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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.

ARTURO PONCE,

Defendant and Appellant.

B264868

(Los Angeles County
Super. Ct. No. BA421616)

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

David B. Cohen, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Following a jury trial, defendant and appellant, Arturo Ponce, was found guilty of second degree robbery (Pen. Code, § 211) and sentenced to a term of five years in prison. 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 April 24, 2013, Michelle Pardew was parking her car on Bonnie Brae Avenue when she heard two men in a car next to her start yelling obscenities, calling her “something like a dumb bitch.” Pardew yelled back at them: “I don’t know what your problem is. Keep fucking going.” Because she thought their car was leaving, Pardew walked around to the back of her hatchback to retrieve some items. The other car did not leave, however, and there was further yelling back and forth, and then defendant Ponce got out of the passenger seat of the other car and walked over to Pardew.

Pardew had her wallet and iPhone in her hand. She testified: “As I saw him walking up to me, I was telling him to fuck off and get the fuck out of my face because I knew something bad was going to happen.” Pardew testified Ponce walked up to her and punched her several times in the head and the neck. Pardew grabbed a platform shoe from the back of her car and tried to hit Ponce with it. During this struggle, Pardew dropped her wallet and cell phone on the ground. Ponce immediately picked them up and returned to his car. Pardew ran after him and tried to grab her phone back, but Ponce held it high over his head where she couldn’t reach it. When Pardew demanded that Ponce return her phone, he insisted it was his iPod. Ponce pushed Pardew away and dumped a large soda over her head. He then got back into the car and closed the door. Pardew grabbed his shirt through the open window in an attempt to prevent him from leaving, but the car started driving so she had to let go.

Meanwhile, a bystander had called 9-1-1 to report that a woman was being attacked. The caller told the 9-1-1 operator that two guys had “jumped a woman” who was “running down the middle of the street crying.” A police officer responded to the

scene and found Pardew in the middle of the street, distraught and crying, with “superficial lacerations” which the officer testified were the kind of “[l]ittle cuts you would receive . . . during [a] struggle.”

2. Defense evidence.

Ponce testified he was a passenger in a car being driven by his “friend Marco.” Ponce was listening to his iPod and not really paying attention to what was going on. He heard Marco refer to someone as a “fucking bitch” and then he noticed a woman pounding on the passenger-side window of Marco’s car and yelling. Marco was yelling back at the woman. The woman opened the passenger door and Ponce got out to try to calm her down, but she started hitting him. The woman went to the trunk of her car and returned with a high-heeled shoe which she used to hit Ponce repeatedly. Ponce put up a hand to defend himself, and he tried to push the woman away. He threw the soda at her to try to get her to stop hitting him.

Ponce picked up what he thought was his iPod from the ground and got back into the car. Marco drove off. Ponce then realized that what he had picked up was not his iPod but an iPhone. He assumed it belonged to the woman, but instead of going back and returning it to her, he threw it into the trash.

3. Trial outcome.

The jury convicted Ponce of second degree robbery, for which the trial court sentenced him to the high term of five years. At Ponce’s request, his probationary term arising from an independent drug offense was revoked and a two-year prison term was imposed for that offense, to be served concurrently with his five-year term for the robbery.¹

We appointed counsel to represent Ponce on appeal. After reviewing the record, counsel filed an opening brief requesting this court to independently review the record

¹ The trial court did not find that Ponce had violated his probation, however, because the instant robbery took place prior to the drug offense.

pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. Ponce has filed a supplemental opening brief.

DISCUSSION

We have examined the entire record and are satisfied appellate counsel has fully complied with his responsibilities and that no arguable appellate issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 278 [120 S.Ct. 746]; *People v. Wende, supra*, 25 Cal.3d at p. 443.)

In his supplemental brief, Ponce asserts that he was “misrepresented” by his trial counsel because: (1) he had a witness, Marco Martinez, whom defense counsel interviewed but did not call at trial, and (2) the 9-1-1 caller (who did not testify at trial) had “approached us with a knife to attack us, which is the reason we left in [a] hurry in the first place.” However, “[i]t is axiomatic that it is the burden of the appellant to provide an adequate record to permit review of a claimed error, and failure to do so may be deemed a waiver of the issue on appeal.” (*People v. Akins* (2005) 128 Cal.App.4th 1376, 1385.) There is nothing in the record indicating that the 9-1-1 caller threatened Ponce or his friend. Indeed, Ponce testified that he and Marco drove off to get away from Pardew, not because they were being threatened by a knife-wielding bystander. The record demonstrates that defense counsel was prepared to call someone named Marco Martinez to testify, but for some reason a decision was made not to put him on the stand.² If Ponce desires to pursue either of these claims, he must do so by means of a habeas corpus petition in which he supplements the record to include an appropriate factual basis demonstrating that he was denied effective assistance of counsel; as the record currently stands, no such showing has been made.

² During pretrial discussions, defense counsel informed the trial court she might call a Marco Martinez as a witness. The court asked if this was “the second individual at the scene that the [9-1-1] caller talks about?” When defense counsel replied affirmatively, the prosecutor and the trial court noted that before allowing this witness to testify, independent counsel would have to be appointed to advise him regarding his Fifth Amendment right against self-incrimination.

DISPOSITION

The judgment is affirmed.

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EDMON, P. J.

We concur:

ALDRICH, J.

LAVIN, J.