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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

EVERETT FRED BASHAM,

Defendant and Appellant.

H041880  
(Santa Clara County  
Super. Ct. No. C1350067)

Defendant Everett Fred Basham was arrested in February 2013 after an investigation in which it was determined he was responsible for making a criminal threat via email against a California State Senator. Searches of defendant’s vehicle, residence, and garage resulted in law enforcement locating weapons, including assault weapons, explosives and explosive devices, and a computer showing research concerning the manufacturing of bombs and the identification of various explosive chemicals. A 12-count criminal complaint was filed, and on October 28, 2013, defendant pleaded no contest to 10 counts— seven felonies and three misdemeanors—including the attempted making of a criminal threat (Pen. Code, §§ 664/422; count 1),<sup>1</sup> possession of a destructive device (§ 18715; count 2), and possession of an assault weapon (§ 30605, subd. (a));

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise stated.

counts 8, 9, and 10). The court sentenced defendant to an aggregate term of five years in prison.

Counsel filed an opening brief in which no issues are raised, requesting that this court conduct an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We will provide “a brief description of the facts and procedural history of the case, the crimes of which defendant was convicted, and the punishment imposed.” (*People v. Kelly* (2006) 40 Cal.4th 106, 110.) We will affirm the judgment.

## FACTS<sup>2</sup>

In January 2013, the California Highway Patrol (CHP) commenced an investigation into an email threat to former California State Senator Leland Yee. The email threatened Senator Yee’s life if he were to pass a bill banning AR15 weapons. The sender indicated he had several rifles with over 200 rounds of ammunition; he was an ex-military sniper; he knew the locations of both Senator Yee’s office and the State Capital; he had hiding spots in both locations; and he had a one-half mile shooting radius as a trained sniper.

In the course of its investigation, CHP determined through email links and internet connections that the threats had originated from defendant. Defendant initially denied having made the threats but later stated he took medication at night, often sleepwalked, and may have sent the threatening email while sleepwalking.

After defendant’s arrest, a search of defendant’s vehicle yielded a false military identification card, a loaded pistol with two additional loaded magazines, black powder and other reloading supplies, a laptop computer, and a GPS device. A search of defendant’s home the same day resulted in the discovery of a bomb-making laboratory

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<sup>2</sup> The facts are taken from the report of the probation officer of December 17, 2013.

with numerous chemicals. Law enforcement as a result suspended the search until the scene could be rendered safe. Thereafter, during a multiple-day search of defendant's residence and garage, officers found and seized computers, flash drives, electronic data, media storage devices, documents, ammunition, and weapons, including five illegal assault weapons. Chemicals found in the home included nitric acid, sulfuric acid, and methanol. A search of the garage yielded mannitol hexanitrate, an explosive with greater volatility than nitroglycerine. Officers, in order to dispose of this chemical safely, were required to close the area to all street and pedestrian traffic, dig a trench in defendant's yard, and detonate the chemical.

Officers searching defendant's kitchen located five two-inch long destructive devices with fuses. Officers also located a tumbler containing a potentially volatile explosive that was filled with small prills, metal washers, and razor blades. A search of defendant's computer disclosed history indicating research concerning bomb manufacturing, including information on making detonators, the identification of various explosive chemicals, and recipes for creating various explosive devices. The probation officer summarized that the following explosive devices and chemicals used for making explosive devices were found on defendant's property: mannitol hexanitrate; sulfuric acid, nitric acid, and mannitol (used for making mannitol hexanitrate); thermite (an explosive device); iron oxide and aluminum (used for making thermite); ammonium nitrate and nitro methane (used to make an ammonium nitrate and fuel oil explosive); ammonium nitrate and aluminum (used to make an ammonium nitrate and aluminum powder explosive); pentaerythritol, nitrate, and sulfuric acid (used to make a PETN explosive); and hexamine and nitric acid (used to make an RDX explosive).

#### PROCEDURAL BACKGROUND

A felony complaint against defendant was filed February 15, 2013. The District Attorney alleged 12 counts, all except counts 11 and 12 being felonies, as follows: the making of a criminal threat (§ 422; count 1); possession of a destructive device (§ 18715,

subd. (a); count 2); possession of a destructive device (§ 18710; count 3); possession of materials with the intent to make a destructive device (§ 18720; counts 4 and 5); forgery of a driver's license (§ 470a; count 6); possession of a forged driver's license (§ 470b; count 7); possession of an assault weapon (§ 30605, subd. (a); counts 8, 9, and 10); carrying a concealed firearm in a vehicle (§ 25400, subd. (a)(1); count 11); and carrying a concealed firearm on the person or in a vehicle (§ 25850, subd. (a); count 12). In addition, it was alleged that in the commission of count 1, defendant was armed with a firearm (§ 12022, subd. (a)(1)). As to counts 2 through 5, it was alleged that probation should not be granted and execution of the sentence should not be suspended (§ 18780).

On October 28, 2013, the prosecution amended the complaint by amending count 1 to charge an attempted criminal threat (§§ 664/422); striking the gun use enhancement relative to count 1; reducing count 3 to a misdemeanor; and dismissing counts 5 and 7. Defendant pleaded no contest to the 10 charges alleged in the amended complaint.

At the sentencing hearing on December 5, 2014, the court heard argument and denied defendant's requests (1) for a grant of probation and the reduction of the attempted criminal threat conviction (count 1) to a misdemeanor; (2) in the alternative, for a finding that a violation of section 422 should be treated similarly to section 76, based upon due process and equal protection grounds; and (3) for a finding that imprisonment would constitute cruel and unusual punishment in light of defendant's medical condition. The court sentenced defendant to a total prison term of five years. Specifically, the court sentenced defendant to the following terms as to the various counts to which he pleaded no contest: four years (count 2); four months consecutive (count 1); eight months consecutive (count 8); two years concurrent (count 4); two years concurrent (count 6); two years concurrent (count 9); two years concurrent (count 10); and six months concurrent for each of the misdemeanor offenses (counts 3, 11, and 12).

## DISCUSSION

We appointed counsel to represent defendant in this court. Appointed counsel filed an opening brief which stated the case and the facts but raised no specific issues. We notified defendant of his right to submit written argument on his own behalf within 30 days. We have received no written argument from defendant.

We have reviewed the entire record pursuant to *Wende, supra*, 25 Cal.3d 436. Based upon that review, we conclude there is no arguable issue on appeal.

## DISPOSITION

The judgment is affirmed.

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Márquez, J.

WE CONCUR:

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Rushing, P.J.

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Premo, J.