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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ENRIQUE DE JESUS RESENDEZ,

Defendant and Appellant.

2d Crim. No. B234804  
(Super. Ct. No. LA066223)  
(Los Angeles County)

Enrique De Jesus Resendez appeals from the judgment entered following his conviction by jury of assault by means of force likely to produce great bodily injury. (Pen. Code, § 245, subd. (a)(1).)<sup>1</sup> The jury also found true an allegation that appellant personally inflicted great bodily injury on the victim. (§ 12022.7, subd. (a).) Appellant admitted two section 667.5, subdivision (b) prior prison term allegations. After striking one of appellant's prior felony convictions and the attendant prior prison term allegation, the trial court sentenced him to state prison for seven years (a three-year middle term for the assault; a three-year great

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

bodily injury enhancement; and a one-year section 667.5, subdivision (b) enhancement).

On September 1, 2010, appellant asked victim Carlos Barahona to come outside and speak with him. Barahona did so. As he turned away to shut the door, appellant hit the right side of Barahona's head with a closed fist. During the ensuing struggle, appellant hit Barahona at least two more times. Barahona lost consciousness briefly, and suffered severe head injuries that required medical treatment and caused residual pain.

We appointed counsel to represent appellant in this appeal. After counsel's examination of the record, she filed an opening brief raising no issues and requesting that we independently examine the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

We advised appellant that he had 30 days within which to personally submit any contentions or issues he wished us to consider. Appellant submitted a supplemental letter brief claiming evidentiary errors and misconduct. He argues that the trial court erred by admitting hearsay and uncharged act evidence. We disagree. The court properly concluded that the hearsay statement of the victim of an uncharged act was admissible as a spontaneous statement. (Evid. Code, § 1240.) The court excluded inflammatory portions of that statement. Although the prosecutor initially offered uncharged act evidence for a different purpose, the court properly ruled that such evidence was admissible to show appellant's motive (Evid. Code, § 1101, subd. (b)), and instructed the jury that it could not consider such evidence for any purpose other than motive. We also reject appellant's claim that the prosecutor committed prejudicial misconduct by misstating victim Barahona's proffered testimony during an Evidence Code section 402 hearing. We therefore reject the related claim that the court erred by failing to find that the prosecutor misstated such facts.

We have reviewed the entire record and are satisfied that appellant's attorney has fully complied with her responsibilities, and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 124; *People v. Wende, supra*, 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Martin L. Herscovitz, Judge  
Superior Court County of Los Angeles

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California Appellate Project, Jonathan B. Steiner and Nancy Gaynor, under  
appointment by the Court of Appeal, for Defendant and Appellant.

Enrique De Jesus Resendez, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.