

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

YVONNE JESSICA GUTIERREZ,

Defendant and Appellant.

B277712

(Los Angeles County  
Super. Ct. No. KA110700)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mike Camacho, Judge. Affirmed.

Ann Haberfelde, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

---

A jury found Yvonne Jessica Gutierrez not guilty of a charge of attempted murder (count 1; Pen. Code, §§ 664; 187, subd. (a)),<sup>1</sup> and not guilty of the lesser included offense of attempted voluntary manslaughter based on heat of passion (§§ 664; 192, subd. (a)). The jury found Gutierrez guilty of assault with a deadly weapon (count 2; § 245, subd. (a)(1)), with a finding that she inflicted great bodily injury in the commission of the offense (§ 12022.7, subd. (e)). The trial court sentenced Gutierrez to state prison for a total term of seven years comprised of the three-year midterm for the assault, plus four years for the great bodily injury enhancement. The court imposed regular restitution, fines and assessments. Hubbard’s appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm the judgment.

### **FACTS**

Gutierrez and her husband, Daniel Ayala (the victim), lived in his SUV in a commercial parking lot. Gutierrez had a daughter by another man, and sporadically accused Ayala of molesting her daughter. She also would accuse him of having a pornographic video and photographs of her daughter on his cell phone.

On the evening of May 26, 2015, Gutierrez and Ayala were in the back of the SUV. Ayala was “fidgeting, . . . kind of not being able to just lie still,” and “jokingly” said, “Babe, perhaps I need sex just to calm down.” Gutierrez responded to Ayala’s comment by grabbing a box-cutter and slashing at his throat.

---

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

West Covina Police Department Officers Noel Flamenno, Jason Convento and other officers received a radio call reporting a stabbing and responded to the parking lot. The officers found Gutierrez standing outside the SUV and took her into custody. Paramedics transported Ayala to the hospital. Gutierrez's attack left a gash in Ayala's throat that required 11 stitches to close. The officers recovered the box-cutter at the scene. West Covina Police Department Detective Peter Gallardo investigated the stabbing. He interviewed Ayala the day after the stabbing. During the interview, Detective Gallardo obtained permission to look at Ayala's cell phone. Detective Gallardo found "nothing pornographic, nothing illicit" on the phone.

The People filed information charging Gutierrez with attempted murder with an allegation that she had inflicted great bodily injury during the commission of the offense. (Count 1; §§ 664; 187, subd. (a); 12022.7, subd. (e).) The trial court granted the People's oral motion to amend the information by interlineation to add a charge of assault with a deadly weapon, with a great bodily injury allegation. (Count 2; §§ 245, subd. (a)(1); 12022.7, subd. (e).)

The charges against Gutierrez were tried to jury and the prosecution presented evidence establishing the facts summarized above. Gutierrez testified on her own behalf. She testified to a history of physical abuse and claimed self-defense in using the box-cutter. As the facts above indicate, the only witnesses to what occurred inside the SUV were Ayala and Gutierrez. The jury returned verdicts as noted at the outset of this opinion. Gutierrez requested to be sentenced forthwith.

On the same day the jury returned its verdicts, the court received a psychological evaluation prepared for Gutierrez. Prior to sentencing, the trial court read and considered a pre-plea report and the psychological evaluation. The court then ordered the psychological evaluation to be sealed, and listened to arguments from the prosecutor and defense counsel regarding sentence. Defense counsel noted Gutierrez's lack of any significant criminal history, and argued for a grant of probation with a one year "sentence" in a local lock-down rehabilitation facility. Counsel argued Gutierrez's "substantial drug problem" could be addressed. He requested a suspended sentence to assure she complied with drug treatment, with a suggested low term for the sentence. The prosecutor argued for "the maximum sentence [of] ten years or nine years" given the nature and seriousness of Gutierrez's assault with the box-cutter. As noted above, the trial court sentenced Gutierrez to a total term of seven years in state prison.

### **DISCUSSION**

We appointed counsel to represent Gutierrez on appeal. Appointed counsel filed an opening brief on appeal pursuant to *Wende, supra*, 25 Cal.3d 436, asking our court to review the record independently for any arguable issues. We notified Gutierrez by letter that she could submit any arguments or issues that he wished our court to review. Gutierrez has not responded to our letter.

### **DISPOSITION**

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

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.