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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.

MOSES AVENDANO FLORES,

Defendant and Appellant.

B292028

(Los Angeles County  
Super. Ct. No. BA455070)

APPEAL from a judgment of the Superior Court of Los Angeles County, Norm Shapiro, Judge. Affirmed as modified.

Jerome J. Haig, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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A jury convicted Moses Flores of two counts of assault with a deadly weapon. The court sentenced him to two years in state prison. Flores's appointed counsel on appeal filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm. However, there are several clerical errors in the abstract of judgment that must be corrected.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On November 13, 2016, Flores was drinking at the bar of the Los Arcos restaurant, where he had previously worked as a cook. Jonathan R., with whom Flores had a minor disagreement a few months earlier, was working as a disc jockey at the restaurant that day.

Before leaving the restaurant at the end of his shift, Jonathan went over to Flores to say goodbye. Flores responded, "Go to hell, you're going to get fucked up." As Jonathan turned to leave, Flores pulled out a large knife and started moving towards him quickly. Flores swung the knife from side-to-side, and Jonathan took cover behind a table.

Another Los Arcos worker, F.P., told Flores to calm down. Flores swung the knife at F.P. and threw a chair at him. F.P. blocked the chair with another chair. Flores left the restaurant before the police arrived.

About a year later, on November 2, 2017, Jonathan was working at El Palmar Piano Bar. Flores came into the bar and approached Jonathan in a friendly way. Jonathan told Flores to step away or he would call the police. Flores started cursing and told Jonathan he was "going to get it." Flores eventually left the bar.

Flores was charged by information with two counts of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1);<sup>1</sup> counts 1 and 2), one count of making a criminal threat (§ 422, subd. (a); count 3), and one count of assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4); count 4). Counts 1, 2, and 4 related to the incident at Los Arcos. Count 3 related to the incident at El Palmar Piano Bar.

The case was tried to a jury in June 2018. The People presented evidence establishing the facts summarized above. In his own defense, Flores testified that Jonathan, F.P., and another employee were the instigators of the conflict at Los Arcos, and he was merely protecting himself from their attack. Flores denied having a knife or throwing any chairs. He admitted exchanging profanities with Jonathan at El Palmar Piano Bar, but denied threatening him.

The jury convicted Flores of both counts of assault with a deadly weapon (counts 1 and 2). It found him not guilty of making a criminal threat (count 3). The jury could not reach a verdict on the count for assault by means of force likely to produce great bodily injury (count 4), which the court subsequently dismissed.

The court sentenced Flores to an aggregate term of two years, consisting of the low term of two years on both counts, which it ordered to run concurrently. The court awarded Flores 316 days of custody credit.

The court imposed a \$400 restitution fine (§ 1202.4, subd. (b)), and a \$400 parole revocation restitution fine (§ 1202.45), which it stayed unless parole is revoked. It also imposed an \$80

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

court security fee (§ 1465.8) and a \$60 criminal conviction assessment (Gov. Code, § 70373).

Flores filed a timely notice of appeal, and we appointed counsel to represent him on appeal. Appointed counsel filed an opening brief on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requesting independent review of the record on appeal for any arguable issues. We notified Flores by letter that he could submit any arguments or issues that he wished our court to review. Flores has not filed any claims or arguments.<sup>2</sup>

### DISCUSSION

We have independently reviewed the record on appeal. We find appointed counsel has fulfilled his duty and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d 436; *People v. Kelly* (2006) 40 Cal.4th 106.)

However, there are several clerical errors in the abstract of judgment that must be corrected. First, Flores was convicted by jury on counts 1 and 2. The abstract of judgment, however, states the convictions were the result of a plea.

Second, at the sentencing hearing, the court imposed a \$400 restitution fine and a \$400 parole revocation restitution fine. The abstract of judgment, however, reflects the court imposed a \$300 restitution fine and no parole revocation restitution fine. “Where there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract

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<sup>2</sup> After receiving counsel’s opening brief, we ordered the record corrected. Counsel informed us he did not intend to file a supplemental brief based on the corrected record. We notified Flores by letter that he could submit any arguments or issues that he wished our court to review based on the corrected record. He has not done so.

of judgment, the oral pronouncement controls.” (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385.) Accordingly, the abstract of judgment must be corrected to properly reflect the fines the court imposed at the sentencing hearing.

### **DISPOSITION**

The judgment is affirmed.

Upon issuance of remittitur, the trial court shall amend the abstract of judgment to reflect that Flores was convicted by jury and the court imposed a \$400 restitution fine and a \$400 parole revocation restitution fine. The trial court is directed to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

BIGELOW, P. J.

We Concur:

STRATTON, J.

WILEY, J.