injury enhancement. The court also ordered defendant to pay \$6,000 in restitution to Flowers and imposed other requisite fines and fees.

Defendant appealed the judgment, and this court appointed counsel to represent him. After examining the record, defendant's attorney on appeal filed an opening brief raising no issues. On July 30, 2018, we invited defendant to personally submit a supplemental brief. He responded by filing a seven-page letter on August 14, 2018. He later submitted a second two-page letter on September 7, 2018, which was filed with permission from the court.

Defendant's August 14 letter complains about the factual recitation included in his attorney's brief filed pursuant to *People v. Wende* (1979) 25 Cal.3d 436. He specifically takes issue with, among other things, the *Wende* brief's description of evidence concerning whether Epps needed help to eat; where and how the bullets were stored in the room occupied by Flowers; whether Epps was holding a plate or a bag of french fries shortly before the stabbing; and whether, as Flowers testified at trial, defendant said "Bitch, I'm going to kill you" shortly before cutting him on his left cheek as Flowers was running out of the house.

On the basis of these complaints, defendant advances a claim of ineffective assistance of appellate counsel—one entirely lacking in merit. The statement of facts in counsel's *Wende* brief is consistent with the governing standard of review on appeal (*People v. Williams* (2015) 61 Cal.4th 1244, 1281), and we have in any event independently reviewed the entire appellate record as *Wende* requires, which defeats any claim of prejudice from the filing of the *Wende* brief. Defendant also suggests his attorney on appeal failed to comply with procedures required by *Anders v.*

*California* (1967) 386 U.S. 738, but the brief filed by his attorney comports with *Anders* in precisely the manner described by our Supreme Court in *Wende*. (*Wende*, 25 Cal.3d. at 440; *People v. Feggans* (1967) 67 Cal.2d 444, 447 [“If counsel concludes that there are no arguable issues and the appeal is frivolous, he may limit his brief to a statement of the facts and applicable law and may ask to withdraw from the case, but he must not argue the case against his client”].)

Defendant’s August 14 letter can also be read to argue the prosecution engaged in misconduct by presenting false testimony or allowing false testimony to go uncorrected. There was no misconduct, as defendant has made no adequate showing that there was any presentation of false evidence. Rather, he believes certain evidence at trial was “false” only because he incorrectly views the evidence at trial in the light most favorable to him and because he identifies what are, at most, perceived inconsistencies in witness testimony that were either resolved adversely to him by the jury or had no prospect of influencing the jury’s verdicts. That does not warrant reversal under well-established law. (*Williams*, 61 Cal.4th at 1281 [viewing the evidence in the light most favorable to the prosecution, we decide whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt]; see also Evid. Code, § 411; *People v. Jones* (2013) 57 Cal.4th 899, 963-64 [testimony of single witness suffices to support conviction unless physically impossible or inherently improbable].)

Defendant’s September 7 letter reprises the same complaints concerning his appointed appellate attorney and asks that she be removed and new counsel appointed. The complaints

are baseless for reasons already explained, and the request for appointment of new counsel is denied.

Having considered defendant's submissions and conducted our own examination of the record, we are satisfied defendant's appellate attorney has complied with her responsibilities and no arguable issue exists. (*Wende*, 25 Cal.3d at 441; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-82; *People v. Kelly* (2006) 40 Cal.4th 106, 122-24.).

#### DISPOSITION

The judgment is affirmed.

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BAKER, Acting P. J.

We concur:

MOOR, J.

JASKOL, J.\*

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