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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.

MICHAEL WAYNE STIVERS,

Defendant and Appellant.

E058965

(Super.Ct.No. FVI1202742)

**OPINION**

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin,  
Judge. Affirmed.

Susan L. Ferguson, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

## I

### INTRODUCTION

On January 23, 2013, a felony information charged defendant and appellant Michael Wayne Stivers with two counts of criminal threats under Penal Code<sup>1</sup> section 422. The information also alleged that defendant suffered three prison priors under section 667.5, subdivision (b), and that one of those priors was a serious or violent felony under sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i).

On June 12, 2013, after a jury trial, the jury convicted defendant of one count of criminal threats (count 1). Thereafter, the court found that defendant suffered three prison priors under section 667.5, subdivision (b), and that one of those priors was a strike under sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i). The trial court sentenced defendant to a total term of seven years in state prison as follows: midterm of two years, doubled to four years based on the strike, with an additional three consecutive years based on the prison priors.

On June 13, 2013, defendant filed his notice of appeal.

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

## II

### STATEMENT OF FACTS

On the night of October 10, 2012, William Pursglove was working in the kitchen of Pasco's Pizza in San Bernardino. An employee came into the kitchen and reported that a person was harassing the customers. Pursglove went into the dining room where he heard and saw defendant screaming that he was going to kill everyone; defendant stated he had a gun. Defendant appeared agitated, was moving around, and his arms were shaking. Pursglove slammed his hand on a table to get defendant's attention; defendant threatened to kill Pursglove. Pursglove was in fear for his life and the lives of the staff and customers.

Pursglove told defendant to leave the restaurant and escorted him to the door. Defendant still appeared highly agitated and continued to threaten people as he left. Pursglove called the police as he followed defendant and updated the police as to defendant's location. Defendant tried to spit on Pursglove and threw gravel at him. As Pursglove approached defendant, he tried to grab Pursglove. Pursglove threw defendant to the ground and some of the customers helped Pursglove hold defendant down until the police arrived.

Two days later, Pursglove saw defendant panhandling in front of the restaurant. Defendant said he was going to "kick Pursglove's ass" but did not threaten to kill him. On October 19, 2012, defendant was in the restaurant's parking lot screaming and waving his arms. Pursglove went outside with his business partner, Nick Lane. Defendant was with his brother who was trying to quiet defendant down. Defendant and his brother left

the property while Pursglove and Lane called the police. There were no threats on this occasion. Defendant was yelling something, but Pursglove could not hear it. Pursglove could not tell if defendant was drunk during any of the encounters. He did not remember telling detectives that defendant appeared drunk on October 10, 2012 but remembered mentioning that defendant had urinated on himself.

San Bernardino Deputy Sheriff Jonathan Womelsdorf spoke with Pursglove and Lane on October 19, 2013. Defendant was two or three blocks away and appeared to be under the influence. Defendant's speech was slurred, his gait was unsteady, and he smelled of alcohol.

### III

#### 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.<sup>2</sup>

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<sup>2</sup> On January 14, 2014, defendant filed his opening brief. On February 14, 2014, defendant filed a motion to strike the filing of his brief and to replace it with a revised brief under *People v. Wende, supra*, 24 Cal.3d 436. On February 21, 2014, we granted defendant's motion. Therefore, we struck the opening brief filed on January 14, 2014 and directed the clerk of this court to file the revised opening brief under *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738.

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.

**IV**

**DISPOSITION**

The judgment is affirmed.

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RICHLI  
Acting P. J.

We concur:

MILLER  
J.

CODRINGTON  
J.