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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

BRENDA ARMSTRONG,

Defendant and Appellant.

B280091

(Los Angeles County  
Super. Ct. No. KA102596)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Wade D. Olson, Judge. Affirmed.

Michele A. Douglass, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

## **INTRODUCTION**

Defendant Brenda Armstrong pled no contest to one count of first degree murder and one count of arson, and was sentenced to 30 years to life. She appealed. We have conducted an independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and conclude that no arguable issues exist. We therefore affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

At the preliminary hearing, witnesses testified that victim Ralph “Roy” Simonian, defendant, and several other people were at Simonian’s usual breakfast restaurant on the morning of November 15, 2012. Defendant was not a regular customer of the restaurant, but several customers knew her because she worked nearby. Over their breakfast and coffee, defendant, Simonian, and other customers discussed attending a funeral for a mutual acquaintance later that day. Simonian then left the restaurant in his own car, and defendant left on foot. Defendant’s house was a three or four minute walk from the restaurant.

Later that morning, emergency crews responded to a fire at Simonian’s house. Los Angeles County Sheriff’s Department homicide detective Robert Gray was called to the scene, and testified that Simonian’s body was found in the doorway of one of the bedrooms. There was a large bloodstain on the floor where the body was found, as well as blood smears up the wall and on the door frame.

Deputy medical examiner Cho Lwin testified that Simonian’s body had 62 stab wounds and evidence of burns. Multiple wounds on the neck, chest, and abdomen were fatal; there were defensive wounds on the hands. The burns were not a cause of death; lack of soot in the airways and lack of carbon

monoxide in the blood indicated that the victim was not breathing while the house was on fire.

Detective Kimberly Ponce, a Los Angeles County Sheriff's Department arson investigator, testified that the origin of the fire was application of an open flame to bedding and clothing at the foot of the bed in the master bedroom. The fire was intentionally set. One wall of the bedroom had sliding glass doors that had broken, and due to lack of sooting or smoke damage on the glass, it appeared that the doors had been broken before the fire began.

Simonian's next-door neighbor testified that as she was leaving for work at about 8:00 a.m. on November 15, 2012, she saw a woman driving a large SUV park in front of Simonian's house. Gray obtained video surveillance from a neighbor's house located between the breakfast restaurant and Simonian's house. The video showed that Simonian's car drove by at 10:14 a.m., and a dark Ford Explorer drove in the same direction at 10:18 a.m. Gray observed the same Explorer parked at defendant's house. The Explorer belonged to Ramon Torres, who testified that defendant borrowed it the morning of the murder.

Defendant's boss told Gray that defendant was not at work on the day of the murder. Other witnesses testified that defendant was not at home the morning of the murder.

Gray testified that he obtained records for defendant's phone. Around 8:00 a.m. on the day of the murder, a call was made from defendant's phone through a short-range antenna near Simonian's house. The call lasted four minutes and 24 seconds and it never switched cell towers, showing that the person making the call remained in the same area for the duration of the call. A text message sent the following day, November 16, 2012, was partially unintelligible but said

something along the lines of, “Tell Alfredo to throw everything away. If he gets caught with those things he’s going to get in trouble.” Alfredo is defendant’s husband’s brother.

Homicide detective David Gunner testified that he spoke with Simonian’s daughter as part of his investigation. She told Gunner that her father’s garage door opener was missing from his car, and a portable safe was missing from his bedroom. On November 20, a text from defendant’s phone stated, “Does ur brother still want the gold?”

The court denied defendant’s motion to dismiss for lack of evidence. The Los Angeles County District Attorney (the People) filed an information charging defendant with murder (Pen. Code, § 187, subd. (a),<sup>1</sup> count 1), and arson (§ 451, subd. (b), count 2). As to count 1, the information further alleged the special circumstance that the crime was committed while defendant was engaged in the commission of burglary (§ 190.2, subd. (a)(17)), and that defendant personally used a knife (§ 12022, subd. (b)(1)) and caused great bodily injury upon Simonian, who was over the age of 60 (§ 1203.09, subd. (a)). The sentencing range for the murder allegation was life without the possibility of parole or death.

Defendant pled not guilty. Several months later, on July 21, 2016, the court granted a motion to amend the information to include count 3, willful, deliberate, and premeditated murder (§§ 187, subd. (a); 189). Defendant pled no contest to counts 2 and 3 in exchange for a sentence of 25 years to life on count 3, and 5 years on count 2. At the plea hearing, defendant agreed that she had sufficient time to talk to her lawyer about the case,

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

possible defenses, and consequences of the plea. She agreed that she knowingly waived her rights, and that she entered her plea freely and voluntarily. The court set a sentencing hearing for December 4, 2016.

At the sentencing hearing, defendant asked to withdraw her plea. Defendant asserted that she was not in her right mind at the time she took the plea, and her counsel failed to recognize that fact. The court asked whether there was evidence that defendant did not enter into the plea freely, noting that defendant signed a plea form advising her of her rights and stated in court that her plea was knowing and voluntary. Defendant asserted that she had been taking lithium at the time of the plea, and since she stopped taking it, she was able to think more clearly. She said, “I made a mistake [by] signing those papers and I just wanted a chance” to present the case to a jury. Defendant also asserted that her attorney should have recognized that allowing her to make the plea was a mistake. Because this assertion implicated attorney-client communication issues, the court conducted a *Marsden* hearing.<sup>2</sup>

In the closed hearing, defense counsel provided an extensive history of her communication with defendant, including discussions of potential defenses, defendant’s refusal to pursue certain defenses, summaries of evidence that would likely be admitted at trial, and consequences of a plea. Counsel said that defendant told her that she had changed her mind about the plea after talking to family members who said she was stupid to take the plea. Following counsel’s statements, defendant said she had nothing to add. The court found that defense counsel’s representation “far exceeds” the expectations a court would

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<sup>2</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

require of a criminal defense lawyer, and denied defendant's *Marsden* motion.

The court also denied defendant's motion to withdraw her plea, stating that defendant entered the plea freely and voluntarily, and "certainly there was no evidence, much less satisfying clear and convincing evidence that she entered this plea by way of mistake in fact that affected her exercise of free judgment." The court sentenced defendant to 25 years to life on count 3, and a consecutive 5 years on count 2, for a total of 30 years to life. The court awarded defendant 1,121 days of custody credits and imposed various fines and fees.<sup>3</sup> Count 1 was dismissed.

Defendant timely appealed. In her notice of appeal, defendant requested a certificate of probable cause relating to her motion to withdraw her plea and her *Marsden* motion. The court issued a certificate of probable cause.

### **WENDE REVIEW**

Defendant's appointed counsel filed a brief requesting that we independently review the record for error. (*Wende, supra*, 25 Cal.3d at p. 441.) We directed counsel to send the record and a copy of the brief to defendant, and notified defendant of her right to respond within 30 days. We have received no response.

We have examined the entire record, and are satisfied no arguable issues exist in the appeal before us. (*Smith v. Robbins*

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<sup>3</sup> Appellant's counsel submitted to this court a copy of a letter to the trial court requesting that the trial court adjust the restitution fine imposed, because the amount was erroneous. Counsel thereafter filed a *Wende* brief with this court. Because counsel has not asked us to address the restitution fine, we assume it was corrected in the trial court.

(2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 110; *Wende, supra*, 25 Cal.3d at p. 443.)

**DISPOSITION**

The judgment is affirmed.

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COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.