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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS JAVIER GARCIA,

Defendant and Appellant.

E053993

(Super.Ct.No. RIF131692)

OPINION

APPEAL from the Superior Court of Riverside County. Raymond C. Youngquist, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Marcia R. Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

## I

### INTRODUCTION<sup>1</sup>

A jury convicted defendant Carlos Javier Garcia of premeditated attempted murder (§ 664/187, subd. (a)) and assault with a firearm on a peace officer (§ 245, subd. (d)(1)) plus related enhancements for personal discharge of a firearm. (§ 12022.53, subd. (c).)

On count 1, the court sentenced defendant to a prison term of 15 years to life for attempted murder, plus a consecutive term of 20 years for the weapons enhancement. On count 2 for assault, the court imposed and stayed a sentence of six years, plus 20 years for the weapons enhancement.

Defendant appeals from the judgment, citing *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts, potential arguable issues, and requesting this court undertake a review of the entire record.

We find no errors and affirm the judgment.

## II

### FACTUAL BACKGROUND

#### *A. Prosecution Evidence*

Melanie Weaver, a California Highway Patrol officer, attempted to stop defendant's vehicle on the freeway for having expired registration tags. Defendant drove on the shoulder and slowed down without stopping. Weaver activated her lights and

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<sup>1</sup> All statutory references are to the Penal Code.

siren and defendant exited the freeway without pulling over. Weaver contacted a dispatcher about defendant's failure to yield and gave the car's license plate number. Weaver was concerned about defendant's erratic driving and whether it signified impairment or driving under the influence.

While defendant continued driving through a residential neighborhood, Weaver observed as defendant reached into the right rear area of the car. Defendant stopped about 30 feet ahead of Weaver. Weaver saw defendant standing next to his car and raising a rifle, which he aimed at Weaver. As Weaver ducked and began reversing her car, defendant fired between three and five shots. The first shot missed the car. Two shots passed through the windshield above her head, causing broken glass to strike her.

As defendant continued to fire the rifle, Weaver backed up more. Defendant threw the rifle into his car and fled the scene. Weaver gave chase but could not continue the pursuit because her tires lost traction. A few minutes later, the Riverside police spotted defendant and pursued him. The police took defendant into custody within about 10 to 20 minutes. Defendant was the sole occupant and there was no firearm in his car. Defendant smelled of alcohol.

In the recorded call to the dispatcher, Weaver reported she was trying to effect a traffic stop but the driver was not responding. The driver had fired at her with a semi-automatic rifle. The shooter was a Middle Eastern or Hispanic man in his 20's, with short, shaggy dark hair and wearing a white T-shirt and dark pants. Weaver identified defendant from a six-pack photographic lineup and in person.

A witness observed the shooting. She heard the police siren and saw a small dark car pull up with a CHP vehicle behind it. A slightly built Hispanic man with short dark hair emerged from the car, pulled out a rifle, and fired 10 to 12 rounds at the officer. As the officer backed up, the shooter continued to fire. The witness had previous embezzlement and felony drug convictions.

The weapon was never found. A box of 7.62-caliber rifle cartridges, a glass pipe or bong, empty beer bottles, and Zigzag rolling papers were inside the car. Other forensic evidence at the site included spent bullets and 11 expended shell casings. Many bullet strikes, holes, and fragments were found on and in the car. Particles of gunshot residue were detected on defendant's hands.

#### *B. Defense Evidence*

Seven hours after his arrest, defendant's blood alcohol content was .03 percent. Defendant's blood sample was also positive for cocaine and marijuana. The toxicologist estimated defendant had used both drugs within six to eight hours of the sampling. Alcohol, cocaine, and marijuana, used together, cause impairment, risky and violent behavior, hyperactivity, paranoia, hallucinations, and memory and attention problems.

Defendant had worked as a custodian at Poly High School in Riverside for eight years until he was fired for driving under the influence a few months before July 2006 when he was arrested.<sup>2</sup> Two Poly teachers testified to defendant's good character without knowing about his criminal history, including a conviction for gun possession.

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<sup>2</sup> Defendant had multiple criminal offenses between July 2000 and January 2007.

### III

#### DISCUSSION

Defendant has proposed two issues for our independent review: 1) the failure to instruct the jury on involuntary manslaughter based on intoxication (CALCRIM Nos. 580 and 626); and 2) whether it was ineffective assistance of counsel to present the character witnesses, allowing introduction of defendant's criminal history. (*People v. Pope* (1979) 23 Cal.3d 412, 425.)

On the first point, the record demonstrates that the court instructed the jury on attempted murder, deliberation and premeditation, and the effects of voluntary intoxication on homicide. (CALCRIM Nos. 600, 601, and 625.) The jury necessarily resolved the issues of deliberation, premeditation, and intoxication against defendant. No additional instruction on a lesser offense was required.

As to the claim of ineffective assistance of counsel, defendant cannot show prejudicial error. The evidence against defendant was overwhelming. The collateral evidence about what the character witnesses knew about defendant's history simply was not significant.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

### IV

DISPOSITION

The judgment is affirmed.

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CODRINGTON  
J.

We concur:

HOLLENHORST  
Acting P.J.

RICHLI  
J.