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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD LITTLEJOHN,

Defendant and Appellant.

2d Crim. No. B241427
(Super. Ct. No. SA070874)
(Los Angeles County)

An amended information charged appellant Edward Littlejohn with attempted willful, deliberate, and premeditated murder (Pen. Code, §§ 664, 187, subd. (a))¹ and assault with a deadly weapon (§ 245, subd. (a)(1)). It further alleged that appellant used a deadly and dangerous weapon, a knife (§ 12022, subd. (b)(1)), personally inflicted great bodily injury (§ 12022.7, subd. (a)) and had suffered a prior serious felony conviction (§ 667, subd. (a)(1)) and strike conviction (§ 1170.12). Appellant pleaded not guilty and not guilty by reason of insanity. He waived jury on the sanity phase with the understanding that the prosecution was conceding the sanity issue.

¹ All statutory references are to the Penal Code.

Appellant made a *Batson/Wheeler*² motion after the prosecution exercised peremptory challenges to two African-American prospective jurors. The trial court denied the motion, finding that appellant had failed to state a prima facie case of discrimination and, alternatively, that the prosecution had offered permissible race-neutral justifications for the challenges.

A jury found appellant guilty of both counts. It found all of the special allegations true, except that it found not true that the attempted murder was committed willfully, deliberately, and with premeditation within the meaning of section 664, subdivision (a). The prior conviction allegations were neither proven nor admitted by appellant.

The sanity issue was submitted on the reports of Dr. Kaushal Sharma and Dr. Marshall Levy. Based on those reports, the trial court found appellant not guilty by reason of insanity. The court stated: "It appears that the defendant may have understood the nature and quality of the act, but at the time of the crime his mental illness caused him to believe that he was protecting himself, according to Dr. Sharma, and reacted in what he probably believed was in a morally justified way." The court fixed appellant's maximum confinement time at 13 years.

Appellant filed a timely notice of appeal, and we appointed counsel to represent him. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, setting forth the facts of the case and requesting that we review the entire record. Appellant subsequently filed a nine-page handwritten "supplemental opening brief" in which he contends that his trial counsel was ineffective in presenting his defense, that the prosecutor engaged in misconduct and that the trial court erred in denying his *Batson/Wheeler* motion. We agree with appellate counsel's conclusion that no arguable issues exist. Accordingly, we affirm.

² *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*); *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*), overruled in part by *Johnson v. California* (2005) 545 U.S. 162.

STATEMENT OF FACTS

A. *Prosecution Case*

On April 8, 2009, at about 9:00 a.m., Hawthorne police officers responded to a call that there was a stabbing at Bally's Total Fitness on El Segundo Boulevard in Hawthorne. Numerous witnesses saw appellant attack the victim, Daniel Chavez. The manager directed the officers to his office where appellant was seated behind a desk. The officers asked appellant if he still had the knife on him. Appellant said he did not and pointed to a sweatshirt on top of a table. Inside the sweatshirt was a red towel containing a two-inch paring knife wrapped in a paper towel. The blade was bent. The officers arrested appellant.

Harold Bryant had been going to Bally's Total Fitness five times a week, at about 8:00 a.m., for about 10 years. He and appellant, who also was a long-time gym member, were roughly on the same schedule. Bryant had never spoken to appellant because appellant was quiet and kept to himself. Bryant had spoken to Chavez, who had been a member for about four months. On the morning of April 8th, Bryant was waiting to use one of the exercise machines when he saw appellant throw punches at Chavez, who was using another machine. Chavez, who claims he had never had any prior interactions with appellant, put up his arms to block the punches and then ran into the locker room. Appellant and Bryant followed him. Bryant saw Chavez trying to block appellant, and Bryant asked appellant, "What's wrong with you?" Appellant told him the guy had spit on him the day before. Chavez responded, "I don't even know you and I didn't spit on you." Chavez kept repeating that appellant was mistaking him for someone else. Appellant responded, "You're going to get to know me." Other gym members, including Ronald Eadie, separated appellant from Chavez.

Eadie saw a paper towel in appellant's hand and told him that if there was anything in that towel, he had better put it down. Appellant dropped the towel, and Eadie saw an object resembling a "close knife." Seeing that Chavez was bleeding from various wounds, Bryant informed Chavez that he had been stabbed and left to get medical

attention. A gym employee then arrived, said he had called the police, and asked appellant to follow him. Appellant complied.

Dr. Timothy Van Natta treated Chavez at Harbor-UCLA Medical Center. Dr. Van Natta observed multiple penetrating injuries, and expressed particular concern about the stab wounds over Chavez's heart, neck and skull. He conducted various tests and determined the injuries were not life threatening. The wounds were sutured or stapled and Chavez was released the next day.

B. Defense Case

Appellant testified that he went to Bally's between 6:00 and 8:00 a.m. five days a week. On the day of the incident, appellant did not feel well when he woke up. He was depressed over losing his job and his poor finances, but he forced himself to go to the gym. Once he got there he remembered having a confrontation with Chavez the day before. He recalled that as he was leaving the gym on April 7th, Chavez walked towards him, gave him his hand, and then he heard Chavez spit at him. Appellant did not do anything. As he kept walking, Chavez did it again. Appellant got in his truck and drove away. Chavez followed appellant almost to his house, which made appellant feel scared and nervous.

When appellant got out of his truck on the day of the incident, he felt dizzy and was sweating. He got back into his truck and reclined the seat. He then got back out and walked across the parking lot to the gym. His next memory is being in the locker room surrounded by a number of people, including Chavez. An employee came up to him and said he had to call paramedics and the police. Appellant followed the employee to the front office. When officers asked appellant about a knife, he pointed towards his shirt. The knife had been in his truck since 2009. Appellant had no recollection of striking Chavez.

Appellant recalled being interviewed by detectives after the incident. He did not know that the interview was videotaped. He did not remember much of the interview. Appellant recalled telling the police that while he was sitting in his truck he thought about going into the gym to find out why Chavez had spit on him and why

Chavez and his friends were harassing him. He did not recall putting the knife in his shirt pocket, but admitted it was possible he told the police he put it in his pocket for protection. He said he did not realize he had the knife until he was in the locker room. It was not his intent to harm Chavez. Appellant acknowledged he was previously diagnosed with mental illness.

Dr. Kaushal Sharma, a forensic psychiatrist, reviewed appellant's medical records, police reports, witness statements and additional documentation. He examined appellant on August 30, 2010, and heard his testimony in court. Dr. Sharma opined that starting in 1997 and continuing to 2009, appellant suffered from delusional disorder, paranoid type. He explained that "[d]elusional disorder is a mental condition in which a person has usually nonbizarre, fixed false beliefs, and even if you provide them information you cannot shake those fixed false beliefs."

Dr. Sharma observed that almost all the examiners who saw appellant between 1997 and 2001 reached the same conclusion. Appellant was prescribed anti-psychotic medication, which he was no longer taking. Dr. Sharma explained that the condition is difficult to treat because medication does not completely take away the irrational thinking. Typically, there are periods of remission, and anything that causes stress can enhance the paranoia.

Dr. Sharma gave prior examples of appellant's delusional behavior. While in a state facility, appellant refused to eat the food supplied by the facility because he thought it was causing his testicles to become sore. Appellant also was obsessed with the thought that people were following him, even though his family tried to convince him otherwise. At one point, he became fixated on red cars. Whenever he saw a red car on the freeway, he was sure it was following him.

C. Rebuttal

By stipulation, the videotape of the police interview with appellant on April 9, 2009, was played for the jury. Appellant told the detectives about several incidents involving Chavez which culminated in Chavez spitting at him. Appellant said that while he was sitting in his truck on April 8th, he put the paring knife in his shirt pocket for his

safety because he did not know what "this guy[]" was going to do. Appellant claimed that during the spitting incident, Chavez "said something else as we were walking out the door. Like he's gonna show me, or he was gonna shoot me, or some shit like that."

Appellant told detectives he remembered walking to the door after he left his truck. The next thing appellant remembered was being in the locker room with a bunch of people saying, "What the hell's going on?" Appellant stated that all he wanted to do was talk to the guy and "to get this shit squared away." He said it "wasn't my purpose to hurt the guy."

DISCUSSION

In his supplemental brief, appellant contends his trial counsel was ineffective because she failed (1) to raise his prior history of mental illness and medication, (2) to bring up his prior confrontations with Chavez, (3) to set forth a defense on his behalf, (4) to protect him from self-incrimination, and (5) to prevent admission of the videotaped interview. None of these contentions has merit. Both appellant and Dr. Sharma testified about appellant's history of mental illness and medication, and appellant himself testified about earlier incidents involving Chavez and his friends. Trial counsel obviously asserted a defense (insanity) on appellant's behalf, and there is nothing in the record supporting his claims that counsel forced him to testify or that she allowed the videotaped interview to be admitted without his knowledge or consent.

Appellant asserts the prosecutor engaged in misconduct by essentially calling him a "liar" during closing argument. Appellant waived this claim by failing to object at trial. (*People v. Wrest* (1992) 3 Cal.4th 1088, 1105.) Moreover, he has not demonstrated that the comments constituted misconduct or were prejudicial. (See *People v. Barnett* (1998) 17 Cal.4th 1044, 1133.)

Finally, appellant contends the trial court erred by denying his *Batson/Wheeler* motion. The record discloses, however, that appellant failed to establish a prima facie case of discrimination and that, even if he had met that burden, the prosecutor had race neutral reasons for excusing the two African-American prospective jurors in question. (See *People v. Williams* (2013) 56 Cal.4th 630, 649.)

Having examined the entire record, counsel's *Wende* brief and appellant's supplemental brief, we are satisfied that appointed counsel has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 123-124; *People v. Wende*, *supra*, 25 Cal.3d at p. 441.)

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Cynthia Rayvis, Judge

Superior Court County of Los Angeles

Linn Davis, under appointment by the Court of Appeal; Edward Littlejohn,
in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.