

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

RAFAEL CORONA,

Defendant and Appellant.

B241959

(Los Angeles County
Super. Ct. No. VA120520)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Michael L. Schuur, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Eric R. Cioffi, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Rafael Corona appeals from the judgment entered following a jury trial which resulted in his conviction of second degree robbery (Pen. Code, § 211).¹ The trial court sentenced Corona to three years in prison, stayed the term and awarded him three years formal probation on the condition, among others, that he serve one year in county jail. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Facts.

At approximately 1:30 a.m. on June 12, 2011, 14-year-old Adriana R., her niece, Natalie, and her friend, Ciara, were sitting on the steps of the Santa Fe Springs Villa Apartments waiting for Adriana R.'s mother's friend to pick them up. The apartment is near the St. Pius Church on South Pioneer Avenue in the City of Santa Fe Springs. As the girls waited, they saw Pearl G., an acquaintance from their school, walking with a bicycle on the other side of the street. As Pearl G. walked toward the church, several young men and one woman, who was driving the vehicle, pulled up in a red car and parked. Three men got out of the car, ran toward Pearl G. and began punching her in the face. They continued to hit her until she dropped to the ground. Then one of the men took Pearl G.'s bicycle and, as he rode off, another man told him to meet them "on Lakeland." At this point, Adriana R.'s friends decided to call the police.

As the other two men walked back toward the red car, the driver, who had remained in the vehicle during the attack, pulled the car up to pick them up. The vehicle was approximately 12 feet from Adriana R. and the other girls. Adriana R. could clearly see the faces of the two men who had beaten Pearl G. as they got back into the car.

A short time later, as police officers were speaking to the young women, Adriana R. saw the red car drive by, headed toward Florence Avenue. She alerted the police officers and told them that she had seen two of the men who had attacked Pearl G. riding inside the car. Although the men were covering their faces, Adriana R. recognized their clothing. Officers followed the car and "pulled [it] over."

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Later that night, a police officer transported Adriana R. to a location on Florence Avenue where she identified the men who had attacked Pearl G. Still later, at a preliminary hearing, Adriana R. identified Corona as one of the men who had attacked Pearl G. She could not, however, identify Corona at trial.

Adriana R. remembered the clothing the two men who had gotten back into the red car had been wearing on the night of June 12, 2011. The area had been well-lit with a street lamp and Adriana R. had been able to see that one man had on a gray, pullover “hoody” and the other man had been wearing a red and white plaid shirt. Both men were Hispanic and appeared to be approximately 17 years old. The man in the gray sweatshirt had short, black hair.

Ciara T. testified that at approximately 1:30 a.m. on June 12, 2011, she was sitting on the steps of an apartment building with her friends, Adriana and Natalie. The apartment building was across the street from St. Pius Church. At the bottom of the stairs was a closed gate covered with fencing. Ciara T. was waiting for her mother to pick her up and, during that time, she saw the sister of one of her friends, Pearl G., walking her bicycle in front of the church. As Ciara T. watched, a car pulled up, three men got out, ran across the street, “jumped” Pearl G., and took her bicycle. The three men “socked” Pearl G. with their “fists” and, after fighting with her for three or four minutes, one of the men took Pearl G.’s bicycle and rode off while the other two men ran back to the car. When the two men got into the car, it was parked approximately 10 feet from where Ciara T. was sitting. Ciara T. noted that one of the attackers who got into the car was wearing a red plaid long sleeve shirt and a red hat. The man who rode away on Pearl G.’s bicycle was “kind of chunky” and had been wearing a gray hooded sweatshirt and blue jeans.

Later that evening, a police officer transported Ciara T. in his patrol car to the area where the men who had allegedly attacked Pearl G. were being held. There, Ciara T. identified two of the attackers. She was, however, unable to identify Corona as one of the three attackers at trial. She attributed her inability to identify him to the amount of

time which had passed since the incident. It had been approximately one year since Ciara T. had seen the three men attack Pearl G.

Pearl G. was 15 years old when she was attacked on June 12, 2011. At approximately 1:30 a.m., she had been walking her bicycle down Pioneer Boulevard in Santa Fe Springs. As she walked past St. Pius Church, Pearl G. was approached by “three guys.” The men had gotten out of a red car which had parked across the street. When they reached Pearl G., the men, who were all Hispanic and between the ages of 16 and 18, “beat [her] up for [her] bike.”

The first man who approached Pearl G. told her to give him her bike. When she refused, he tried to take it and his two cohorts began pushing and punching her. As she hung onto her bicycle, the men knocked Pearl G. to the ground, “punched [her] in [the] nose” and “kicked [her].” Although she was “scared,” Pearl G. continued to hang onto her bike. She “struggle[d]” with the three men for more than a minute. However, at that point one of the men was able to take her bicycle from her and the three men walked away. Together, the three men walked toward nearby Lakeland Park on Pioneer Street. When the man who had taken her bicycle then rode off, the other two men ran back to the red car and got inside.

Pearl G. remembered that the first man to approach her had been wearing a red plaid shirt and had a slight build. Another one of the three men had been wearing a gray hooded sweatshirt and blue jeans, had short, black hair and a medium build. Pearl G. could not remember what the third man had been wearing.

As soon as the three men left the area, several young women Pearl G. knew from her school came from across the street to help her. Police officers then arrived and one of them drove her to the site where two of the three men who had attacked her were being held.

As a result of this attack, Pearl G. was in pain for approximately one month. When the men had punched her in the nose, it had caused her nose to bleed. They had also kicked her in the shoulder and she suffered from pain there for some time.

At approximately 1:46 a.m. on June 12, 2011, Whittier Police Corporal Gonzalo Ponce was “dispatched to the area of Pioneer Boulevard in front of the St. Pius church.” There, he met two other officers, Balzano and Draper, and observed “a female victim, who was bleeding from the nose[.]” Three other females were at the scene “assisting the victim and . . . [they indicated] that they [had] observed what had happened.” While Ponce was investigating the incident, the victim, Pearl G., pointed to a passing vehicle, a “red Toyota compact SUV,” and told the officer that that was the car which had stopped and, although the men inside were covering their faces, she could see that they were the men who had attacked her.

Corporal Ponce, along with Officers Balzano and Draper, got into their vehicles and pursued the red Toyota as it was being driven north on Pioneer. Followed by the patrol cars, the Toyota made a left-hand turn onto Florence. Shortly thereafter, the officers were able to stop the Toyota. There were only two occupants in the car and one of them was Corona. Ponce and the other officers “extracted” Corona and the second man, the driver, from the Toyota and detained them. At that time, Corona was wearing a gray hooded sweatshirt and blue jeans.

The officers transported the victim, Pearl G., and the three witnesses, Adriana R., Ciara T. and Natalie G., to the location where Corona and his companion were being held to conduct “field show-up[s].” After admonishing the young women and making certain they understood they did not have to make an identification, Adriana R. identified Corona and indicated that she was “100 percent certain” that he had been involved in the incident. As to the second man, Adriana R. indicated that, although she could not be 100 percent certain, he was wearing clothing which was “very similar” to that of one of the other attackers. Ciara T. then identified both men as “attackers.”

Approximately three hours later, Ponce interviewed Corona in an interview room at the Whittier Police Station. After Ponce read to Corona his *Miranda*² rights, Corona agreed to waive those rights and to speak with the officer. Corona indicated that on the

² *Miranda v. Arizona* (1966) 384 U.S. 436.

night of the attack on Pearl G. he had been at a friend's home watching movies from approximately 10:00 p.m. to 1:00 a.m. At 1:00 a.m., Corona's girlfriend had "called him via text" and asked him to pick her up in Rosemead. As Corona's friend was driving him to Rosemead, the two were stopped by Corporal Ponce and Officers Draper and Balzano. When Ponce asked Corona if he had been involved in a robbery that evening, Corona indicated that he had not and that "it was all a mistake." Corona stated that he "had no involvement in what [the officer] was . . . investigating."

Approximately one and a half to two hours later, Corona indicated that he wished to speak with Ponce again. While in a holding cell at the jail, Corona told Ponce that "he was a bit scared, but wanted to talk to [the officer] again because he . . . wasn't truthful [with Ponce] in the beginning." At that point he just "wanted to come clean and tell [Ponce] what the truth was."

Ponce removed Corona from the holding cell and took him back to an interview room where he indicated that he had been afraid to tell Ponce what had happened because the individuals involved "might hurt him." According to Ponce, Corona "was fearing some retaliation . . . if he was to rat somebody out." Corona then explained that "he was actually there at the . . . incident" but had not been involved. His friend had picked up three other men from a party in West Covina that night. Corona was sitting in the very back seat of the car and the three men they had picked up from the party were sitting on the middle bench seat. As they were driving, the three men had seen Pearl G. walking on Pioneer Boulevard with her bicycle. After one of the men said, "[H]ey, there is one of those fixie bikes I want," the driver pulled over to the curb. The three men got out of the car, ran toward Pearl G. and "assault[ed]" her. "[U]ltimately . . . one of [the men] took the bicycle and began [to ride] away. . . . [T]he two other [men] ran back [to] the car [and] got in." The driver then drove off to look for the man who had ridden away on the bicycle.

Corona described the man who took the bicycle as "a male Hispanic about 18 [years old], dark skinned [and] wearing a black hooded sweatshirt. The other two [individuals involved] were also males. One was kind of a lighter skinned 16 to 17 year[]

old. . . . [¶] . . . [¶] [Corona said] [t]he light skinned suspect . . . was wearing . . . a red hooded sweatshirt [and] dark pants. The heavier set Hispanic suspect was wearing a black shirt [and] khaki pants.”

Although Corona never did so, Ponce asked him if he would be willing to take a lie detector test. Corona indicated that he would.

City of Whittier Detective Robert Wolfe was “the detective assigned to the investigation of this case.” He was present at Corona’s preliminary hearing which had been held on October 26, 2011. There, Adriana R. had testified that Corona was one of the men who had attacked Pearl G. She stated that “she saw the defendant, Rafael Corona, punch the victim, Pearl [G.,]” then “fle[e] the scene and [get] back into [the] red vehicle.”

2. Defense Evidence.

At approximately 8:00 p.m. on June 12, 2011, 18-year-old Juan Bautista, who was wearing a solid color, short sleeved button-up shirt, was picked up by a friend, Noe Mojica. There were a couple of other people in the car, a red Toyota sport utility vehicle (SUV), including a woman named Brianna who was dating Mojica. The group was going to a party in West Covina and they arrived at approximately 9:00 p.m. When the group left the party at approximately midnight, Bautista and two other men were sitting in the middle seat of the red SUV. Corona, with whom Bautista had become acquainted only that evening, was seated in the front passenger seat. While going home, at some point the driver drove through Santa Fe Springs near the intersection of Florence Avenue and Pioneer Boulevard. There, Bautista and the others saw a young woman walking with a bicycle. The driver stopped the car and Bautista, accompanied by two other men, neither one of whom was Corona, got out of the car and approached her. Bautista grabbed the bicycle and, after a struggle during which the two other men hit and kicked the young woman, Bautista was able to take the bicycle away from her. As he rode the bicycle to his home, the two other men ran back toward the car. Bautista assumed that they got back inside before the car drove off. As he rode away on the bicycle, Bautista did not tell the others to meet him “on Lakeland.”

Bautista was ultimately arrested for the robbery of the bicycle from Pearl G. After being interviewed by police officers, including Detective Wolfe, Bautista admitted having committed the robbery and he showed the officers the yellow bicycle which he had ridden to his house. Bautista did not, however, tell the detective the identities of the two individuals who had assisted him during the robbery. Among other things, he told the detective he did not “want to be a rat.” However, at trial Bautista indicated that both of the other men were probably 16 or 17 years old, were approximately 5 feet 7 inches tall, were Hispanic and had black hair.

Corona testified that, at approximately 8:00 p.m. on June 12, 2011, he was at his friend George Lopez’s home. From there, he was picked up by his friend Sergio, who was accompanied by two other men and the four men drove to a party in West Covina.

Shortly after he had arrived at the party, police officers “showed up to break [it up].” Corona’s friend Sergio and his two friends “got scared” and they left the party without Corona. Corona knew very few people at the party, but after a while he found his friend Noe Mojica. When Mojica offered Corona a ride home, Corona accepted. Mojica was in an SUV with three rows of seats. Besides Corona and Mojica, a woman named Brianna Barraza, a man named Juan Bautista, and three other men were in the car. The three men were all Hispanic and approximately 17 or 18 years old. Corona had not met any of them before that night.

As they started to drive home, Corona was seated in the very back row, on the passenger’s side. In order to get out of the vehicle, he had to put the seat in front of him down to reach the door. Of the four men seated in the middle row, Corona was familiar with only two of them, Noe Mojica and Juan Bautista.

At some point during the ride home, the red Toyota passed through the area near the intersection of Pioneer Boulevard and Santa Fe Avenue in Santa Fe Springs. When one of the men in the middle row saw a young woman with a bicycle, the driver stopped the car and Bautista got out. The driver pulled away and “the people inside the car [began to argue about] whether they [should] leave [Bautista] or not.” The driver decided that he was going to go back and, when he stopped for a red light at the intersection of

Santa Fe and Pioneer, “two other guys” got out of the car. They ran back, joined Bautista, and the three men approached the young woman walking with her bicycle. After Corona saw the three men hit the woman, then take her bicycle, the driver of the SUV turned onto Pioneer and stopped. Two of the men ran to the car while Bautista rode off on the bicycle.

During the entire incident Corona remained seated in the third row of the SUV. He had not known that the robbery was going to occur and had not participated in it.

On the night of the robbery, Corona had been wearing a gray “hoody” and light gray denim pants. He could not remember what the two men who assisted Bautista in the taking of the young woman’s bicycle were wearing, except that they each had on a button-down shirt and sweatshirt and the fabric of one man’s shirt was a red plaid. Both men were taller than Corona, who is 5 feet 5 inches tall. One of the men was “stocky” and the other man was “skinny.” The stocky man was wearing a sweatshirt with a hood.

After the two men got back into the SUV, the driver drove to Whittier, where he dropped off Brianna Barraza. The driver then drove to Mayberry Park, which is on a street in South Whittier called Lakeland. There, the driver and the two men who had helped Bautista rob the victim got out of the vehicle. Noe Mojica got into the driver’s seat, continued to drive down Lakeland, then drove toward Norwalk where Corona’s girlfriend, Jasmine Gonzales, was at a party. In order to get to Norwalk, Mojica drove back through the area where Bautista had taken the young woman’s bicycle. There, they were “pulled over” by police officers.

After Mojica and Corona had been detained for some time, they were made to stand in the middle of the street while two patrol cars pulled up and shined bright lights on them. Corona was ultimately taken to jail where he gave two statements to Corporal Ponce. Corona indicated that, during his first statement, he had not told the truth about where he had been that evening. Corona had told the officer that he had been at a friend’s house watching movies. When he gave his second statement, Corona truthfully told Ponce that, although he had been at the scene of the robbery, he had not been involved.

Noe Mojica's girlfriend, Brianna Barraza, testified that, although she could not remember exactly when, she had met Corona before the night of June 12, 2011. At approximately 8:00 p.m. that night, she was at a party in West Covina with Mojica, Corona and several other friends. Although she did not know how Corona had gotten to the party, she and the other individuals that she knew had been driven there by Mojica in his mother's red Toyota SUV. She and several other friends, including Mojica, Corona and Bautista, left the party at about midnight. An individual named Ramiro Ramirez was driving and he was supposed to drop Barraza off at her home in Whittier. At that time, Barraza was seated in the very back seat of the SUV. Corona was seated in the front passenger seat.

Ramirez drove through the area near Florence Avenue and Pioneer Boulevard in the City of Santa Fe Springs. As he was stopped at a red light, three of the men, including Bautista, got out of the SUV and ran toward a young woman with a bicycle. Ramirez turned around and drove toward the place where the three men were attacking the woman. The men kicked and hit the woman until Bautista got a hold of the bicycle. When Ramirez then pulled up, two of the men got back into the car while Bautista rode away on the bike. As Ramirez pulled away in the SUV, Barraza was "shocked" and "ashamed" that she had been "there when that happened." She did not, however, call the police and after a short ride Ramirez, who was still driving the SUV, dropped her off at her home.

2. Procedural history.

Following a preliminary hearing, an information was filed on November 9, 2011 in which Corona was charged with second degree robbery in violation of section 211, a serious and violent felony (§ 1170, subd. (h)(3)). Corona entered a plea of not guilty to the crime and, following numerous continuances, a jury trial began on May 22, 2012.

After both the People and Corona presented evidence, the jury was instructed and counsel for both the prosecution and the defense argued. The matter was submitted to the jury on May 25, 2012. Later that same day, the foreperson indicated that the jury had reached a verdict. It found Corona "guilty of second degree robbery, in violation of . . .

section 211, a felony as charged in . . . the information.” The jurors were polled and each juror indicated that he or she had concluded that Corona was guilty.

Sentencing was held on June 1, 2012. The trial court indicated that it had read the probation officer’s report and the sentencing memorandum submitted by defense counsel. The prosecutor then argued that, given the severity of the crime, he believed it was “worthy of state prison.”

After indicating that Corona had no prior criminal record, the trial court sentenced him to the midterm of three years in state prison, stayed the term and granted him three years formal probation, one condition of which was that he serve “one year in the county jail.” The court awarded Corona presentence custody credit for nine days actually served and one day of good time/work time, for a total of ten days. The court then ordered Corona to pay a \$240 restitution fine (§ 1202.4, subd. (b)), a stayed \$240 probation revocation restitution fine (§ 1202.44), a \$40 court operations assessment (§ 1465.8, subd. (a)(1)), a \$30 criminal conviction assessment (Gov. Code, § 70373), a \$38 crime prevention fine (§ 1202.5), and the costs of probation services (§ 1203.1b).

Corona filed a timely notice of appeal on June 11, 2012.

CONTENTIONS

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed December 11, 2012, the clerk of this court advised Corona to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.