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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.

DARYL D'ANDRE TURNER,

Defendant and Appellant.

E054282

(Super.Ct.No. SWF10001269)

OPINION

APPEAL from the Superior Court of Riverside County. Eric G. Helgesen, Judge.
(Retired judge of the Tulare Mun. Ct. assigned by the Chief Justice pursuant to art. VI, §
6 of the Cal. Const.) Affirmed.

Daniel J. Kessler, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

On December 14, 2010, an information charged defendant and appellant Daryl D'Andre Turner with (1) attempted robbery of a person in an inhabited dwelling under Penal Code¹ sections 664 and 212.5, with the enhancement allegation that, in committing the attempted robbery, defendant personally used a firearm within the meaning of sections 12022.53, subdivision (b) and 1192.7, subdivision (c)(8) (count 1); (2) making a felonious threat under section 422, with the enhancement allegation that defendant personally used a handgun when committing the offense within the meaning of sections 12022.5, subdivision (a) and 1192.7, subdivision (c)(8) (count 2); and (3) possessing a firearm as a convicted felon under former section 12021, subdivision (a)(1).

The information also alleged that defendant had previously served two terms in prison for prior offenses under section 667.5, subdivision (a); had previously been convicted of two serious felony prior offenses under section 667, subdivision (a); and had suffered two prior convictions for “special prior offenses” (strikes), under sections 667, subdivisions (c) and (e)(2)(A) and 1170.12, subdivision (c)(2)(A).

Defendant’s bifurcated jury trial commenced on April 18, 2011. On April 20, 2011, defendant formally waived his right to have the jury decide the truth of the prior conviction allegations. Thereafter, the jury returned its verdict finding defendant guilty of all of the charges, and finding the firearm enhancement allegations to be true.

¹ All statutory references are to the Penal Code unless otherwise specified.

On August 12, 2011, defendant formally admitted the truth of the alleged prior offense convictions, and the trial court denied his request to dismiss one of those prior convictions constituting a strike, in the interest of justice. The trial court then sentenced defendant to serve a determinate term of 21 years four months in prison, plus a consecutive indeterminate term of 75 years to life.

The trial court calculated defendant's sentence as follows: The court chose count 1 as the principal count and imposed an indeterminate sentence of 25 years to life for that count, plus an additional 10-year term to run consecutively for the corresponding firearm use enhancement; for count 2, the trial court imposed a consecutive indeterminate sentence of 25 years to life, plus one year four months to run consecutively for the firearm use enhancement; and for count 3, the court imposed a third consecutive indeterminate sentence of 25 years to life. The court then ordered that defendant serve two consecutive five-year terms for the two serious felony prior convictions under section 667, subdivision (a). The court struck the remaining prison prior allegations.

Moreover, the trial court ordered defendant to pay a \$200 restitution fine, with a fine in the same amount stayed pending success completion of parole, and \$240 in court fines and fees. The trial court left the amount of direct victim restitution to be determined by the probation department, and ordered that interest would accrue at 10 percent per annum. Defendant received credit for having 312 actual days in custody, plus 47 days under section 2933.1, for a total credit for time served of 359 days in custody.

On August 16, 2011, defendant filed a timely notice of appeal.

STATEMENT OF FACTS

On July 25, 2009, Kristina McGinnis (the victim) lived in a house in Hemet, California, with her three children. Her boyfriend, Cedric Dempsey, had been arrested that morning and was in jail. About 10:20 p.m., the victim stepped outside of her home to talk on the telephone. A Chevy Impala drove very slowly past the house, then stopped, backed up, and pulled into the victim's driveway. The victim went back into her house and watched the car through the blinds.

Someone then knocked on her front door. The victim asked who it was, and a man responded that it was Capone. The victim recognized the person from the name Capone and from his voice. She recalled that Capone was at her house about 11 days earlier, moving some boxes and playing a video game with her boyfriend, Dempsey.

The victim, who was still on the telephone talking to her friend, opened the door and let Capone into her house. Capone asked for Dempsey. When the victim told him that Dempsey was out of town, Capone responded that he heard Dempsey was in jail. Capone also asked to use the bathroom and for a glass of water. The victim directed him to the bathroom and went to get the water.

The victim then turned around and saw that Capone was standing about two or three feet away from her, and was pointing a gun at her head. The gun was black and appeared to be a .38-caliber. The victim was unsure whether it was a revolver or an automatic.

The victim identified defendant as the person she knew as Capone, and as the person who was in her house pointing the gun at her. The victim recalled that defendant had a tattoo of the letters “E” and “S” on the right side of his neck.

Defendant asked, “Where’s the money?” The victim responded that she did not know what he was talking about. Defendant then grabbed her arm and flung her against the wall. She saw her six-year-old daughter standing behind defendant. The victim’s daughter screamed and ran into the back portion of the house. The victim then heard the clicking sounds of defendant pulling the trigger on the firearm.

At that point, the victim ran out of the house with defendant in pursuit. Defendant said he would kill the victim. The victim ran across the street to some apartments to get help. A neighbor let her use the phone to call 911. When the victim saw that defendant had left, she returned to her house. She noticed that the refrigerator was pulled away from the wall.

The victim stated that she was afraid for her life during the incident. She later told police that she believed that defendant was a member of a street gang called the 1200 Blocc Crips.

The victim saw defendant driving his car in August or September of 2009. She immediately called the police, but the police did not arrest him at that time. The victim later saw defendant again in December of 2009, while she was with her friend. The victim’s friend called police, and defendant ran off down the street. The police later arrested defendant, and the victim identified him as the person who tried to rob her.

The parties stipulated that defendant was a convicted felon. Police documented that defendant had a tattoo of the word “Capone” on his arm. The police did not find a gun.

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *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, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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MCKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.
KING
J.