

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN ARAUJO,

Defendant and Appellant.

B243652

(Los Angeles County
Super. Ct. No. NA092227)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Arthur Jean, Jr., Judge. Affirmed.

Hart J. Levin, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance by Plaintiff and Respondent.

Juan Araujo appeals from his convictions by jury verdict of two counts of second degree burglary of a vehicle, receiving stolen property, and misdemeanor assault. Our independent review of the record reveals an inconsistency between the reporter's transcript of the sentencing hearing, the minute order, and the abstract of judgment as to the sentence imposed on count 6, misdemeanor assault. We shall direct the trial court to correct the abstract of judgment accordingly. We have found no other arguable issue that would aid Araujo. We affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

Jonathan Pasilla parked and locked his pickup truck in front of his house the night of April 25, 2012. Between 10:00 a.m. and 11:00 a.m. the following morning, he went outside. He saw a man he identified as appellant, near the driver's side of his truck, walking away. The man was wearing Mr. Pasilla's hat and sunglasses which had been left inside the truck. The hat had Mr. Pasilla's high school logo on it. Mr. Pasilla ascertained that his father had not given his belongings to the man. He went outside and saw the man about a block away on a bicycle, pedaling fast. The driver's side window of the truck was halfway down and the door was unlocked. Mr. Pasilla got into his truck and followed. Four to five blocks from his house, Mr. Pasilla caught up with appellant. He asked why appellant was wearing his things. Appellant claimed that he had found them on the ground. Appellant then dropped the hat and sunglasses onto the ground and rode away on the bicycle. Mr. Pasilla grabbed his belongings and followed appellant to a fenced off area by a riverbed. He called 911. Mr. Pasilla had never seen appellant before and had not given him permission to take his belongings.

Long Beach Police Officer Jason Cochran responded to Mr. Pasilla's burglary report and spoke to him near the riverbed. Mr. Pasilla's father notified the officer that he found somebody hiding in the bushes by the riverbed. Officer Cochran and other officers found appellant there, unresponsive. They called paramedics. Appellant was transported to a hospital.

Larry Hurle parked his Chevy Silverado at the La Mirage Hotel in Long Beach where he was staying on the night of May 8, 2012. He parked and locked the vehicle. He was awakened by a noise outside by his vehicle at around 3:30 a.m. in the morning. He got up. Looking out the window, he saw a person inside his vehicle and a bicycle parked beside it. Mr. Hurle later identified appellant as that person. The parking lot was well lit. Earlier, Mr. Hurle had seen this individual three to four times going through the vehicles. He had been trying to get inside Mr. Hurle's vehicle. Mr. Hurle put on pants and went outside. He confronted appellant and told him to get out of his vehicle. He had a flashlight which he shined in appellant's eyes. During this time, Mr. Hurle backed up and started ringing the doorbell for the manager. When the manager came out, Mr. Hurle asked him to telephone the police. After a few seconds, appellant got out of the vehicle. Mr. Hurle ordered appellant to get on the ground so he could detain him for the police. Appellant threw a set of keys at Mr. Hurle, hitting him in the mouth and chipping a tooth. Appellant then took off running, leaving the bicycle behind. Nothing was missing from the truck.

Dianne Jessie parked her Saturn SUV at the curb outside of her home in Long Beach on the night of May 8 or 9, 2012. Her house is about a block and a half from the La Mirage Hotel. Her normal procedure is to lock the car, but she was not sure whether she locked it that night. She rolled up the windows. She had left items in the car, including a Trader Joe's shopping bag, a Mickey Mouse bag, a red checkered shirt, and CD's by Lionel Richie, Barry White, Frank Sinatra and a fourth by various artists. She also left a receipt for clothing from a Chadwick's store. A jury summons with the name of her husband, John Jessie, and their address also was in the car.

About 4:00 a.m. the next morning, Long Beach police officers came to her house. They asked Ms. Jessie whether she was aware that her car had been broken into. She was not. The officer asked her to step outside and look into the car, without touching it, to see if anything had been moved around inside the car. She did so and saw that things had been moved. Officers asked Ms. Jessie to go to a location around the corner where she

identified the items taken from her car. She never gave appellant permission to enter her vehicle.

In the early morning hours of May 9, 2012, Officer Cory Lapworth of the Long Beach Police Department received a radio call about the potential burglary at the La Mirage Hotel. He drove to the area and saw appellant, who matched the description given in the call. Appellant was carrying some bags. Officer Lapworth detained him and conducted a field interview in an attempt to identify him. Items in the bags had the names of Dianne Jessie and her husband John. They contained CD's, a receipt, and a jury summons. Appellant had a pair of pliers, a chisel, and sets of keys in his possession.

Appellant was arrested. On motion of the prosecutor, the original information was dismissed and a first amended information was filed, alleging counts 1, 2, 3, and 6. It charged appellant with second degree burglary of the vehicle of Mr. Hurle (Pen. Code, § 459¹, count 1); the second degree burglary of the vehicle of Mr. Pasilla (§ 459, count 2); receiving stolen property belonging to Dianne Jessie (§ 496, subd. (a), count 3); and assault of Mr. Hurle by means likely to produce great bodily injury (§ 245, subd. (a)(4), count 6). The amended information alleged that appellant had suffered a prior conviction in 2009 for a grand theft (§ 487, subdivision (a)). A not guilty plea was entered on the amended information.

On the first day of trial, appellant declined the prosecution's offer of a plea bargain which would have included a three-year prison term. His attorney sought a continuance. Defense counsel said he had had the case for 46 days, having received it on July 5. He met with appellant for the first time on July 9. Defense counsel had an investigation done, which raised additional questions. After a video conference with appellant, his counsel decided he needed an additional two weeks to prepare for trial. The trial court observed that defense counsel is an experienced and "terrific" lawyer who would not need a continuance to prepare for such a simple case. The request for continuance was denied.

¹ Statutory references are to the Penal Code unless otherwise indicated.

The prosecutor sought to use the preliminary hearing testimony of victim Larry Hurle. Bruce Turner, a witness assistant for the Los Angeles County District Attorney's Office, testified as to due diligence in attempting to locate Mr. Hurle. He mailed a subpoena to Mr. Hurle at his last known address, the La Mirage Hotel in Long Beach on July 18, 2012, but received no response. He called the phone number listed for Mr. Hurle but it was disconnected. On July 31, Mr. Turner asked investigators for the district attorney's office to personally serve a new subpoena on Mr. Hurle.

Paul Purmalis, a senior investigator for the Los Angeles District Attorney's Office, was contacted by Mr. Turner to personally serve Mr. Hurle. On August 8, Purmalis went to the La Mirage Hotel in Long Beach and confirmed with the manager that Mr. Hurle was still living there. He knocked on the door of Mr. Hurle's room but found no one there. He returned the next day, spoke with the manager again, knocked on the door, and left a business card. He asked the manager to have Mr. Hurle call him. Mr. Hurle called that night. He confirmed he was still living at the La Mirage Hotel. Mr. Purmalis told him that he would have to appear for trial. Mr. Hurle was cooperative. Since Mr. Purmalis was taking a few days of vacation, he arranged with Mr. Hurle to meet him on August 16, early in the morning before Mr. Hurle left for work at 7:00 a.m.

Mr. Purmalis returned to the hotel on August 16 with the subpoena. He knocked on the door and an irate person answered, saying that he was not Mr. Hurle. The manager told Mr. Purmalis that Mr. Hurle had moved out the previous Sunday. Mr. Hurle had told the manager that he did not want to be bothered by the police. The manager said Mr. Hurle did not leave any forwarding information. Mr. Purmalis was unable to find out where Mr. Hurle was employed. He canvassed other residents at the hotel to see if anyone knew Mr. Hurle, but no one did. He canvassed 10 or 11 other Long Beach hotels. He also checked custody records and local hospitals without success. He found a current post office box used by Mr. Hurle, but the box had been locked by the postal service because Mr. Hurle was delinquent in his payments. He left his business card at that location as well. An examination of records from the Department of Motor Vehicles did not aid in locating Mr. Hurle. While he was on vacation, Mr. Purmalis had

not asked other investigators for the district attorney's office to serve Mr. Hurle because Mr. Hurle had appeared cooperative in their telephone call. The trial court found the prosecution exercised due diligence in attempting to secure Mr. Hurle's appearance at trial. It allowed the use of the preliminary hearing testimony. The court denied appellant's motion to dismiss based on violation of his constitutional rights, due process, right to confrontation, and denial of effective assistance of counsel.

After the prosecution rested, counsel for appellant moved to dismiss the count of receiving stolen property involving victim Dianne Jessie. The motion was denied. Defense counsel informed the court that he planned to call his defense investigator, who was supposed to be present but was not. Counsel sought a break to ascertain the whereabouts of his investigator. The court denied the request on the ground that the testimony of the investigator concerned a beer can not mentioned by Mr. Hurle. The trial court ruled this testimony would be irrelevant and excludable under Evidence Code section 352. Detective Bruce Roberson of the Long Beach Police Department was called by the defense. He had interviewed Mr. Hurle and Mr. Pasilla by telephone. Appellant chose not to testify in his own defense.

The jury convicted appellant as charged on counts 1, 2, and 3, and of the lesser offense of assault on count 6. The court found the prior conviction allegation to be true. In sentencing, the court chose count 1 as the base term, selecting the high term of three years, plus consecutive eight-month terms (one-third the midterm) for counts 2 and 3, for a total of four years, four months. An additional one-year term was imposed under section 667.5, subdivision (b) for the prior. On count 6, misdemeanor assault, the term was 105 days, to be served concurrently with the terms for counts 1, 2, and 3. Appellant filed a timely appeal.

DISCUSSION

We appointed counsel to represent appellant on appeal. Appointed counsel filed an appellate brief raising no issues, but asking this court to independently review the record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441–442. We

advised appellant that he had 30 days within which to submit by brief or letter any contentions or arguments he wished this court to consider. No response has been received.

We have independently reviewed the record in accordance with *People v. Wende*, *supra*, 25 Cal.3d at pp. 441–442. The reporter’s transcript states that the court imposed a sentence of 105 days on count 6, the misdemeanor assault: “As to count 6, serve 105 days. That’s to run concurrently with any other time he may serve in count 1, 2, and 3.” The minute order of the hearing states: “As to Count (06): [¶] Court orders probation denied. Serve 210 days in Los Angeles County jail.” The abstract of judgment states: “As to CT.6-245(A)(4) PC: DEFENDANT TO SERVE 210 DAYS IN L.A. COUNTY JAIL.” We presume that the court reporter accurately reported the proceedings at the sentencing hearing. (*People v. Anzalone* (2013) 56 Cal.4th 545, 552, fn. 6.) We shall direct the trial court to correct the abstract of judgment to reflect the concurrent sentence of 105 days on count 6. We find no other arguable issues that could aid appellant.

DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment to reflect the sentence of 105 days on count 6, to run concurrent to the sentences on counts 1, 2, and 3. The trial court shall forward a certified copy of the corrected abstract of judgment to the California Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.