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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.

JESSE JAMES HARRIS,

Defendant and Appellant.

E057176

(Super.Ct.No. BAF1200205)

OPINION

APPEAL from the Superior Court of Riverside County. Thomas E. Kelly, Judge.
(Retired judge of the Santa Cruz Super. Ct. assigned by the Chief Justice pursuant to art.
VI, § 6 of the Cal. Const.) Affirmed.

Joanna Rehm, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant Jesse James Harris is serving 16 years in prison for attacking a friend
with a shovel handle. A jury convicted defendant of assault with a deadly weapon and

found true that he personally inflicted great bodily injury. As discussed below, we affirm the judgment

FACTS AND PROCEDURE

On the evening of March 31, 2012, defendant was at a bar with a friend he had known for 15 to 20 years, Norris Smith. Both men were in their 60's. The two got into an argument. Defendant went outside to talk on his cell phone and Smith followed defendant outside to confront him. Smith testified that he went back inside the bar to get his keys so he could go home. Smith went outside into the parking lot. He saw defendant and told him "I don't know what your problem is." Smith raised the hand that was holding the keys and told defendant "I'm out of here." Defendant then turned around and went to his truck and pulled out a shovel. Smith realized that defendant was going to come after him, so he ran to get into his own truck, which was parked about 32 feet way from defendant's. Smith had not quite reached his truck when defendant hit him in the face with the handle of the shovel. Smith fell to the ground. At the time of trial, Smith was no longer able to see out of his right eye. He testified, "It's still in there, but the pupil is busted."

Another witness, who was friends with both men, testified that he saw the men arguing inside the bar, and then saw Smith follow defendant out to the parking lot. He was concerned so he looked out into the parking lot and saw the two men talking, so he returned to the bar. This witness testified that both of the men came back into the bar, still arguing. Defendant left the bar first, then Smith left as well, grabbing his keys and saying goodbye. The witness went out to his own truck in another part of the parking lot,

but heard the two men arguing so he walked over to see what was happening. He saw Smith with his keys in his hand, but did not see Smith raise his hand. Smith walked away from defendant toward his truck. Defendant hurried over to his own truck and picked out a shovel from amongst other items in the bed. Defendant then moved at a “fast pace” toward Smith, holding the shovel like a baseball bat, with his hands on the metal part. Both men were still arguing. Defendant hit Smith on the right side of his head, close to the eye, with the handle of the shovel. The witness intervened before defendant could hit Smith again. The witness never heard or saw Smith threaten defendant.

Smith suffered multiple facial fractures, a cut on the right side of his face, and a ruptured (smashed) eyeball. Smith underwent two surgeries in an attempt to repair the damage.

At the close of the People’s case, defendant moved to instruct the jury on self-defense based on the evidence up to that point. The court denied the motion. Defendant then testified that he hit Smith with the shovel because he thought Smith had a weapon and intended to use it on him. Defendant testified that he had prior convictions for manslaughter and assault. After the defense objected, the trial court allowed the People to ask defendant whether his manslaughter conviction involved the use of a sledgehammer handle. Defendant answered that it did.

On July 23, 2012, the jury convicted defendant of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) and found true the allegation that he personally inflicted great bodily injury (Pen. Code, §§ 12022.7, 1192.7, subd. (c)(8)). Also on that date,

defendant admitted to having a prior “strike” conviction (Pen. Code, §§ 667, subd. (c) & (e)(1) and 1170.12, subd. (c)(1)) and a prior serious felony (Pen. Code, § 667, subd. (a)).

On September 21, 2012, the trial court sentenced defendant to a total of 16 years in prison as follows: four years for the assault, doubled for the prior strike, plus a three-year enhancement for the bodily injury finding, plus five years for the serious prior felony. This appeal followed.

DISCUSSION

Upon defendant’s 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 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court to conduct an independent review of the 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 independently reviewed the record for potential error and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

KING
J.

CODRINGTON
J.