

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GEYWARD R. SABATER,

Defendant and Appellant.

A142667

(Contra Costa County  
Super. Ct. No. 51400118)

Appellant Geyward R. Sabater appeals from the judgment entered after a jury convicted him of three counts of a lewd act upon a child, age 14 or 15, in violation of Penal Code section 288, subdivision (c)(1).<sup>1</sup> Appellant was sentenced to the upper term of three years on count one, and concurrent two-year middle terms on counts two and three, stayed pursuant to section 654. Appellant received 502 days of credit toward his sentence, and was ordered to pay various fines, fees and assessments. Appellant’s counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, requesting that we conduct an independent review of the entire record on appeal. Having done so, we affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

On December 31, 2013, an information was filed charging appellant with the following crimes: lewd act upon a child, age 14 or 15 (§ 288, subd. (c)(1)) (counts one

<sup>1</sup> Unless otherwise stated, all further statutory references herein are to the Penal Code.

through three); sexual penetration of an unconscious person (§ 289, subd. (d)(4)) (count four); and oral copulation of an unconscious person (§ 288a, subd. (f)(4)) (count five). A jury trial began April 16, 2014, at which the following evidence was heard.

Jane Doe was born in early 1999. Doe lived with her mother and appellant, her stepfather. Both appellant and Doe's mother worked as certified nursing assistants caring for older people. Appellant possessed above-average medical knowledge.

Doe had expressed to her mother and appellant an interest in trying alcohol. Her mother was opposed to this idea. However, at least twice, appellant provided Doe alcohol to drink in his presence. One of these times, which occurred the evening of Sunday, October 13, 2013, appellant provided Doe some Smirnoff and beer in her bedroom while her mother was at work.<sup>2</sup> Doe was upset with her boyfriend on this day, and appellant suggested that drinking alcohol would take her mind off of it. He brought Doe, who weighed 108 pounds, the Smirnoff bottle, and she drank most of it in about 10 minutes. He then brought her a cup and small bottle of alcohol, telling her to try a new flavor. Doe drank this alcohol, which was cotton candy flavored and chocolate flavored, all at once. She then drank another bottle the same way, chasing it with soda. Appellant stayed with Doe while she consumed these drinks (in about 30 minutes to an hour), but did not consume any himself.

Doe then fell asleep. She woke up tossing and turning and went to have some soda. At this point, appellant came into her room and helped her into bed. Doe complained that she was dizzy and felt as if the room were spinning. Appellant closed the door, sat next to Doe and took her pulse. Appellant told Doe her pulse was too high, and that he needed to do something to normalize it.<sup>3</sup> Appellant explained that he would have to touch her to normalize her heart rate. Appellant then touched her vagina three times over her underwear, before removing her underwear and touching her vagina again. He then put his finger in and out of her vagina for about five minutes, saying nothing. He

---

<sup>2</sup> Doe had spent the evening watching movies and was getting ready for bed.

<sup>3</sup> After reading her police statement, Doe testified that appellant actually said her pulse was too low.

then got closer and started licking her vagina and clitoris for about five minutes. Doe, scared and confused, stared off into the distance, not watching him. She did not push his hand away, however, she eventually started crying, which prompted appellant to stop. Appellant explained he had to touch her to stabilize her heart rate. Appellant told Doe he would never do it again, and that he would place a lock on her door. He also told her that, if she reported his actions, he would go to jail. Eventually, appellant left Doe's room and she went to sleep.

The next day, Doe pretended to be normal, even attending a family dinner. She told her friend, Karen, what had occurred, and Karen offered to come over. The next day, Doe went to school and told another friend, who advised her to talk to her band teacher. Doe talked to this teacher and, later, to the police. Doe was given a sexual assault exam, and was interviewed by Officer Jason Waite of the Pittsburgh Police Department for about a half hour. Doe told Officer Waite that appellant had explained that he needed to raise her heart rate. Officer Waite asked Doe's mother to tell appellant to come to the police station, which he did.

The defense rested without presenting any evidence. Defense counsel argued that appellant lacked the requisite sexual intent and that Doe was not unconscious.

On April 23, 2014, the jury found appellant guilty of three counts of a lewd act on a child, age 14 or 15, but was unable to reach a decision on counts four and five, sexual penetration of and oral copulation of an unconscious person.<sup>4</sup> The court thereafter sentenced appellant to the upper three-year term on count one, and the concurrent two-year middle terms on counts two and three, stayed pursuant to section 654. The trial court also gave appellant 502 days of credit for time served (251 actual days and 251 conduct credits), and ordered him to pay a \$840 restitution fine, \$840 parole violation fine to be suspended unless parole is revoked, \$120 court security fee, and a \$90 criminal conviction assessment. Appellant was ordered to register as a sex offender pursuant

---

<sup>4</sup> On July 25, 2014, after sentencing, the trial court granted the prosecution's motion to dismiss counts four and five.

section 290 and to submit a DNA sample pursuant to section 296. This timely appeal followed.

### DISCUSSION

As mentioned above, appellant's counsel has filed an opening brief setting forth the material facts, but raising no legal issue for our consideration. Counsel requests that we independently review the record to decide whether there exists any valid issue for appeal. (*People v. Wende, supra*, 25 Cal.3d 436; *People v. Kelly, supra*, 40 Cal.4th 106.) In doing so, counsel attests that appellant was advised of his right to file his own brief with this court. However, this court has received no such brief.

After a careful, independent review of this record, we agree with appellant's counsel that there are no reasonably arguable legal or factual issues for our consideration. Appellant, represented by competent counsel, was found guilty by a jury of three counts of a lewd act on a child, age 14 or 15. (§ 288, subd. (c)(1).) The jury was unable to reach a decision on counts four and five, sexual penetration of an unconscious person and oral copulation of an unconscious person (§ 289, subd. (d)(4); § 288a, subd. (f)(4)), prompting the subsequent dismissal of those counts. The jury's findings on counts one through three were adequately supported by the evidence offered at trial, including the victim's and Officer Waite's testimony.

The trial court thereafter sentenced appellant to the upper three-year term on count one and the concurrent two-year middle terms on counts two and three, which terms were then stayed pursuant to section 654. The trial court provided appellant 502 days of credit, consisting of 251 actual days and 251 conduct credits. (§ 4019.) The trial court also imposed a \$840 restitution fine (§ 1202.4, subd. (b)), \$840 parole violation fine to be suspended unless parole is revoked (§ 1202.45), \$120 court security fee (§ 1465.8), and a \$90 criminal conviction assessment (Gov. Code, § 70373). The sentence, fees, fines, and assessments, which were not challenged by appellant below, were lawful. (§ 288, subd. (c)(1); Cal. Rules of Court, rule 4.421, subds. (a)(3), (a)(8), (a)(11); see also *People v. Valtakis* (2003) 105 Cal.App.4th 1066, 1072 [“defendants . . . cannot complain for the

first time on appeal of restitution fines imposed without findings or evidence of ability to pay”].)

Thus, having ensured appellant received adequate and effective appellate review, we affirm the trial court’s judgment. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Kelly, supra*, 40 Cal.4th at pp. 112-113.)

**DISPOSITION**

The judgment is affirmed.

---

Jenkins, J.

We concur:

---

McGuinness, P. J.

---

Siggins, J.