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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

HIRAM CHRISTOPHER KELLY,

Defendant and Appellant.

B282569

(Los Angeles County  
Super. Ct. No. BA447940)

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

Byron C. Lichstein, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Hiram Christophe Kelly appeals from a judgment entered following his conviction by a jury on four counts of assault with a deadly weapon. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

The People charged Kelly with four counts of assault with a deadly weapon (a truck) in violation of Penal Code section 245, subdivision (a)(1). Kelly pleaded not guilty to the charges, and the case proceeded to trial.

According to the evidence at trial, Veronica Salas drove her husband Julio Anguiano and their two children to a shopping center loading dock to collect discarded cardboard boxes. Kelly was already there, collecting boxes to recycle. Anguiano approached and began to take some boxes. A dispute ensued between the two men, which escalated to a physical altercation. Kelly and Anguiano each claimed to have reacted in self-defense and denied having been the aggressor.

After knocking Kelly to the ground, Anguiano got into his car and told his wife to drive away. Kelly began to follow them in his truck, and a prolonged high-speed chase ensued. At one point, Kelly ran into a fence, repositioned his truck and continued to pursue Anguiano's car. The chase ended when Kelly's truck struck the car from behind, causing it to roll over onto its side. Anguiano and his children were unhurt, but Salas went to the hospital with neck and back pain.

Witnesses testified to having seen Kelly's truck chasing Anguiano's car at estimated speeds in excess of 60 miles per hour. Kelly was honking his horn and traveling "unbelievably close," approximately one foot away from the car.

Kelly testified in his defense. He acknowledged having followed Anguiano's car, but he denied there had been a high speed chase. He stated that he only followed the car to obtain the license plate number for the police. At times, Kelly was two-feet away from the car and could have struck it, but he refrained from doing so. Kelly denied crashing into Anguiano's car. He explained the car was heading toward the curb, when the driver "flipped the wheel back, accelerated and flipped over." Kelly acknowledged having told the police at the scene that the people in the car got what they deserved.

The jury convicted Kelly as charged. The trial court sentenced Kelly to the middle term of three years on count 1, a consecutive term of one year on count two and concurrent terms of three years on each of the remaining counts. Kelly's notice of appeal was untimely filed. This court granted Kelly relief from default for failing to file a timely notice of appeal.

## **DISCUSSION**

We appointed counsel to represent Kelly on appeal. After reviewing the record, counsel filed an opening brief raising no issues. On November 22, 2017, we advised Kelly that he had 30 days to submit a brief or letter raising any grounds for appeal, contentions, or arguments he wanted us to consider. On January 9, 2018, we received a hand-printed supplemental brief in which he asserts, without reference to the record, the prosecutor stated someone was altering the witnesses' statements and trial counsel was ineffective in failing to introduce the results of his mental health examination by his court-appointed expert (Evid. Code, §§ 730, 952, 1017).

The record provides no support for Kelly's assertion concerning the prosecutor's statement or his trial counsel's

ineffective assistance. (*Strickland v. Washington* (1984) 466 U.S. 668, 686 [104 S.Ct. 2052, 80 L.Ed.2d 674].) To the extent Kelly's claim is based on matters outside the record, it is more appropriately decided in a habeas corpus proceeding where all relevant facts can be developed. (*People v. Avena* (1996) 13 Cal.4th 394, 419.)

We have examined the record and are satisfied that appellate counsel for Kelly has complied with his responsibilities and there are no arguable issues. (See *Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *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.

ZELON, Acting P. J.

We concur:

SEGAL, J.

FEUER, J. \*

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