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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.

LOWELL LEE TAYLOR, JR.,

Defendant and Appellant.

In re LOWELL LEE TAYLOR,
JR.

on Habeas Corpus.

B267920

(Los Angeles County
Super. Ct. No. BA412388)

B280421

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Perry, Judge; petition for writ of habeas corpus. Judgment affirmed; petition denied.

Donna L. Harris, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Lowell Taylor appeals from the judgment entered following his conviction for second degree murder. His counsel filed an opening brief that raised no issues and requested independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). On June 16, 2016, we sent defendant a letter informing him of the nature of the brief that had been filed and advising him that he had 30 days to file a supplemental brief setting forth issues he wished this court to consider. Defendant requested, and was granted, several extensions of time to file a supplemental brief. However, we have received no additional response. Defendant also filed a petition for writ of habeas corpus on January 30, 2017 alleging ineffective assistance of counsel. We affirm the judgment and deny the petition.

I. *Background*

On January 10, 2014, an information charged defendant with one count of murder (Pen. Code, § 187, subd. (a)),¹ with a special allegation that he personally used a deadly and dangerous weapon, a kitchen knife, in the commission of the murder (§ 12022, subd. (b)(1)). Defendant entered a plea of not guilty and denied the special allegation.

At trial, the prosecution presented evidence that on June 11, 2013, defendant stabbed Tim G.² in the parking lot of the Playboy Liquor store in Hollywood. Defendant, who was homeless, often spent time at that location. He would purchase beer from the liquor store and also redeem recyclables for cash at

¹ All further statutory references herein are to the Penal Code unless otherwise indicated.

² Pursuant to California Rules of Court, rule 8.90(b)(4), we refer to the victim in this case by first name to protect his personal privacy interests.

the recycling center located in the same parking lot. George Ceras testified that on the morning of June 11, 2013, he was visiting the recycling center and saw defendant and Tim standing in the parking lot. Ceras, who was standing about two feet away, heard defendant asking Tim about defendant's belongings. Tim responded that defendant's belongings were in the dumpster. Defendant then "appeared to punch Timmy in his left pectoral area." Tim screamed "somebody call 9-1-1, I've been stabbed in the heart," and then collapsed. Ceras watched defendant walk away and toss a "butcher knife that didn't have a handle" into the street, before returning to the recycling area. Defendant told Ceras and another witness to "stay out of it" and then went inside the liquor store. Ceras retrieved the knife, wrapped a newspaper around it, and "held onto it until the detectives arrived."

The incident was recorded on a surveillance video that was played for the jury. Tim later died as a result of a stab wound to the chest and abdomen. The medical examiner testified that the wound was consistent with the knife recovered at the scene.

Defendant was detained shortly after the incident, and agreed to speak with police detectives later that day. The recording of the interview was played for the jury over defense objection as to the voluntariness of defendant's statements. Therein, defendant stated that a day or two before the incident, Tim had taken some of defendant's things, including legal papers, papers he needed for a job interview, and a DVD player, from a laundromat while defendant was washing his clothes. When Tim did not return defendant's belongings, defendant became angry and told Tim, "you pushed the wrong fuckin' button right now," and "you gonna get erased." Defendant stated that Tim was intoxicated at the time. When defendant woke up on the morning

of June 11, 2013, he “just knew it was doom day,” so he went to the liquor store and waited for Tim for several hours. When Tim arrived, he swore at defendant, and defendant stabbed him one time with a knife, a “steak blade,” he had found on the street. When the detectives asked defendant where he stabbed Tim, defendant responded, “hopefully in the proper place,” and then stated that he was aiming for the heart. He then threw the knife down and “walked away.” Later in the interview, the detectives informed defendant that Tim had died but defendant insisted that was not true.³ The detectives asked if defendant felt any remorse and defendant said “No.”

Defendant testified in his own defense. He stated he had known Tim since 1999 and detailed Tim’s history of violence and making racist remarks. Defendant testified that his stolen paperwork was very important to him, it was “my life right there.” On the morning of the incident, defendant was drinking beer in the laundromat. When Tim came in, defendant asked about his property and Tim responded that he was going to kill defendant. Defendant could tell he was serious and defendant decided to get away from Tim. Sometime later that morning, defendant was approaching the recycling center when he heard Tim’s voice. He decided that he “had to confront” Tim to “stop his campaign from coming after me.” Defendant intended to “just injure [Tim], and then later on, you know, explain to the police what happened.” Defendant testified that he just intended to “stick” Tim, not to kill him. He meant to stab Tim in the stomach, not the heart. On cross-examination, over defense

³ The detectives knew at the start of the interview that Tim had died. But they admitted using a “ruse” to elicit defendant’s statements, telling him they had “talked to Timmy” and heard his “side of the story.”

objection, the prosecutor impeached defendant with three prior misdemeanor convictions.

Defendant's brother and his friend both testified on his behalf. The defense also presented testimony from an expert witness regarding the challenges faced by homeless individuals and the importance of documentation to receive services, apply for jobs, and provide identification, among other things.

The jury convicted defendant of second-degree murder and found true the special allegation regarding defendant's use of the knife. The court sentenced defendant to 15 years to life, plus a one year enhancement pursuant to section 12022, subdivision (b)(1). Defendant timely appealed.

II. *Wende review*

We have independently reviewed the entire record, including the surveillance video, the video and transcript of defendant's interview with detectives, and other trial exhibits. We are satisfied that no arguable issues exist and defendant has received effective appellate review of the judgment entered against him. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-279; *People v. Kelly* (2006) 40 Cal. 4th 106, 123-124.)

III. *Habeas petition*

Defendant filed a petition for writ of habeas corpus on January 30, 2017. Defendant contends he received ineffective assistance of counsel at trial. Defendant has not shown that his appointed trial counsel was ineffective, i.e., either that her representation fell below an objective standard of reasonableness or that he was prejudiced by any alleged deficiencies in her performance. (*Strickland v. Washington* (1984) 466 U.S. 668, 688.)

DISPOSITION

The judgment is affirmed. The petition for writ of habeas corpus is denied.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.