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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MEL CORREA,

Defendant and Appellant.

B283922

(Los Angeles County
Super. Ct. No. BA445694)

APPEAL from a judgment of the Superior Court of Los Angeles County. Stephen A. Marcus, Judge. Affirmed.

Mel Correa, in pro. per.; G. Martin Velez, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

Appellant Mel Correa was charged with assault with a deadly weapon (AWD) in violation of Penal Code section 245, subdivision (a)(1).¹ The information further alleged that appellant had suffered two prior convictions for carrying a concealed dirk or dagger (§ 21310), one of which was in connection with his participation in a criminal street gang (§ 186.22) and was therefore alleged to be a serious and/or violent felony under the provisions of the “Three Strikes” law (§§ 667, subd. (d) & 1170.12, subd. (b)). It was further alleged that appellant was subject to a one-year prison enhancement under section 667.5, subdivision (b) and a five-year enhancement under section 667, subdivision (a)(1).

The victim testified that on the evening of April 9, 2016, appellant approached him at a bus stop, said something in English the victim did not understand, and slashed at the victim, hitting his face. The victim saw appellant pull a metal object from his pocket just before the attack, but was not looking at the object or appellant’s hand when he felt something strike his cheek. A witness observed the attack, called 911, and later identified appellant in a field identification. She told the 911 operator -- and later testified -- that the assailant slashed the victim with a box cutter and ran away. Both the victim and the witness identified appellant in court as the assailant. When appellant was arrested, a quarter mile from the site of the attack, he had blood on his hands and clothing. He and his clothing fit the description given by the victim and the

¹ Undesignated statutory references are to the Penal Code.

witness. Officers did not find a weapon. The victim was hospitalized; the wound on his cheek required five stitches. The blood on appellant's clothing was tested and found not to contain the victim's DNA. The jury found appellant guilty of AWD. Appellant admitted the priors.

The trial court sentenced appellant to 11 years in state prison, consisting of the mid-term of three years for the AWD offense, doubled pursuant to section 667 subdivisions (b) through (j) and section 1170.12, subdivisions (a) through (d), and a five-year enhancement under section 667, subdivision (a)(1). The court exercised its discretion under section 1385 to strike the section 667, subdivision (b) enhancement. Appellant was given credit for 832 days in custody (416 actual, 416 good time/work time). The following fines were assessed: a \$40 court operations assessment pursuant to section 1465.8, subdivision (a)(1); a \$30 criminal conviction assessment pursuant to Government Code section 70373; and a \$600 restitution fine pursuant to section 1202.4, subdivision (b). A parole restitution fine (§ 1202.45) was imposed and stayed.

Appellant filed a notice of appeal. After reviewing the record, appellant's court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). On January 29, 2018, we sent a letter to appellant's last known address, advising him that he had 30 days within which to submit by brief or letter any contentions or argument he wished this court to consider.

Appellant filed a letter brief contending there was insufficient evidence to support the conviction. He contended that the victim's testimony and the failure to find a weapon established that he used no weapon. He further contended the absence of the victim's DNA in the blood on his clothing established his innocence.

“The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]” (*People v. Jones* (1990) 51 Cal.3d 294, 314.)

Here, there was substantial evidence to support the jury's finding that appellant used a weapon. Although the victim was not looking at appellant's hand when he was struck, he saw a metallic object in appellant's hand just before feeling the blow to his cheek. In addition, the witness

saw appellant slash the victim with a weapon she identified as a box cutter. The nature and seriousness of the wound also supported the finding that a sharp weapon was used. The absence of the victim's DNA in the blood on appellant's clothing was not dispositive on the question of guilt. It was not inevitable that the victim's blood would get on appellant's clothing in the brief period between the attack and appellant's escape, and there was no evidence that it did so.

This court has examined the entire record, and is satisfied no arguable issues exist. Appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment. (*Smith v. Robbins* (2000) 528 U.S. 259, 278.)

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.