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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.

JAMES ARTHUR LITTLE,

Defendant and Appellant.

E065484

(Super.Ct.No. INF1501251)

OPINION

APPEAL from the Superior Court of Riverside County. Jeffrey L. Gunther, Judge. (Retired judge of the Sacramento Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL BACKGROUND

On October 1, 2015, an information charged defendant and appellant James Arthur Little with assault with a deadly weapon (Pen. Code,¹ § 245, subd. (a)(1); count 1); assault with a deadly weapon on a peace officer (§ 245, subd. (c); count 2); and making criminal threats (§ 422; counts 3 and 4). Additionally, the information alleged, with respect to counts 3 and 4, that defendant personally used a deadly weapon under section 12022, subdivision (b)(1).

Trial began on January 20, 2016; on January 25, 2016, the trial court granted defendant's section 1118 motion to dismiss count 1 (§ 245; assault with a deadly weapon). On January 25, 2016, the jury found defendant guilty of count 2 (§ 245, subd. (c); assault with a deadly weapon on a peace officer), but not guilty of counts 3 and 4 (§ 422; making criminal threats).

On February 19, 2016, the court denied probation and imposed the midterm of four years on count 2. Defendant was awarded 212 actual days and 212 days of conduct credit, and imposed a \$30 criminal assessment fine.

On February 24, 2016, defendant filed a timely notice of appeal.

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

B. FACTUAL BACKGROUND²

1. *PEOPLE'S CASE*

Riverside County Sheriff's Deputy Nicholas Jones responded to a trespassing complaint at a residence on Datil Road in Thousand Palms, at approximately 3:00 p.m. on July 23, 2015. A resident of the home, Bradley Shearer, said that he found a man who fit defendant's description sitting inside his garage. Deputy Jones looked for defendant but was unsuccessful in locating him.

The same night, at approximately 9:00 p.m., Deputy Jones returned to the same residence in response to call that there was a man with a machete threatening the Shearer family. Shearer testified that defendant waved a machete at him, claimed to be his "next of kin," and threatened to cut off Shearer's head.

Deputy Jones located defendant on Datil Road, shirtless, pushing a shopping cart down the middle of the street approximately one-half mile from the Shearer's residence. Deputy Jones stopped his marked police vehicle in the middle of the street, turned on his spotlight, but not his lights or siren, identified himself as a Sheriff's deputy, and asked defendant to step over towards his car; Deputy Jones was wearing his uniform. Deputy Jones had encountered defendant several times previously; he believed that he had a good rapport with defendant.

The deputy asked defendant to come talk to him. Defendant responded with something to the effect of "It's not me. It's them." Defendant walked past the deputy

² Because the trial court dismissed count 1 and the jury found defendant not guilty of counts 3 and 4, the factual background will focus on count 2.

and continued to push his shopping cart down Datil Road. Deputy Jones said, “James, come over here. Come talk to me. Tell me what happened.” Defendant stopped. As the deputy approached defendant to within six to 10 feet, defendant put his right hand inside the shopping cart, which appeared to contain several golf clubs; Deputy Jones feared the shopping cart also contained a weapon.

Deputy Jones told defendant to get his hand out of the cart and to show his hands, but made no other demands. When the deputy started to take his gun out of his holster, defendant looked at him and started to pull out a machete. Deputy Jones took several steps back in preparation for protecting himself, should defendant throw the machete. The deputy pointed his gun at defendant and twice ordered him to drop the machete. The deputy never told defendant to hold up the machete or to throw it. Defendant never said “Don’t fucking kill me,” or “I don’t want to get shot.”

Defendant raised the machete over his head, looked at Deputy Jones, and said, “I’ll fucking kill you.” Deputy Jones took the threat seriously and feared for his safety. Defendant was close enough to the deputy—within six to 10 feet—to carry out his threat.

Deputy Jones placed his finger on his gun’s trigger and told defendant to drop the machete several more times. He warned defendant, “I don’t want to shoot you, James. You better drop it.” Defendant paused for about five seconds, looked to the left and right, and threw the machete away from the deputy, off to defendant’s left side.

After defendant discarded the machete, Deputy Jones ordered him to the ground in order to arrest him. Instead of complying, defendant turned away and continued to push the shopping cart down the street. Defendant ignored repeated orders to stop until the

deputy tried to grab the shopping cart from defendant's hands. As they struggled over the cart, Deputy Jones pulled out his Taser. Deputy Jones warned defendant that he would use his Taser if defendant refused to comply. Defendant grabbed the shaft of one of the golf clubs in the cart, but before he actually pulled it out, Deputy Jones shot defendant with his Taser; the charge lasted five seconds. Defendant fell to the ground; Deputy Jones told defendant to get on his stomach; defendant refused. When defendant tried to sit up, the deputy again shot defendant with the Taser.

2. *DEFENSE CASE*

Defendant testified on his own behalf at trial. On July 23, 2015, defendant went inside a garage to get out of the sun. He was sitting in the garage smoking a cigar when Shearer burst into the garage and threatened defendant with a knife. Defendant attempted to leave but Shearer wouldn't open the gate; he told defendant to jump over the wall. A woman appeared with a shotgun. Eventually, defendant was able to jump back over the wall.

After defendant's confrontations at the Shearer residence, he walked down the road. Deputy Jones, who had always been respectful to him, pulled up. Defendant was very upset after almost being stabbed and having a shotgun pulled on him. Deputy Jones rolled down his window and asked defendant what was going on. Defendant told the deputy that his problem was the other way; he repeated his answer to the deputy and continued to walk. The deputy ordered defendant to stop.

Deputy Jones exited his vehicle. A minute later, when the deputy saw that defendant had a machete in his cart, he pointed his gun at defendant. Defendant had not

picked up his machete or any other weapon, nor had he made any threats. Deputy Jones had previously told defendant that it was legal for him to carry a weapon as long as it was “in the open.”

Defendant said, “Oh, now that you see there’s a machete you’re going to trip out.” He then picked up the machete with two fingers and held it in front of him with an extended arm. Deputy Jones said, “James, I don’t want to do this. Drop the knife.” Defendant said, “I’m going to take it and throw it over there away from me and you, so don’t shoot me.” Deputy Jones said, “Okay.” Defendant then threw the machete about 15 feet behind the deputy’s car. Defendant never threatened the deputy in any way.

Defendant reiterated that the deputy’s problem was at the Shearer residence. He then turned around and started pushing his shopping cart down the road. Deputy Jones immediately circled around and told defendant to put his hands behind his back. Defendant asked, “What for? I just did what you asked me to do.” When defendant refused to comply with the deputy’s order to put his hands behind his back, the deputy shot him with a Taser. Defendant never reached for a golf club and was 98 percent certain that he did not have a golf club in his cart that day. He admitted he has had golf clubs in his cart in the past for protection.

Defendant suffered a felony drug conviction in 2002 in Georgia, and a felony conviction for domestic assault in 2008.

DISCUSSION

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 independently reviewed the record for potential error and find no error.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

SLOUGH
J.