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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

HUYNH DANH,

Defendant and Appellant.

B291748

(Los Angeles County
Super. Ct. No. MA072000)

APPEAL from a judgment of the Superior Court of Los Angeles County. Christopher G. Estes, Judge. Affirmed.

Helen Hoeffel, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Huynh Danh appeals from the judgment entered following his conviction by a jury of aggravated assault by a prison inmate and battery by a prison inmate. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Incident

In 2016 Danh was an inmate at the California State Prison, Los Angeles County in Lancaster. On August 9, 2016 correctional officer Edouard Kouzmitch found Danh outside his prison cell, standing next to a bank of telephones. Because Danh had lost some of his privileges for having used a cellphone, he was prohibited from being outside his cell. Danh ignored Kouzmitch's orders to return to his cell and, instead, took a shower, locking himself inside the shower stall. After 15 to 20 minutes Danh returned to his cell, then ripped from his cell door his name tag and a sign indicating he had lost his privileges. Danh threw the name tag and privileges sign to the ground. He then grabbed hair clippers from his cell and walked quickly down the stairs toward Kouzmitch.

Kouzmitch ordered him to stop, and Danh assumed a fighting stance, with his hands raised toward his face as if he were about to fight. Kouzmitch activated an audible alarm for officer assistance. Once the alarm sounded, inmates were required to get face-down on the floor. Kouzmitch ordered Danh onto the floor, but Danh did not comply. Instead, Danh threw the hair clippers at Kouzmitch's face. Kouzmitch put his hands up to shield his face, and the clippers hit his hand, cutting his hand open and causing it to swell. Danh continued to advance toward Kouzmitch, and Kouzmitch sprayed Danh with pepper spray.

Danh slipped on the wet floor (from the pepper spray) and fell. Kouzmitch tried to place Danh in handcuffs, but Danh began to kick his arms and swing his legs to resist. Danh was eventually subdued with the assistance of Kouzmitch's partner, Miriam Diaz, and other officers.

At trial Danh testified he was angry because Officer Kouzmitch had falsely accused him of having a cell phone. Danh acknowledged he attempted to hit Kouzmitch with the hair clippers. But Danh claimed he missed his target because he slipped on the pepper spray and fell, and the clippers dropped to the floor.

B. *Pitchess Motion*

The trial court granted Danh's *Pitchess*¹ motion seeking disclosure of all complaints against Kouzmitch and Diaz concerning dishonesty, fabrication, and perjury. The court held an in camera hearing and stated on the record, "No information of the type sought will be disclosed."

C. *Verdict and Sentencing*

The jury found Danh guilty of assault by a prison inmate by means of force likely to produce great bodily injury in violation of Penal Code section 4501, subdivision (b), and of battery by a prison inmate in violation of Penal Code section 4501.5. In a bifurcated proceeding, Danh admitted having suffered one prior conviction of a serious or violent felony within the meaning of the three strikes law, specifically, a 2007 conviction of assault with a deadly weapon, with a true allegation Danh inflicted great bodily injury on a person. (Pen. Code, §§ 667, subds. (b)-(i), 1170.12.)

¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 536-538.

By agreement of the parties, the trial court sentenced Danh for aggravated assault to four years in state prison (the lower term of two years doubled). The court ordered the aggravated assault count would be the base term, and it resentenced Danh to a consecutive term of one year (one-third the middle term) on the offense for which he was currently serving prison time. The court imposed a four-year term on count 3 for battery (lower term of two years doubled), but stayed the sentence pursuant to Penal Code section 654.

Danh timely appealed.

DISCUSSION

We appointed counsel to represent Danh on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On April 15, 2019 we advised Danh that he had 30 days in which to submit any contentions or issues he wished us to consider. We have received no response.

We have examined the entire record and are satisfied Danh's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The judgment is affirmed.

FEUER, J.

We concur:

PERLUSS, P. J.

ZELON, J.