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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL JAMES WHITEHURST,

Defendant and Appellant.

A135428

**(Mendocino County Super. Ct.
No. SCUKRCR 11-19926)**

Defendant Michael James Whitehurst appeals from a jury conviction of assault with a deadly weapon with infliction of great bodily injury (Pen. Code, §§ 245, subd. (a)(1), 12022.7, subd. (a)).¹ He admitted a prior strike allegation and a prior serious felony allegation (§§ 1170.12, 667, subd. (a)(1)).² His counsel has advised that examination of the record reveals no arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) Counsel informed defendant in writing that a *Wende* brief was being filed and that defendant had the right to personally file a supplemental brief in this case within 30 days. No supplemental brief has been filed.

¹ All undesignated section references are to the Penal Code.

² At sentencing, the court dismissed one of the prior serious felony allegations and sentenced defendant to 14 years in state prison.

BACKGROUND

On April 2, 2012, the date this matter was set for jury trial, an amended information was filed charging defendant with assault with a deadly weapon (§ 245, subd. (a)(1)) with infliction of great bodily injury (§ 12022.7, subd. (a)), and specially alleging two 1999 Del Norte County criminal threats convictions as prior serious felonies and a prior strike (§§ 1170.12, 1192.7, 667, subd. (a)(1)). That same day, after a hearing on defendant's properly denied *Marsden* motion,³ the court bifurcated the prior conviction allegations, and the matter proceeded to trial.

The following evidence was adduced at trial. On December 16, 2011, Michael Orozco-Chadwell, who was celebrating his birthday, entered a Ukiah bar and saw defendant seated at a table with a friend. Orozco-Chadwell had known defendant "for a while," but less than six years,⁴ and could tell he had been drinking. Orozco-Chadwell turned down defendant's offer to buy Orozco-Chadwell a beer and went to the bar to order his own beer. After getting his beer, Orozco-Chadwell returned to the table and talked with defendant for a little while. Orozco-Chadwell saw defendant get up out of his seat and make an upward, thrusting motion with his right fist aimed at Orozco-Chadwell's left side. Orozco-Chadwell blocked defendant's right arm and, in doing so, was cut on his left forearm. After the assault, defendant started laughing and quickly closed whatever he had in his hand and put it in his pocket. Orozco-Chadwell went to the bathroom to clean his wound and later received treatment at a hospital for a stab wound to his arm. He could not use his arm normally for about two weeks. On cross-examination, Orozco-Chadwell conceded that the stabbing could have been intended as a joke that "went wrong."

Ukiah Police Officer Sean Kaeser responded to the bar and then contacted the injured Orozco-Chadwell, who was walking nearby. Orozco-Chadwell told Kaeser an

³ *People v. Marsden* (1970) 2 Cal.3d 118.

⁴ On redirect examination, Orozco-Chadwell said he had known defendant about two or three years; during that time, he saw him on a weekly basis.

older man named Michael was responsible for his injury. Near the bar, Kaeser saw defendant emerge from behind some dumpsters carrying a duffel bag. Defendant was handcuffed and detained. A search of the duffel bag revealed a lock-blade knife and paperwork bearing defendant's name.

Ukiah Police Officer Noble Waidelich responded to the bar and noticed a trail of blood droplets leading from the table and a "significant amount" of blood in the bathroom. The next day, Waidelich spoke to defendant after obtaining an implied waiver of his *Miranda*⁵ rights. Defendant said he had a knife that had been given to him by his grandson. He appeared not to recall a lot of what occurred the night before; he believed he had been hit in the back of the head and had been arrested for public intoxication. He was surprised when Waidelich told him Orozco-Chadwell had been stabbed and said, "I don't cut friends." Defendant later said he may have "cut" Orozco-Chadwell after mistakenly thinking Orozco-Chadwell had hit him.

The jury returned a guilty verdict and found true the great bodily injury allegation. Thereafter, defendant waived his right to a trial on the prior conviction allegations and admitted them.

At the commencement of the May 4, 2012 sentencing hearing, defendant made a *Marsden* motion, which was properly denied following a hearing. On the prosecution's motion, the court dismissed one of the prior serious felony allegations (§ 667, subd. (a)(1)). It then denied probation and imposed a 14-year state prison term as follows: A three-year midterm, doubled, on the assault with a deadly weapon conviction, plus a three-year term for the great bodily injury enhancement, plus a five-year term for the prior serious felony allegation. Defendant was awarded 141 days of actual credit and 21 days of conduct credit (§ 2933.1.) The court imposed a \$3,360 restitution fine (§ 1202.4, subd. (b)); a \$3,360 parole revocation fine, suspended unless parole is revoked (§ 1202.45); a \$40 court security fee (§ 1465.8); and a \$30 criminal conviction assessment (Gov. Code, § 70373).

⁵ *Miranda v. Arizona* (1966) 384 U.S. 436.

Defendant was adequately represented throughout the proceedings. No arguable issues are shown.

DISPOSITION

The judgment is affirmed.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUNIERS, J.