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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.

MARCOS CRUZ,

Defendant and Appellant.

B279402

(Los Angeles County
Super. Ct. No. TA138498)

APPEAL from a judgment of the Superior Court of
Los Angeles County, H. Clay Jacke, III, Judge. Affirmed.

Lenore De Vita, under appointment by the Court of Appeal,
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury found defendant and appellant Marcos Cruz guilty of four counts of second degree robbery. He appealed, and his appellate counsel filed a brief under *People v. Wende* (1979) 25 Cal.3d 436. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background

A. *The October 12, 2015 incidents*

On October 12, 2015, Sokunthy Eng was working the graveyard shift at a 7-11 on Atlantic Avenue in Lynwood. That night, defendant, whom Eng identified at trial, came into the store. Eng went to the cash register and asked if defendant was ready. Defendant pointed a gun at Eng and said, “ ‘Give me the money or I’m gonna shoot you.’ ” Scared, Eng gave him approximately \$160.

That same night, Ramon Lopez was working at a different 7-11 on Alondra Boulevard in Compton. Defendant, whom Lopez identified at trial, came in and asked for Scratchers. When Lopez showed defendant where the Scratchers were kept, defendant raised a gun and told Lopez to give him the money. Lopez opened the cash register, and defendant warned, “ ‘Remember your family is waiting for you.’ ” Lopez was afraid that defendant would shoot him. Lopez gave about \$78 to defendant.

B. *The October 13, 2015 incident*

On October 13, 2015, Mathew Punnoose was working the night shift at Circle K on Imperial Highway in Lynwood. Defendant, whom Punnoose identified at trial, came into the store with another person and told Punnoose to give them money.

Defendant held a gun. Punnoose tried to “put” “away” a \$100 bill but defendant climbed over the counter and took the money.

C. *The October 21, 2015 incident*

On October 21, 2015, Amrit Kaul and Redy Balu were working the night shift at a 7-11 on East Rosecrans Avenue in Compton. Defendant came into the store, pointed a gun at Balu and told Balu to give him the “‘cash.’” Defendant took \$400 to \$500. Balu was scared. Kaul saw defendant holding a gun and Balu handing money to defendant.¹

D. *The investigation*

Deputy Sheriff Adam Kirste reviewed surveillance from the Circle K robbery and noted that the suspect got into a late 1990’s Toyota Corolla. On October 22, 2015, while near the 7-11 on Rosecrans, the deputy noticed a similar car, which was driven by defendant. The deputy arrested defendant and read him his *Miranda*² rights, which defendant waived. Defendant admitted that he committed the robberies, but said he had been high. He denied knowing about a gun, but also said the gun “had nothing” in it.

From what Deputy Kirste could see from the surveillance video, the gun used in the robberies was a black semiautomatic. However, no firearms were recovered from defendant, his car or his home, although a pellet gun was found at defendant’s house months after defendant was arrested.

¹ Kaul and Balu identified defendant at trial.

² *Miranda v. Arizona* (1966) 384 U.S. 436.

II. Procedural background

In December 2015, an information was filed alleging four counts of second degree robbery (Pen. Code, § 211)³ with firearm enhancements (§§ 12022.5, subd. (a), 12022.53, subd. (b)). Thereafter, on August 25, 2016, the trial court denied defendant's motion to dismiss the action under section 1382. The court found that there had been good cause to continue the trial based on the unavailability of an interpreter for a witness.

The matter proceeded to a jury trial. Defendant's counsel conceded that defendant had committed the robberies but challenged the firearm allegations. On September 1, 2016, the jury found defendant guilty of the four counts of second degree robbery but found the firearm allegations not true.

On October 3, 2016, the trial court selected count 1 as the principal term and sentenced defendant to the midterm of three years. On the remaining three counts, the court sentenced defendant to three consecutive one-year terms. He was ordered to provide a DNA sample and finger and palm print impressions (§§ 296, 296.1), to pay a \$400 restitution fine (§ 1202.4, subd. (b)), a \$400 parole revocation fine (stayed) (§ 1202.45), a \$160 court security fee (§ 1465.8, subd. (a)(1)), and a \$120 conviction assessment (Gov. Code, § 70373, subd. (a)(1)). Defendant had 348 days of actual custody credits plus 52 days of good time/work time credits, for total custody credits of 400 days.

The court set a restitution hearing but it does not appear that one was held.

³ All further undesignated statutory references are to the Penal Code.

DISCUSSION

After review of the record, appellant's court-appointed counsel filed an opening brief which raised no issues and which asked this court to conduct an independent review of the record, under *People v. Wende, supra*, 25 Cal.3d at p. 441. By letter dated June 7, 2017, we advised appellant that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. Appellant did not file a supplemental brief.

We have examined the record and are satisfied appellant's attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

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BACHNER, J.*

We concur:

EDMON, P.J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.