

NOT TO BE PUBLISHED

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS LYNN JARRETT,

Defendant and Appellant.

C068976

(Super. Ct. No. 10F7997)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Having reviewed the record as required by *Wende*, we affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (*People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On October 21, 2010, Tina Weldin stopped at a gas station to get gas. She pulled up behind defendant's truck, which was next in line to access the gas pumps. Defendant was not in or near his truck. When the customer in front of

defendant finished refueling and drove off, defendant had not returned to his truck. Weldin noticed a tow truck and some police officers and thought that whatever was going on may involve the absent driver of the truck in front of her. Accordingly, she pulled around the truck and got out of her car to begin refueling.

At this point, defendant approached her, yelling at her that it was his pump. She looked back and saw the line was now long and the lot was crowded, so she could not just pull out and get back in line. Weldin told defendant, "Well, I'm here; just let me pump; just let me go ahead and pump; I don't have to get a full tank, and I'll be right out of your way." Defendant appeared very angry but backed away.

Defendant reapproached Weldin while she was still refueling, leaned over her shoulder, and again yelled that she had taken his pump. He indicated he had seen her license plate (which was personalized) and he would "watch for that car." He then backed away again. Weldin believed she recognized defendant as a customer of the auto glass business she owns with her husband and decided she would apologize for his inconvenience and give him a business card with an offer for a free window chip repair.

Weldin finished pumping the gas. As she replaced her gas cap and took her receipt, defendant started moving his truck forward toward Weldin's car. Weldin got her receipt and began looking in her purse for a business card as she walked -- not

noticing defendant's truck in motion. She walked behind her car and defendant struck her with his truck, pinning her between the two vehicles. Defendant then backed his truck up, stuck his head out of the window, and started yelling again for her to move her car.

Weldin used her cell phone to call 911. While Weldin was on the phone, defendant got out of his truck, approached her and continued to angrily yell about Weldin taking his spot in line and demanding that she move her car or he would move it for her. Defendant could be heard on the 911 audiotape yelling at Weldin and at the 911 operator about having Weldin move her car. The incident itself was captured on videotape.

When interviewed at the scene by one of the officers, defendant was asked several times if he intentionally struck Weldin or her car and defendant responded that he had become impatient and angry and wanted to move her car out of the way. The third time he was asked, defendant claimed it was an accident. Defendant told another officer at the scene that he had not realized how close he was until he struck Weldin. At trial, defendant testified that he had been inching his truck forward in anticipation of Weldin driving away from the pump, became distracted, and accidentally bumped into her car.

Defendant was charged with felony assault with a deadly weapon. (Pen. Code, § 245, subd. (a)(1).)¹ Defendant filed a section 995 motion to set aside the information on the ground that there was insufficient evidence of intent. The motion was denied.

Upon commencement of trial, the trial court granted the prosecution's section 17, subdivision (b) motion to reduce the charge to a misdemeanor. Upon close of the prosecution's case-in-chief, defendant moved to dismiss pursuant to section 1118.1, again for insufficient evidence of intent. His motion was denied.

The jury found defendant guilty of misdemeanor assault with a deadly weapon. The trial court placed defendant on three years' informal probation, ordered defendant to complete 90 days of community services and 16 weeks of anger management, and imposed various fines and fees.

DISCUSSION

Counsel for defendant filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed and we have received no communication from defendant. We have undertaken an

¹ Undesignated statutory references are to the Penal Code.

examination of the entire record and find no arguable issues that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

_____ MURRAY _____, J.

We concur:

_____ RAYE _____, P. J.

_____ DUARTE _____, J.