

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN NICHOLAS STUPNIK,

Defendant and Appellant.

B267037

(Los Angeles County  
Super. Ct. No. YA090661)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Scott T. Millington, Judge. Modified and,  
as so modified, affirmed.

Emily L. Brough, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

---

A jury convicted defendant and appellant Ryan Stupnik of second degree robbery, and the trial court sentenced him to 11 years in prison. He appeals. We modify the judgment to correct the custody credit award, and otherwise affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. Facts*

#### *a. People's evidence*

In July 2014, Stupnik resided at Progress House, a sober living facility located on Arlington Street in Torrance. The facility was comprised of two buildings: a front house containing three bedrooms, a common area, and a laundry room, and a two-story back house. Residents at Progress House were free to come and go.

On July 8, 2014, at approximately 2:25 p.m., Stupnik entered Tribu, an Ecuadorian clothing and jewelry store located on Carson Street less than a half-mile from Progress House, and asked to use the restroom. Store employee Sebastian Martinez directed Stupnik to the restroom, which was located in the back of the store behind a curtain. Stupnik was wearing a black shirt and shorts with a camouflage pattern.

Shortly thereafter Stupnik emerged from behind the curtain and pushed Martinez, causing Martinez to fall to the ground and scrape his knee. Stupnik opened the cash drawer, grabbed a money bag, stuffed it under his shirt, and ran from the store. Martinez screamed for help and called 911. He watched Stupnik run across the street and turn onto Cabrillo Street.

Conrado Bartolo Guevarra was driving nearby and observed Stupnik run across the street with something under his shirt, nearly getting hit by a car in the process. Guevarra also saw Martinez outside the store, on the phone, "hysterical."

Guevarra tried to follow Stupnik but lost sight of him when Stupnik turned down an alley. Guevarra turned down another street and then saw Stupnik enter the Progress House property through a side fence. Guevarra returned to the store.

Police officers responded to Martinez's 911 call. A detective observed Stupnik exit Progress House wearing a gray T-shirt and camouflage shorts. Stupnik looked around, went back inside, and reemerged wearing different clothing. Police arrested him. Both Guevarra and Martinez positively identified Stupnik in a field show-up. Martinez also identified Stupnik at trial.

Officers searched Stupnik's bedroom and nearby areas of the house. They found black T-shirts in a duffle bag in Stupnik's bedroom, and a dry pair of shorts with a camouflage pattern in a washing machine in the laundry. A pair of gray shorts and a gray T-shirt were in a trash can nearby. Neither the money bag nor the stolen cash was recovered. Officers did not search the entire property. No fingerprints were found on the store's cash drawer or bathroom door. Stupnik's DNA was not found on money clips recovered at the scene of the crime.

b. *Defense evidence*

Stupnik testified in his own behalf. He denied committing the robbery. He explained that on the date of the robbery he had remained at Progress House the entire day, cooking his breakfast, doing his laundry, making phone calls, and talking to and visiting with his father in front of the facility. He had placed his clean laundry in a duffle bag on his bed. He believed he accidentally left the camouflage shorts in the laundry; he had not worn them that day.

John Cassinelli, the manager of Progress House, testified that he saw Stupnik at the facility on the date of the robbery, and

Stupnik appeared to be there the entire day. Cassinelli could not definitively say that Stupnik was at the property between 2:00 p.m. and 2:45 p.m.

An expert testified for the defense regarding basic principles of DNA analysis. The expert also confirmed that DNA from two individuals, but not Stupnik, was found on the money clips. He would expect that a person who touched the money clips with their bare hands would transfer DNA.

## *2. Procedure*

The jury found Stupnik guilty of second degree robbery (Pen. Code, § 211).<sup>1</sup> Stupnik waived his right to a jury trial on prior conviction allegations and admitted suffering a prior conviction for first degree burglary, which was both a “strike” (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and a serious felony (§ 667, subd. (a)), and serving a prior prison term within the meaning of section 667.5, subdivision (b). The trial court sentenced Stupnik to an aggregate term of 11 years in prison, configured as follows: for the robbery, the midterm of three years (§ 213, subd. (a)(2)), doubled pursuant to the Three Strikes law, plus an additional five years pursuant to section 667, subdivision (a).<sup>2</sup> The court struck the section 667.5, subdivision (b) allegation. It ordered Stupnik to make restitution

---

<sup>1</sup> All further undesignated statutory references are to the Penal Code.

<sup>2</sup> The trial court also heard two probation violation matters along with the charged robbery. Based upon the jury’s verdict, the court found Stupnik in violation of probation in both cases and imposed three-year prison terms in each, to run concurrently with the sentence imposed in the instant case.

to the victim in the amount of \$100, and imposed a restitution fine, a suspended parole revocation fine, a court operations assessment, and a criminal conviction assessment. The court awarded 372 days of actual custody credit and 56 days of conduct credit for a total of 428 days. Stupnik appeals.

### **DISCUSSION**

After review of the record, appellant's court-appointed counsel filed an opening brief that raised no issues, and requested this court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. We advised appellant that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. We have received no response.

Stupnik is entitled to one additional day of actual custody credit. Stupnik was arrested on July 8, 2014 and sentenced on July 16, 2015. Therefore, he is entitled to 373 days of actual custody credit, rather than the 372 days awarded. "A defendant is entitled to actual custody credit for 'all days of custody' in county jail and residential treatment facilities, including partial days. [Citations.] Calculation of custody credit begins on the day of arrest and continues through the day of sentencing." (*People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 48.) This change does not result in any additional presentence conduct credit.

We have examined the entire record and are satisfied no other arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at pp. 441-442.)

### **DISPOSITION**

The judgment is modified to reflect 373 days of actual custody credit, for a total of 429 days of credit. The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting this correction and to forward a copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

ALDRICH, J.

We concur:

EDMON, P. J.

GOSWAMI, J.\*

---

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.