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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JT MAKAKEOLA BARICUATRO,

Defendant and Appellant.

G050517

(Super. Ct. No. 12WF1698)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Daniel Barrett McNerney, Judge. Affirmed.

Esther K. Hong, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

* * *

1. Background

A jury convicted JT Makakeola Baricuatro (Defendant) of one count (count 1) of attempted voluntary manslaughter (Pen. Code, §§ 192, subd. (a), 664) as a lesser included offense of the charged offense of attempted first degree murder, one count (count 2) of assault with a firearm (*id.*, § 245, subd. (a)(2)), and one count (count 3) of battery with serious bodily injury (*id.*, § 243, subd. (d)). As to counts 1 and 2, the jury found true the allegations that Defendant personally used a firearm (*id.*, § 12022.5, subd. (a)) and that he inflicted great bodily injury (*id.*, § 12022.7, subd. (a)). As to count 3, the jury found true the allegation that Defendant personally used a firearm. (*Id.*, § 12022.5, subd. (a).) Defendant admitted the allegation under Penal Code section 667.5, subdivision (b) of a prior separate prison term or county jail term, and the trial court accepted the admission.

The trial court sentenced Defendant to a term of 13 years six months in prison, calculated as follows: upper term of five years six months on count 1, a consecutive term of three years for the great bodily injury enhancement, a consecutive term of four years for the firearm enhancement, and a consecutive term of one year for the prior separate prison term or county jail term enhancement. Sentence on counts 2 and 3 and on the enhancements to those counts was imposed and execution of sentence stayed pursuant to Penal Code section 654.

Defendant timely appealed from the judgment. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), setting forth the facts of the case and requesting that we review the entire record. Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), appointed counsel provided issues to assist us in conducting our independent review. Defendant was granted 30 days to file written arguments in his own behalf, but did not file anything.

We have examined the entire record and counsel's *Wende/Anders* brief. After considering the entire record, we have found no reasonably arguable issue. (*Wende, supra*, 25 Cal.3d 436.) We therefore affirm.

2. Facts

In April 2012, Michael Rose approached Defendant in front of a doughnut shop and asked him to repay a debt so that Rose could help a homeless friend. Defendant said no. Rose became angry and said, "I could just take it from you." Defendant took out a knife, slashed Rose across the tip of his finger, and ran away. The tip of Rose's pinky finger was sliced off just below the nail line.

During the afternoon of June 18, 2012, Rose and his girlfriend were riding their bicycles down Westminster Boulevard. As they rode through the intersection of Westminster Boulevard and La Pat Place, Rose's girlfriend (who was riding ahead of Rose) stopped at the westbound curb and stared at Defendant, who was standing on the corner. Rose stopped behind his girlfriend and looked over to see what she was staring at. He noticed that Defendant was looking at him and realized "th[at] guy has an interest in me."

After saying something to Rose, Defendant raised both arms, put a "trucker" cap on his left hand over his right fist, fired a gun at Rose, and ran away. Rose's right arm was bleeding from the gunshot. The bullet was still in his arm at the time of trial. Rose suffers shooting pain down his right arm, has lost strength in that arm, and does not have full range of motion.

3. Analysis

We have reviewed the record in accordance with our obligations under *Wende* and *Anders*, and we find no arguable issues on appeal. Defendant himself has not raised any issues for our review. (*People v. Kelly* (2006) 40 Cal.4th 106, 110, 120, 124.)

Counsel has suggested two issues to assist us in our review. First, counsel asks whether the trial court committed reversible error by allowing the prosecution to introduce evidence of Defendant's prior altercation with Rose. The evidence was relevant and admissible to show motive. (Evid. Code, § 1101, subd. (b).)

Second, counsel asks whether the trial court erred by denying Defendant's request to instruct the jury with CALCRIM No. 603, the theory of heat of passion, which can reduce murder to voluntary manslaughter. The evidence did not support giving CALCRIM No. 603. Moreover, the trial court did instruct the jury with CALCRIM No. 604, regarding imperfect self-defense. The jury apparently accepted this defense, acquitted Defendant of the charged offense of attempted first degree murder, and found him guilty of the lesser included offense of attempted voluntary manslaughter.

4. Disposition

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.