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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL BRIANS,

Defendant and Appellant.

D061845

(Super. Ct. No. SCS234284)

APPEAL from a judgment of the Superior Court of San Diego County, Ana L. Espana, Judge. Affirmed.

A jury convicted Samuel Brians of attempted murder (Pen. Code, §§ 666/187, subd. (a)), battery with serious bodily injury (*id.*, § 243, subd. (d)),¹ mayhem (*id.*, § 203), assault with a firearm (*id.*, § 245, subd. (a)(2)), two counts of unlawfully taking and driving a vehicle (Veh. Code, §10851, subd. (a)), and two counts of receiving a stolen vehicle (Pen. Code, § 496, subd. (d)). In connection with the attempted murder count, the

¹ The jury found Brians guilty of battery with serious bodily injury as a lesser included offense of aggravated mayhem.

jury found Brians intentionally and personally discharged a firearm and proximately caused great bodily injury to the victim (Pen. Code, § 12022.53, subd. (d)), personally inflicted great bodily injury upon the victim (*id.*, § 12022.7, subd. (a)), and intentionally and personally discharged a firearm (*id.*, § 12022.5, subd. (a)).² The jury also sustained allegations that Brians intentionally and personally discharged a firearm (*id.*, § 12022.5, subd. (a)) in connection with the attempted murder and assault with a firearm counts.

The trial court sentenced Brians to a determinate term of 10 years four months. The court also imposed a consecutive indeterminate sentence of 25 years to life for the Penal Code section 12022.53, subdivision (d) allegation attached to the attempted murder count.

FACTS

On November 29, 2009, at 10:14 p.m., Brians called 911 and reported he had just shot his girlfriend, Kristin Bautista, in the face. Brians said they had been arguing. When first responders arrived at Bautista's apartment in Imperial Beach, Brians was not there. Bautista was slumped over on the couch and was barely breathing; she had a gunshot wound to her right eye.

Bautista was taken to the University of California, San Diego Medical Center, where she had a portion of her skull removed and replaced with a skull cap because of bleeding in the brain. Her right eye could not be saved and was removed. Bautista also

² In connection with the mayhem count, the jury also found Brians intentionally and personally discharged a firearm and proximately caused great bodily injury to the victim with the meaning of Penal Code section 12022.53, subdivision (d).

required a breathing tube (tracheotomy) and a feeding tube. As of February 2012, when the trial took place, Bautista was in a long-term care facility at Sharp Hospital in Coronado. Her treating physician testified that she continued to have a tracheotomy to continue breathing and may require it for rest of her life. The physician also opined that she will require 24-hour care for the rest of her life. Bautista cannot walk and is unable to move the left side of her body. Bautista, who has to eat a pureed type of diet because of the risk of aspiration, needs to have a person feed her. The physician said Bautista's feeding tube remained in place because she does not take in enough calories to sustain life without it. Bautista is able to talk, but her cognitive ability is limited.

DISCUSSION

Appointed appellate counsel has filed a brief setting forth evidence in the superior court. Counsel presents no argument for reversal, but asks that this court review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Counsel has not referred us to any possible, but not arguable issues pursuant to *Anders v. California* (1967) 386 U.S. 738.

We granted Brians permission to file a brief on his own behalf. He has not responded.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738 has disclosed no reasonably arguable appellate issues. Competent counsel has represented Brians on this appeal.

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

HALLER, J.

McDONALD, J.