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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.

LEONARD MICHAEL ALVAREZ,

Defendant and Appellant.

G050548

(Super. Ct. No. 13NF1566)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, M. Marc Kelly, Judge. Affirmed.

Melanie K. Dorian, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

A jury found defendant Leonard Michael Alvarez guilty of assault with a deadly weapon, to wit, a metal bar (Pen. Code, § 245, subd. (a)(1); all further statutory references are to this code). Based on a prior conviction for violating section 245, subdivision (b), the court found true a prior serious felony conviction enhancement (§ 667, subd. (a)(1)) allegation. The court sentenced Alvarez to a term of seven years in prison. Alvarez appealed.

We appointed counsel to represent Alvarez. She filed a brief which set forth the facts and the procedural history of the case. She did not argue against Alvarez, but advised she had not found any issues to argue on Alvarez's behalf. (*People v. Wende* (1979) 25 Cal.3d 436; *Anders v. California* (1967) 386 U.S. 738.) However, to assist us in our independent review, she suggested we consider: (1) whether the evidence is sufficient to support the assault with a deadly weapon; and (2) whether the prior conviction for violating section 245, subdivision (b) and the current conviction for violating section 245, subdivision (a), are “serious” felonies (§ 1192.7, subd. (c)).

We notified Alvarez he could file written argument on his own behalf, but the period to do so has passed and we received no communication from him.

We reviewed the record according to our obligations under *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 485 U.S. 738, and we considered the issues suggested by counsel, but we found no arguable issues on appeal.

DISCUSSION OF ISSUES SUGGESTED BY COUNSEL

“In addressing a challenge to the sufficiency of the evidence supporting a conviction, the reviewing court must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

The assault with a deadly weapon arose out of a dispute between Alvarez, and Ernesto Salas and his friend Luis Soria. Soria testified Alvarez pulled out a metal bar or crowbar and struck Salas “very hard” in the ear. Both Soria and Salas were certain they saw the metal object in Alvarez’s hand. This testimony alone is sufficient evidence.

Section 245, subdivisions (a) and (b) criminalize assault with a deadly weapon, and assault with a semiautomatic firearm, respectively. Section 1192.7, subdivision (c) defines “serious” felonies to include “any felony in which the defendant personally used a dangerous or deadly weapon.” (§ 1192.7, subd. (c)(23).) That phrase encompasses violations of section 245, subdivisions (a) and (b), so long as a dangerous or deadly weapon is used. (*People v. Williams* (1996) 50 Cal.App.4th 1405, 1411-1412.)

DISPOSITION

The judgment is affirmed.

THOMPSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.