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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY WAYNE DALE,

Defendant and Appellant.

B272453

(Los Angeles County  
Super. Ct. No. VA141049)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Higa, Judge. Affirmed as modified.

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

No appearance for Plaintiff and Respondent.

The Los Angeles County District Attorney charged defendant Timothy Dale (defendant) with one count of attempted robbery. (Pen. Code, § 213(b).)<sup>1</sup> At trial, victim Desiree Scott (Scott) testified that on January 20, 2016, defendant approached her outside her home, ordered her to give him her bracelets, and, when she refused, advanced on her with a knife. Scott ran into her home and called 911. The police apprehended defendant shortly thereafter, carrying the knife he had pointed at Scott. Scott positively identified him as her assailant.

The jury convicted defendant on the attempted robbery charge and found true an allegation, pursuant to section 12022(b)(1), that he personally used a deadly and dangerous weapon in the commission of the offense. The trial court sentenced defendant to a total of 10 years in state prison, calculated by imposing the middle term of two years, doubled pursuant to sections 667(b)-(i) and 1170.12 (for defendant's 1992 burglary conviction), plus an additional five years pursuant to section 667(a)(1) and one year pursuant to section 12022(b)(1). In addition, the court orally imposed a \$300 restitution fine, a \$300 parole revocation fine, which it stayed, a \$40 court operations fee, and a \$30 criminal conviction fee. The court's minute order, as well as the abstract of judgment, however, both specify a \$50 court operations fee. (We address the discrepancy *post*.)

Defendant appealed the judgment, and this court appointed counsel to represent him. After examining the record, defendant's counsel filed an opening brief raising no issues. On November 18, 2016, we invited defendant to personally submit a supplemental brief. He responded by filing a two-page letter

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<sup>1</sup> Statutory references that follow are to the Penal Code.

(without citation to the record or authority) that we construe as a challenge to the sufficiency of the evidence to support his conviction.

Under the governing standard we apply in evaluating a claim of insufficient evidence, defendant's claim fails. (*People v. Williams* (2015) 61 Cal.4th 1244, 1281 [viewing the evidence in the light most favorable to the prosecution, we decide whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt]; see also Evid. Code, § 411; *People v. Jones* (2013) 57 Cal.4th 899, 963-64 [testimony of single witness suffices to support conviction unless physically impossible or inherently improbable]; see generally *People v. Watkins* (2012) 55 Cal.4th 999, 1018-24 [evidence sufficient to prove attempted robbery].) Insofar as defendant's supplemental brief advances factual assertions unsupported by the record, we disregard them.

Having considered defendant's submission and conducted our own examination of the record, we are satisfied defendant's appellate counsel has complied with the responsibilities of counsel and—with one minor exception—no arguable issue exists. (*People v. Wende*, 25 Cal.3d 436, 441; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-82; *People v. Kelly* (2006) 40 Cal.4th 106, 122-24.) The abstract of judgment incorrectly references a \$50 court operations assessment rather than the \$40 assessment the trial court correctly ordered in orally pronouncing sentence. (§ 1465.8 [“To assist in funding court operations, an assessment of forty dollars (\$40) shall be imposed on every conviction for a criminal offense . . .”].) The error requires correction.

## DISPOSITION

The judgment is modified to reduce the amount of the court operations assessment from \$50 to \$40. The judgment is affirmed in all other respects. The clerk of the superior court shall prepare an amended abstract of judgment that reflects the correct \$40 assessment amount and deliver a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KIN, J.<sup>\*</sup>

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