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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMAL MAURICE CARTER,

Defendant and Appellant.

F062997

(Super. Ct. No. 11CM0642)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. James LaPorte and Donna L. Tarter, Judges.†

Deborah Prucha, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Poochigian, J., and Detjen, J.

† Judge LaPorte presided over appellant's change of plea hearing. Judge Tarter sentenced appellant.

STATEMENT OF THE CASE

On April 4, 2011, an information was filed against appellant, Jamal Maurice Carter, alleging that he committed the following offenses: assault likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(1), counts one & seven)¹ with an enhancement in count one for causing great bodily injury (§ 12022.7, subd. (a)), battery with serious bodily injury (§ 243, subd. (d), count two), kidnapping (§ 207, subd. (a), count three) with gun use enhancements (§§ 12022.5, subd. (a)(1) & 12022.53, subd. (b)), false imprisonment by use of force (§ 236, count four), making criminal threats (§ 422, counts five & six) with a gun use enhancement on count six (§ 12022.5, subd. (a)), first degree burglary (§ 459, count eight), and assault with a firearm (§ 245, subd. (a)(2), count nine).

On May 5, 2011, appellant entered into a plea agreement in which appellant would admit counts one and six and the gun use enhancement in count six in exchange for a stipulated prison term of seven years. The total aggregate of all of the allegations against appellant carried a potential prison term of 20 years 8 months. The court reviewed the terms of the plea agreement with appellant and explained the consequences of his plea. The court advised appellant of, and appellant waived, his constitutional rights pursuant to *Boykin/Tahl*.² The parties agreed that the preliminary hearing transcript constituted the factual basis for the plea. Appellant pled no contest to counts one and six and admitted the gun use enhancement in count six.

On June 6, 2011, the trial court sentenced appellant to a prison term of two years on count six plus consecutive terms of four years for the gun use enhancement and one year for count one. Appellant's total prison term is seven years. He was ordered to pay a restitution fine of \$1,400, pay victim restitution of \$11,846.05, and granted 108 days of custody credits. Although appellant filed a timely notice of appeal, the trial court denied his request for a certificate of probable cause.

¹ Unless otherwise noted, all statutory references are to the Penal Code.

² *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

Appellant filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). After review of the record, we affirm the judgment.

FACTS

Count Six

On January 28, 2011, Hanford Police Officer Art Alvarez was dispatched to investigate a physical disturbance call. Alvarez learned that appellant had slammed his girlfriend's head into a door. Appellant threw the girlfriend to the ground and dragged her into their apartment. Appellant's neighbor, Dillon Scott, witnessed appellant's assault.

Scott was on the phone with the police when he saw appellant come out of his residence and look through the window at Scott. Appellant was holding a pistol in one of his hands, raised the pistol into the air, and yelled at Scott, "I'm gonna kill you." Scott was in fear of his life.

Count One

On March 5, 2011, Hanford Police Officer Joshua Ragsdale was dispatched to investigate a call made by paramedics that appellant's girlfriend, Mary Maldonado, had suffered suspicious injuries. Appellant told Ragsdale that his girlfriend had been horsing around with friends and fell down on a glass coffee table where she sustained cuts from the fall. Appellant pointed to an apartment in a complex where the incident occurred.

Ragsdale went to Brenda Kirkbride's apartment, where he talked to Kirkbride and Lawrence Shoal. Maldonado had gone to Kirkbride's apartment. Kirkbride asked Shoal to stay in the apartment while Maldonado and appellant had a conversation. Appellant arrived shortly after Shoal. Appellant and Shoal began to argue. Shoal told appellant he was leaving in a few minutes and did not want any problems. Appellant began to yell at Shoal. Shoal replied that "he was packing and he didn't care if he had to use it."

Shoal went into Kirkbride's bedroom and started to change his clothing. Appellant burst down the door into the bedroom and began hitting Shoal. Shoal ended up in the living room where he fell face first, landing on the coffee table. Ragsdale saw

dried blood on Shoal's face, under his nose, and coming from his ears. Shoal's face was severely swollen.

APPELLATE COURT REVIEW

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*Wende, supra*, 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on October 4, 2011, we invited appellant to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.