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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALLAN WINTHER,

Defendant and Appellant.

B276318

(Los Angeles County
Super. Ct. No. GA097178)

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

Michele A. Douglass, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Allan Winther appeals from his conviction of willful, deliberate and premeditated attempted murder. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background

In September 2015, Joshua Padilla worked for Kmart in its shoe department. Defendant also worked at Kmart, stocking merchandise in the grocery and chemical department. The departments in which the men worked were “quite a distance” from each other, and the only reason someone from defendant’s department would pass Padilla’s department would be to go to the restroom or break room.

Padilla had been at Kmart for five years and defendant only one. Before working together, the men had never met. At first, they had a “normal co-worker relationship.” A few months before September 2015, that changed. Padilla was in the warehouse and a box hit his head. Defendant was “standing there,” and although he denied throwing the box at Padilla, a witness saw him do it. After that, the men had almost daily “yelling confrontations.” Defendant told Padilla to “‘watch your back. I’m going to get you. I have your number,’” and that Padilla’s time was “up.” Although they had never met before working together, defendant also accused Padilla and Padilla’s brother of pushing him when they were 10 years old. Defendant mumbled to himself and said nonsensical things.

On September 18, 2015, Padilla was alone in the shoe department. While shelving merchandise, he felt a “punch” to his back. Turning, he saw defendant, angry and with “red” eyes. Defendant continued to punch Padilla, who tried to defend himself. The men began going “backwards,” knocking down racks in their struggle. Padilla fell, and defendant got on top of him. Defendant pointed a knife at Padilla’s chest and told Padilla, “‘You’re dead. You’re dead.’” Padilla grabbed the knife, and defendant moved the blade up, slicing Padilla’s fingers. Padilla managed to get defendant off him and run away, eventually collapsing. A coworker, seeing blood on Padilla, asked what was wrong, and Padilla said, “‘Allan, Allan.’”

Defendant took off his blue Kmart shirt and threw it and the knife in a trash can. Another coworker gave defendant wipes because defendant had blood on him. Responding deputies found defendant hiding behind a trash can. Defendant was uninjured.

Padilla had been stabbed three times in the back and twice in his right thigh. The knife went through Padilla’s lung cavity, causing air and blood to accumulate in his chest cavity. Padilla’s diaphragm was also punctured. The injuries to Padilla’s hand required surgery.

Defendant testified, but he couldn’t remember all of the events from that day or his prior confrontations with Padilla. On the day Padilla was stabbed, they “figuratively” “bump[ed] heads” and a struggle ensued. Defendant didn’t recall being upset when he approached Padilla; defendant was defending himself. Defendant didn’t recall saying he was going to kill Padilla, but defendant did remember having a knife he’d brought from home. He stabbed Padilla with the knife multiple times. He didn’t run from the struggle, but he did sit against the wall near the trash

can. He removed his shirt because it had someone else's blood on it. After, he didn't have a perfect idea of what had happened, and he was trying to gather himself or come to terms with the incident.

II. Procedural background

In March 2016, an information was filed alleging against defendant one count of willful, deliberate and premeditated attempted murder (Pen. Code, §§ 664, 187, subd. (a)).¹ It was also alleged that defendant personally used a deadly weapon (§ 12022, subd. (b)(1)) and inflicted great bodily injury (§ 12022.7, subd. (a)).

On July 1, 2016, a jury found defendant guilty of willful, deliberate and premeditated attempted murder and found true the weapon and great bodily injury allegations.

On July 21, 2016, defendant was sentenced to life with the possibility of parole plus three years for the great bodily injury enhancement, plus one year for the weapon enhancement. He had 354 days of custody credits (308 actual and 46 good time/work time). He was ordered to pay a \$1,000 restitution fine (§ 1202.4, subd. (b)), a \$40 court operations assessment fee (§ 1465.8, subd. (a)(1)), a \$30 criminal conviction assessment (Gov. Code, § 70373), and a \$1,000 parole/postrelease community supervision fee, stayed (§ 1202.45).

¹ All further undesignated statutory references are to the Penal Code.

DISCUSSION

After review of the record, appellant's court-appointed counsel filed an opening brief which raised no issues and which asked this court to conduct an independent review of the record, under *People v. Wende* (1979) 25 Cal.3d 436, 441. By letter dated January 10, 2017, we advised appellant that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. Defendant did not file a supplemental brief.

We have examined the record and are satisfied appellant's attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, Acting P. J.

We concur:

LAVIN, J.

JOHNSON (MICHAEL), J.*

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