

Filed 11/19/19 P. v. Luna CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

FELIPE DEJESUS HERRERA
LUNA,

Defendant and Appellant.

B296426

(Los Angeles County
Super. Ct. No. GA103126)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael D. Carter, Judge. Affirmed.

Michael C. Sampson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Felipe DeJesus Herrera Luna appeals from the judgment entered following his conviction by a jury of elder abuse with a true finding the victim was over 70 years old and had suffered great bodily injury. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Prosecution Case

On the morning of March 20, 2018, 83-year-old Manuel Cenicerros picked up a cup of coffee at a restaurant before starting his shift as a school crossing guard. As Cenicerros was about to enter his car he had parked in the restaurant parking lot, while holding his coffee, Luna approached him and began asking about the pins displayed on Cenicerros's vest, including an American flag and an Army veteran pin. Cenicerros responded the pins were his and placed his hand over the pins. Luna then raised his closed fists at chest level, and began to "shadow box" in front of Cenicerros, moving his arms and feet back and forth and repeating, "Come on."

Cenicerros turned around to return to the restaurant, but Luna blocked his way and continued to shadow box. Cenicerros said he did not want to fight, and Luna pushed him on the chest once or twice. Cenicerros was afraid and threw his cup of coffee at Luna. With a closed fist Luna then punched Cenicerros on his upper lip, causing Cenicerros to lose consciousness and fall to the ground. The next thing Cenicerros recalled was lying on his stomach on the parking lot pavement and bleeding from his lip. Cenicerros was subsequently transported to the hospital, where he received four or five stitches to his lip and eight staples in his head.

Later that day Luna admitted to the arresting officer he had hit Cenicerros.¹ Luna said he was mad because Cenicerros had looked at him.²

B. *Defense case*

Luna testified he had asked Cenicerros for change to buy food at the restaurant. Cenicerros laughed at him, then threw coffee in his face. Luna punched Cenicerros one time on the lip because the coffee was boiling hot and it hurt. Cenicerros fell to the ground, and Luna ran away.

C. *Verdict and Sentencing*

The jury found Luna guilty of committing elder abuse under circumstances likely to produce great bodily injury and found the allegation true Luna caused Cenicerros, who was over the age of 70 years, to suffer great bodily injury (Pen. Code, § 368, subd. (b)(1) & (2)(B)). The trial court sentenced Luna to the upper term of four years in state prison and imposed and stayed the five-year sentence enhancement.

Luna timely appealed.

¹ Before being questioned by the police, Luna was advised of and waived his right to remain silent, to the presence of an attorney, and, if indigent, to appointed counsel. (*Miranda v. Arizona* (1966) 384 U.S. 436.)

² The audio recording of the interview was played for the jury.

DISCUSSION

We appointed counsel to represent Luna on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On July 9, 2019 we advised Luna that he had 30 days in which to submit any contentions or issues he wished us to consider. We have received no response.

We have examined the entire record and are satisfied Luna's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The judgment is affirmed.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

ZELON, J.