

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE GUTIERREZ,

Defendant and Appellant.

B284485

(Los Angeles County  
Super. Ct. No. KA113827)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Bruce F. Marrs, Judge. Affirmed.

Miriam K. Billington, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

George Gutierrez appeals from the judgment entered following his conviction by jury of one count of assault with a deadly weapon and one count of escape. 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 February 20, 2018, we sent appellant 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. Appellant has not filed a response with the court.

## **I. Background**

An amended information filed April 24, 2017 charged appellant with one count of assault with a deadly weapon, a knife, against Jane Doe (Pen. Code, § 245, subd. (a)(1); count 1);<sup>1</sup> two counts of assault with a deadly weapon, a car, against Jane Doe and Anthony N.<sup>2</sup> (§ 245, subd. (a)(1); counts 2 and 3); one count of resisting an executive officer (§ 69; count 4); and one count of escape (§ 4532, subd. (b)(1); count 5). The information further alleged that appellant had prior strike convictions (§§ 667, subd. (d), 1170.12, subd. (b)), prior serious felony convictions (§ 667, subd. (a)(1)), and prior prison terms (§ 667.5, subd. (c)).

In brief, the prosecution presented evidence at trial that Anthony, appellant, and appellant's girlfriend, Jane Doe, had known each other for several years. The three of them often got

---

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

<sup>2</sup> Pursuant to California Rules of Court, rule 8.90(b)(4), we refer to victim Anthony N. by his first name.

high on heroin together. Anthony testified that he received a phone call from Jane Doe in the afternoon on September 29, 2016. She sounded scared and upset and asked for help. Anthony went to a nearby park, where he saw Jane Doe running out of the park, crying. As Anthony walked toward Jane Doe in the parking lot of the park, he saw a black truck driven by appellant coming toward them. The truck came within six to ten feet of Anthony, and he and Jane Doe “got out of the way a few times in order not to be hit.” Anthony also heard appellant yelling at Jane Doe.

Appellant exited the truck and began hitting Jane Doe in the face. Anthony also saw appellant holding a knife; Jane Doe blocked the knife with her purse and Anthony managed to get the knife out of appellant’s hand and throw it into the grass. Another witness recorded part of the altercation between appellant and Jane Doe on his cell phone. The prosecution played that video at trial.

As police officers approached the park, appellant got back into his truck. An officer drew his weapon, approached the driver’s side of the truck, and told appellant to get out of the vehicle. According to the officer, appellant stated that other individuals had tried to stab him. Appellant did not comply with the officer’s instructions; instead, he sped away and the truck’s mirror struck the officer as he did so.

As to the escape charge, the prosecution presented evidence that appellant ran out of the courtroom during jury selection for the trial on the 2016 charges. He went down the emergency stairwell and was captured outside the courthouse.

Appellant testified in his defense. He denied ever taking heroin and testified that he tried to help Jane Doe with her

heroin addiction. On the day of the incident, he found out that Jane Doe had begun using heroin again, supplied by Anthony. Appellant and Jane Doe stopped at the park, then began to argue over a drug transaction she had planned with Anthony. Appellant and Jane Doe had a physical altercation and were trying to hit each other when Anthony arrived. At that point, appellant testified that he was “basically defending myself against both of them.” Anthony had a knife, and he and appellant struggled over it. Appellant got into his truck and was slowly rolling toward the park exit when he saw an officer approaching. He stopped the truck and told the officer that Anthony and Jane Doe were trying to stab him. Appellant admitted that he disobeyed the officer’s commands and drove away. He claimed he did so because he was worried about going to jail for a suspended driver’s license. Appellant also admitted that he ran out of the courtroom during jury selection, because he “didn’t like the deal” he was offered.

After the jurors indicated they could not reach a verdict as to counts 1, 2, and 4, the court declared a mistrial as to those counts. The jury found appellant guilty on counts three (assault with a deadly weapon against Anthony N.) and five (escape). Appellant admitted a prior strike conviction and the court found it to be true. The court sentenced appellant to ten years, four months in prison, calculated as follows: the low term of two years on count three, doubled for the prior strike, plus five years for the section 667, subdivision (a) enhancement; and a consecutive sentence on count five of one-third the mid-term, or eight months, doubled for the prior strike. The remaining counts were dismissed. Appellant timely appealed.

**II. *Wende review***

We have independently reviewed the entire record. We are satisfied that no arguable issues exist and appellant 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.)

The judgment is affirmed.

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

COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.