

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ALMA CHAVEZ,

Defendant and Appellant.

D067715

(Super. Ct. No. SCN339536)

APPEAL from a judgment of the Superior Court of San Diego County, Blaine K. Bowman, Judge. Affirmed.

Sheila O'Connor, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon Jr., and Kristen Kinnaird Chenelia, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Alma Chavez guilty of robbery (Pen. Code, § 211) and petty theft (§§ 484, 490.5). The court sentenced her to three years in prison: the three-year middle term for robbery and a concurrent 180-day term for petty theft. Chavez appeals. We affirm.

## BACKGROUND

On December 1, 2014, at approximately 5:30 p.m., Anastasia Patterson was on the MetroLink on her way to Oceanside. Her computer bag was on the seat next to her. The bag contained personal items, including a pink box cutter that Patterson used for artwork. There were three or four other people sitting around Patterson.

Chavez came out of the restroom, sat about 12 to 14 feet away from Patterson and said, "What are you looking at?" Patterson, who had been looking out the window, turned and looked at Chavez. Chavez called Patterson "a pignose bitch" and said that if Patterson looked at her again, Chavez "would kick [her] ass and tear [her] apart." Chavez's tone of voice was "very aggressive." Patterson was nervous, scared and anxious. She resumed looking out the window. There was a man sitting in front of Patterson, but he did nothing.

As the train approached the Oceanside stop, Patterson put the strap of her bag over her shoulder. Chavez got up and walked toward Patterson, away from the exit. Patterson took her box cutter from her bag and put it in the right sleeve of the sweater she was wearing. Patterson knew she would have to go through a dark underpass at the Oceanside station, with no security, and believed she had to defend herself in light of Chavez 's statements that she wanted to hurt Patterson.

Chavez grabbed Patterson's bag and pulled. Patterson pulled back. Chavez wrested the bag from Patterson and headed toward the exit with the bag. Patterson got up, followed Chavez and asked for her bag back. Patterson held the box cutter in her hand, chest high, with the blade open "an inch at most." Chavez said it was her bag. Patterson said, "Give me my bag back. I don't want to hurt you." Chavez saw the box cutter and "swung her hand out" toward the box cutter, which was near Patterson's face. Patterson put her hands to her face for protection. The box cutter came into contact with Chavez's hand and cut it. Patterson backed up, saying she just wanted her bag back and did not want to hurt Chavez. Chavez showed Patterson her hand and said Patterson had done enough to her. Chavez pushed past Patterson to get to the second level of the train. Chavez's shoulder hit Patterson's shoulder. Patterson was very anxious. She followed Chavez to the second level, repeating that she wanted her bag back and did not want to hurt Chavez. Chavez said repeatedly that it was her bag and told Patterson to leave her alone.

There were about eight other passengers on the second level. Chavez tried to get through a connecting door but it would not open. She turned and tried to go back to the first level, pushing Patterson out of the way by placing her hand and arm against Patterson's chest. The box cutter was in Patterson's hand, facing down and not pointed at Chavez. Patterson tried to push back and fell, landing on a table on her back. Chavez got on top of Patterson, with her arm across Patterson's neck and chest, holding her down. Patterson was scared and anxious. Acting instinctively, Patterson wrapped her legs around Chavez's hips. Patterson repeatedly yelled at Chavez to get off of her but Chavez

continued to hold her down. Chavez struggled to get away. The box cutter was still in Patterson's hand, pointed toward the seats; her hand was "hanging off the table."

Patterson never moved the box cutter toward Chavez.

Train passenger William Matteo witnessed the struggle. Matteo told Patterson to give him the box cutter. Patterson complied. Matteo pulled Chavez off Patterson.

Chavez started to walk away with Patterson's bag. Patterson dialed 911. Matteo told Chavez and Patterson to produce identification to prove ownership of the bag. Chavez pulled some papers, cash and credit cards out of the bag, and either she or Patterson pulled out an identification card bearing Patterson's photograph. Chavez took the cash and ran out of the train.

At about 5:54 p.m., Chavez entered the Pier View Market, a store a few blocks from the train station. She took a bottle of liquor from a shelf; put the bottle under her armpit, beneath her jacket; and moved another bottle into the empty space on the shelf. Chavez walked to the front counter, holding an energy drink in her hand, purchased the energy drink and walked toward the door. A store employee asked Chavez to remove the bottle from her jacket. Chavez said, "I don't have anything on me." A police officer who was in the store noted that Chavez matched the description of the robber at the train station and detained her. Another police officer brought Patterson to Pier View Market and Patterson identified Chavez. Patterson was visibly upset, crying and shaking.

## DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, but asks this court to

review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*) counsel mentions the following as possible but not arguable issues: (1) whether sufficient evidence exists to prove Chavez committed a robbery rather than grand theft from a person and (2) whether the court abused its discretion in sentencing Chavez to the middle term.

We granted Chavez permission to file a brief on her own behalf. She has not responded. A review of the record pursuant to *Wende* and *Anders*, including the possible issues listed pursuant to *Anders*, has disclosed no reasonably arguable appellate issues. Chavez has been competently represented by appellate counsel.

#### DISPOSITION

The judgment is affirmed.

---

NARES, Acting P. J.

WE CONCUR:

---

AARON, J.

---

IRION, J.