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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.

RICHARD TELL,

Defendant and Appellant.

B239244

(Los Angeles County
Super. Ct. No. NA084357)

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

Trisha Newman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant and appellant Richard Tell was charged by amended information with assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)), felony possession of ammunition (Pen. Code, §§ 12021, 12316, subd. (b)(1)), second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)), and attempted first degree murder (Pen. Code, §§ 187, subd. (a), 664). It was also specially alleged as to counts 1, 3 and 4 (assault, robbery, attempted murder) that defendant personally used a deadly weapon, a screwdriver, and inflicted great bodily injury (Pen. Code, §§ 12022, subd. (b)(1), 12022.7, subd. (a)) in the commission of those offenses. It was further alleged defendant had suffered two qualifying felony strikes for robbery and assault, and had served three prior prison terms (Pen. Code, §§ 1170.12, 667, 667.5).

The incident which gave rise to the filing of the criminal information against defendant occurred on December 26, 2009, in the City of Wilmington. At approximately 8:00 in the evening, Fernando Sanchez was walking near the intersection of Avalon and F Streets when defendant came out of an alley and punched him the face. Mr. Sanchez was knocked to the ground and defendant continued to assault him, stabbing him in the chest area and taking his cell phone. Defendant twice told Mr. Sanchez, in poorly pronounced Spanish, that he was going to kill him. Defendant then rolled Mr. Sanchez over onto his stomach, stabbed him in the back and took his wallet. Mr. Sanchez was able to eventually get away and ask for help from a security guard outside of a business across the street. Mr. Sanchez was taken to a hospital and treated for several stab wounds to his torso, and a collapsed lung.

Defendant was detained on the street shortly after the incident. Mr. Sanchez's cell phone, a screwdriver, and a loaded magazine of ammunition were found on defendant. Tests performed on the screwdriver later confirmed that Mr. Sanchez's blood was on it.

Defendant pled not guilty to all charges, and denied all special allegations. Defense counsel moved, pursuant to Penal Code section 995, to dismiss count 4 (attempted first degree murder) on the grounds the charge had not been pled, or evidence presented, at the preliminary hearing, specifically as to the element of premeditation (the

original information had not pled count 4). The trial court granted the motion, but later reinstated the charge pursuant to an order from the Court of Appeal following writ proceedings.

Trial by jury proceeded in January 2012. The investigating officers testified, as did Mr. Sanchez, the emergency room doctor who treated Mr. Sanchez, and the criminalists and laboratory technicians who performed the DNA testing of the blood found on the screwdriver.

Defendant testified in his own defense, admitting he had previously been convicted of two felonies. He attested to the December 2009 incident with Mr. Sanchez but explained that he reacted in self-defense. Defendant also described an incident in 1999 in which he was attacked and stabbed repeatedly. As part of the defense theory, defendant was allowed to put on the expert testimony of Dr. Nancy Kaser-Boyd to establish that defendant suffers from post-traumatic stress disorder as a result of the 1999 incident and its impact on defendant's perceptions of threats.

The jury found defendant guilty on counts 1, 2, and 3. As to count 4, the jury found defendant not guilty of attempted first degree murder, but guilty of the lesser included offense of attempted voluntary manslaughter. (Pen. Code, §§ 192, 664.) The jury also found true the special allegations that defendant personally used a deadly weapon and inflicted great bodily injury in the commission of counts 1, 3 and 4.

Defendant knowingly and voluntarily waived his right to a jury trial on the bifurcated priors. The court received evidence and found true one prior conviction for robbery and one prior prison term.

The court sentenced defendant to an aggregate state prison term of 23 years, 4 months, calculated as follows: (1) a 15-year term on count 4, the base count of attempted voluntary manslaughter; (2) a consecutive two-year term on count 3, robbery; (3) a consecutive 16-month term on count 2, felony possession of ammunition; (4) an eight-year term on count 1, assault, stayed pursuant to Penal Code section 654; and (5) a consecutive five-year term for the prior robbery conviction (Pen. Code, § 667, subd. (a)).

Defendant was ordered to pay various fines, penalties and restitution in a stipulated amount. Defendant was awarded 898 days of custody credits, consisting of 781 actual days and 117 days of conduct credits. Defendant timely appealed.

We appointed appellate counsel to represent defendant. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. The brief included a declaration from counsel that she reviewed the record and sent a letter to defendant explaining her evaluation of the record. Counsel further declared that she advised defendant of his right, under *Wende*, to submit a supplemental brief within 30 days. Defendant did not file a supplemental brief.

Based on our independent review of the record, we conclude there is substantial evidence in the record to support defendant's conviction. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) No evidentiary, instructional, sentencing, or other errors are apparent in the record, and defendant did not submit a supplemental brief requesting review of any specific issue. We have examined the entire record and are satisfied that appointed counsel fully complied with her responsibilities in assessing whether or not there are any colorable appellate issues. We conclude there no arguable appellate issues. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436.) We therefore affirm the judgment below.

DISPOSITION

The judgment of conviction is affirmed.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.