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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.

MELANIE NICOLE PROKOPOVICH,

Defendant and Appellant.

B270672

(Los Angeles County  
Super. Ct. No. GA096492)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jon R. Takasugi, Judge. Affirmed.

Juliana Drous, under appointment by the Court of Appeal,  
for Defendant and Appellant.

No appearance for respondent.

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Melanie Nicole Prokopovich appeals from a judgment which sentences her to two years in state prison for assault. Prokopovich's appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). After independent review of the record, we affirm the judgment.

### **FACTS**

Prokopovich was charged with attempted carjacking in violation of Penal Code sections 664 and 215, subdivision (a)<sup>1</sup> and with assault by means of force likely to produce great bodily injury in violation of section 245, subdivision (a)(4) against victim John Poh.

At trial, Poh testified he met Prokopovich in 2015 when he worked as a manager at a motel in Pomona. They became friends and he allowed her to stay in his room once or twice a week. He sometimes smoked methamphetamine with Prokopovich and her friends in his room. He also gave her rides when she asked. Poh stopped working at the hotel on February 20, 2015, but they remained friends.

On April 17, 2015, Prokopovich called Poh for a ride and he obliged. They picked up co-defendant Raul Benjamin Salas<sup>2</sup> and drove around the entire day. That night, Poh rented a room at a motel in West Covina for the three of them. The following day, Poh continued to drive Salas and Prokopovich to various destinations. They slept in the car that night because Poh had no money for a hotel room.

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<sup>1</sup> All further section references are to the Penal Code.

<sup>2</sup> Salas was tried with Prokopovich. His appeal is the subject of a separate order, also under case number B270672.

On April 19, 2015, Prokopovich directed Poh to drive them to the mall in Ontario. They spent the day at the mall and Poh smoked methamphetamines with Salas and Prokopovich in his car in the parking lot. At the end of the day, Poh informed them he had to go home. He drove them to a home in Temple City, where Salas and Prokopovich hoped to stay with Prokopovich's friends. After a short visit, Prokopovich informed Poh that she and Salas could not stay with her friends that night. They got back into the car, with Salas in the front passenger seat and Prokopovich sitting behind him. Poh offered to drive them anywhere they wanted, but informed them he had to go home. They aimlessly drove around while Poh waited for Prokopovich to tell him where to go.

Poh testified he was traveling on Las Tunas Drive in the city of San Gabriel at 8:00 p.m. when Prokopovich directed him to pull over on to a small street. She said, "John, right now I'm going to take your car. You know, doesn't matter you like it or not." Because he needed help, Poh stopped the car in the middle of Las Tunas, a heavily trafficked street, to "create attention . . . so the incoming car cannot pass through it." When he stopped the car, Prokopovich began to kick and punch Poh in the head from the back seat, saying, "You better give me your car." Poh testified he felt "very, very hurt" from the assault because she hit him "so hard." When Poh refused to give her his keys, Prokopovich exited the car and crossed the street.

Before she got out of the car, Poh heard her tell Salas to "finish it." Salas then began to punch Poh, demanding he give them the car and telling Poh to get out of the car. He also jabbed Poh in the stomach with a screwdriver located in the center console of the car, though he did not break any skin. Salas then

attempted to push Poh out of the car. When Poh continued to refuse to give in, Salas exited the car to consult with Prokopovich.

After a short discussion, he approached the driver's side of the car, where Poh sat, and began to hit him again through the open window. Salas fled just before the police arrived at the scene. Poh identified Salas and Prokopovich as his assailants to the police. He suffered a laceration on his right eyebrow. A photograph of his injuries was shown to the jury.

The supervisor at a nearby Carl's Jr. called 911 when she saw a car stopped in the middle of the street and the passengers hitting and kicking the driver, who looked scared. She corroborated Poh's testimony that Prokopovich exited the car to wait at a nearby taco stand and Salas conferred with her briefly before returning to the car to continue hitting Poh through the window. She identified Salas as the assailant in a photographic lineup and at trial. A transcript of the 911 call by the Carl's Jr. supervisor was played to the jury.

Several other witnesses observed Poh's car parked in the middle of the street and also called the police. One witness, Israel Cervantes, was in a car travelling on Las Tunas when he heard screaming and someone yelling, "help." When the car turned around, Cervantes noticed Poh's car parked in the middle of the intersection. Cervantes saw a woman leave the car and walk down the street. He then saw a man reaching in and punching the driver. After the man left, Cervantes approached the car and saw Poh sitting in the driver's seat with a bloody nose, complaining that his head hurt. Another witness, Alexander Bell, was driving with his girlfriend on Las Tunas when he saw a man "laying haymaker punches" on the driver of a stopped car.

When a patrol car arrived on the scene, Salas began to run while Prokopovich walked away in a different direction. The officer gave chase and apprehended Salas. On his way back to his patrol car, the officer recovered a yellow screwdriver near some shrubs where Salas had run past.

After the prosecution rested, Prokopovich moved for a judgment of acquittal pursuant to section 1118.1 on the ground there was no evidence she tried to carjack Poh since she had left the car before the screwdriver was produced or the keys taken. Further, there was no indication Poh suffered any injuries from Prokopovich's kicks from the back seat of the car. The trial court denied the motion.

Prokopovich testified for the defense and her testimony paralleled Poh's testimony of the events leading up to the assault on April 19, 2015. She admitted she, Salas, and Poh smoked methamphetamine during the three days they were together. On the third day, she began to notice Poh acting strangely. He also began to drive erratically, hitting the gas and the brakes with too much force. When Poh stopped in the middle of Las Tunas Drive, she kicked and hit him once to make him move the car into the Carl's Jr. parking lot because she feared they would be hit by oncoming traffic. When he refused to move, she got out of the car with her things. She denied having any intention to take Poh's car. She admitted telling him, "I should have taken your car." However, she testified she meant she should have borrowed his car. She also denied telling Salas to "finish it." Instead, she urged Salas to leave with her. She did not see what happened between Salas and Poh as she stood at the taco stand.

The jury further found Prokopovich guilty of assault by means of force likely to produce great bodily injury. The remaining count for carjacking was dismissed. The trial court denied probation and sentenced Prokopovich to the lower term of two years in state prison, with a recommendation to fire camp. Prokopovich timely appealed.

### **DISCUSSION**

We appointed counsel to represent Prokopovich on appeal. Appointed counsel filed an opening brief pursuant to *Wende, supra*, 25 Cal.3d 436, requesting independent review of the record. We notified Prokopovich by letter, advising her to submit any claim, argument, or issue she wished our court to review. We have received no response. We have independently reviewed the record on appeal, and find no arguable issues exist. (*Wende, supra*, 25 Cal.3d 436, *People v. Kelly* (2006) 40 Cal.4th 106.)

### **DISPOSITION**

The judgment is affirmed.

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.