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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.

KIMBERLY LASHAWN
THOMPSON,

Defendant and Appellant.

G053161

(Super. Ct. No. 14CF3068)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James A. Stotler, Judge. Affirmed.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

A jury convicted Kimberly Lashawn Thompson of second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)); all statutory citations are to the Penal Code unless

otherwise indicated). Thompson appealed, and her appointed counsel filed a brief under the procedures outlined in *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel summarized the facts and procedural history of the case, but raised no specific issues, and asked this court to review the record to determine whether there were any arguable matters. Counsel submitted a declaration stating she had thoroughly reviewed the record. Counsel advised Thompson she would file a *Wende* brief, and was provided Thompson with a copy of the brief and appellate record. Counsel also advised Thompson she could personally file a supplemental brief on her own behalf raising any issues she believed worthy of consideration. Counsel further advised Thompson she remained available to brief issues as requested by the court, and that Thompson could file a request for the court to relieve her as counsel. We gave Thompson 30 days to file a supplemental brief, but she has not responded. We have reviewed the record, found no arguable issues, and therefore affirm the judgment.

FACTS AND PROCEDURAL HISTORY

In January 2015, the Orange County District Attorney filed an information, as amended in December 2015, alleging Thompson committed second degree robbery (§§ 211, 212.5, subd. (c) [count 1]), second degree commercial burglary (§§ 459, 460, subd. (b)) [count 2]), made criminal threats (§ 422, subd. (a) [count 3]), misdemeanor assault (§ 240 [count 4]), and misdemeanor battery (§ 242 [count 5]) on August 30, 2014. It also alleged Thompson had suffered a prior robbery conviction in May 1998 within the meaning of section 667, subdivision (a)(1) (five-year enhancement), and subdivisions (d) and (e)(1) and section 1170.12, subdivisions (b) and (c)(1) (Three Strikes law). Counts four and five were dismissed before trial.

At Thompson's trial in December 2015, Teresa C. testified she was working as a loss prevention employee at a T.J. Maxx store in Orange on August 30, 2014. At approximately 4:00 p.m., she saw Thompson quickly place several handbags in

a shopping cart. Thompson met up with a male in the shoe department and they placed several pairs of shoes in the shopping cart. Thompson returned to the handbag department, where she placed several handbags inside a larger handbag. Thompson then exited the store without paying for the handbags.

Teresa C. contacted a fellow employee, Robert Nakagawa, to assist her and then contacted Thompson a few feet outside the store. Teresa C. stood in front of Thompson with her arms out and identified herself as a loss prevention employee. Thompson attempted to move around Teresa C., and she repeatedly ordered her to drop the merchandise. When Teresa C. tried to grab the handbags, Thompson said she was going to “f—k” her up and threatened to spray her with pepper spray. Teresa C. said she was afraid of being injured or harmed by Thompson. At some point, Thompson struck Teresa C. in the arm, causing her to drop her cell phone. Thompson’s male companion appeared and picked up the handbags that had fallen during the conflict. The male shopper referred to a street gang and threatened to kill Teresa C. Thompson may have told her companion to pepper spray Teresa C., and he took something out of his pocket. Fearing for the safety of herself and coworkers, Teresa C. allowed Thompson and her companion to leave in their car. The estimated loss to the store was approximately \$2540. Thompson dropped her cell phone during the incident, which Nakagawa picked up from the floor and gave to the police. On September 8, 2014, Teresa C. identified a photograph of Thompson as the person who had stolen the handbags.

The jury convicted Thompson of second degree robbery (count 1), but acquitted her of commercial burglary (count 2) and making criminal threats (count 3). Thompson admitted the prior conviction. At sentencing on February 5, 2016, the trial court struck the prior strike conviction (§ 1385) and imposed a prison sentence of eight years, comprised of the three-year midterm for robbery (§ 213) plus a five-year consecutive term for the section 667, subdivision (a) enhancement. The court also imposed the minimum restitution fine of \$300 (§ 1202.4, subd. (b)(1)), imposed and

suspended a parole revocation fine of \$300 (§ 1202.45), imposed a \$40 court operations assessment (§ 1465.8) and a \$30 court facilities assessment (Gov. Code, § 70373).

Thompson agreed she was entitled to 459 days of custody credit and 69 days of conduct credit. The court reserved jurisdiction to award restitution. Thompson filed her appeal on February 16, 2016.

DISCUSSION

Following *Wende* guidelines, we have reviewed counsel's brief and the appellate record and discern no arguable issue. This includes counsel's suggestion we consider whether the evidence was sufficient to prove the force or fear element of second degree robbery. Thompson has not availed herself of the opportunity to file a supplemental brief (*People v. Kelly* (2006) 40 Cal.4th 106, 111 [appellate court must address issues raised personally by appellant in a *Wende* proceeding]), nor has she requested to have appellate counsel relieved. We therefore affirm the judgment. (*Wende, supra*, 25 Cal.3d at p. 443.)

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.