

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DIMAS NEFTALI SANCHEZ,

Defendant and Appellant.

B246894

(Los Angeles County
Super. Ct. No. BA392455)

THE COURT:*

Defendant and appellant Dimas Neftali Sanchez (defendant) appeals his judgment of conviction of gross vehicular manslaughter while intoxicated. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. On June 24, 2013, we notified defendant of his counsel's brief and gave him leave to file within 30 days his own brief or letter, and after an extension of time to do so, defendant filed a letter brief setting forth issues he wishes to have considered in this appeal. We have reviewed the entire record and have considered the points made by defendant in his letter brief. Finding no error or other arguable issues, we affirm the judgment.

* BOREN, P. J., ASHMANN-GERST, J., CHAVEZ, J.

An information filed after a preliminary hearing charged defendant with murder, in violation of Penal Code section 187, subdivision (a),¹ leaving the scene of an accident resulting in injury to another person, in violation of Vehicle Code section 20001, subdivision (a), and driving while intoxicated, causing injury to another person, in violation of Vehicle Code section 23153, subdivision (a). The information specially alleged with regard to the first and third counts that defendant personally inflicted great bodily injury upon Rebecca Saavedra (Saavedra) and Joshua Meyers (Meyers) within the meaning of section 12022.7, subdivision (a).²

Evidence presented at the preliminary hearing established that during the early morning hours of January 3, 2012, defendant drove while intoxicated, struck a taxi driven by Jacob Barnett, failed to stop, and a short time later ran a red light, causing a collision with a car driven by Meyers. Meyers suffered a broken jaw and other injuries, and his passenger, Angelo Bowers, suffered fatal injuries.

Defendant's two passengers Alena Tyan and Saavedra were also intoxicated. Saavedra, who was in the back seat during both collisions, suffered a fractured leg in the second collision and was required to use crutches for five weeks. Defendant was driving Tyan's car with her consent after he had agreed not to drink alcohol that evening. Taxi driver Francisco Rosales testified that defendant and his passengers were all noticeably intoxicated, and that he told Saavedra that defendant was in no condition to drive. Saavedra testified that defendant appeared able to drive, and that he told her he was fine.

Following the preliminary hearing, defendant brought two motions pursuant to section 995. In the second motion, defendant challenged the great bodily injury sentence enhancement alleged pursuant to section 12022.7, subdivision (a), as to Saavedra.

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

² Section 12022.7, subdivision (a), provides: "Any person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three years."

Among other things, defendant argued Saavedra was an accomplice and thus the sentence enhancement under that provision was inapplicable.

After that motion was denied, defendant entered into a plea agreement. The information was amended to add count 4, alleging gross vehicular manslaughter while intoxicated, in violation of section 191.5, subdivision (a), along with two sentence enhancement allegations under section 12022.7, subdivision (a). Defendant pled guilty to the new charge, admitted the special allegations, and agreed to a sentence of 16 years in prison. On January 11, 2013, the trial court sentenced defendant according to the plea agreement, ordered him to pay mandatory fines and fees, as well as victim restitution to be decided at a later hearing, and to provide a DNA sample and fingerprints. Defendant was granted custody credit of 432 days, comprised of 375 actual days plus 57 days of conduct credit. The original counts were dismissed.

Defendant filed a timely notice of appeal and obtained a certificate of probable cause from the trial court. The sole ground cited in defendant's notice of appeal and application for certificate of probable cause was the issue of Saavedra as an accomplice under section 12022.7. In his letter brief defendant contends that the court erred in finding Saavedra was not an accomplice.³ As there was no evidence that Saavedra ever contributed to the driving or touched any of the car's controls, she was not an accomplice. (See *People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1155, 1160; cf. *In re Queen T.* (1993) 14 Cal.App.4th 1143, 1144–1145.)

We have examined the entire record and are satisfied that defendant's appellate counsel has fully complied with her responsibilities and that no arguable issue exists. We conclude that defendant has, by virtue of counsel's compliance with the *Wende* procedure

³ Defendant also contends the evidence was insufficient to support a finding that Saavedra suffered great bodily injury, and that she lied about the severity of her injury. Defendant's guilty plea precludes a review of the sufficiency of the evidence. (See *People v. Hunter* (2002) 100 Cal.App.4th 37, 41-42.) We observe however, that a bone fracture may constitute great bodily injury within the meaning of section 12022.7. (See *People v. Villarreal* (1989) 173 Cal.App.3d 1136, 1141 [great bodily injury as a matter of law in some circumstances]; *People v. Nava* (1985) 207 Cal.App.3d 1490, 1499 [question of fact for jury].)

and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.