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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RAMIRO RIVERA ARELLANO,

Defendant and Appellant.

B244549

(Los Angeles County  
Super. Ct. No. VA123510)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Robert J. Higa, Judge. Affirmed.

Tracy A. Rogers, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

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Defendant Ramiro Rivera Arellano appeals from his conviction of second degree robbery. Following our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441 (*Wende*), we affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

In the early morning hours of January 2, 2012, Carlos Portillo walked out of the side door of the Lido Nightclub on Long Beach Boulevard in South Gate and was accosted by a man who held a gun to his head, then grabbed the thick gold chain from Portillo's neck and ran away. Miguel Mota did not see the robbery, but saw a man holding a gun running from the scene. When Mota saw defendant at the Lido a few weeks later, he flagged down a police officer and told him that defendant was the armed man Mota had seen running away on January 2.

Defendant was charged by information with second degree robbery; a firearm use enhancement was also alleged (Pen. Code, § 12022.53. subd. (b).)<sup>1</sup>

Portillo and Mota testified at defendant's jury trial. Although Portillo identified defendant as his assailant at trial, he admitted being unable identify defendant from a photographic lineup shown to him by detectives on January 25. Mota identified defendant as the armed man he saw running from the same photographic lineup and at trial. The police tape recorded an interview with defendant in Spanish; an English translation of the interview, in which defendant admits committing the robbery, was read to the jury. A recording of the robbery taken by the Lido's surveillance cameras was played for the jury.

A defense witness testified that when she reviewed the surveillance video in late February or early March 2012, she noticed that the person in the video tape had a protruding belly, which defendant did not. Defendant's girl friend, Lorena Davila, testified that she was with defendant at the Lido the night Portillo was robbed. Davila had never seen defendant with a gun and he did not have one that night. When Davila

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

and defendant left the Lido at about 1:45 a.m., defendant did not wait in front of the Lido while Davila walked alone to the Lido parking lot and then circled the club in her black SUV (as Mota testified he observed); rather, they walked together to the Lido parking lot and defendant drove them home in Davila's SUV. Davila had reviewed the recording taken by the Lido surveillance cameras and the person seen robbing Portillo in the recording was not defendant.

After the jury found defendant guilty of robbery and found true the firearm enhancement, defendant was sentenced to a total of 12 years in prison comprised of the two year low term for robbery, plus a consecutive 10 years for the section 12022.53, subdivision (b) gun use enhancement. He was ordered to make restitution to Portillo of \$5,000, based on Portillo's testimony that the stolen necklace had a value of that amount. Defendant timely appealed.

We appointed counsel to represent the defendant on appeal. After examination of the record, appointed counsel filed an opening brief which contained an acknowledgment that she had been unable to find any arguable issues and requested that we independently review the record pursuant to *Wende, supra*, 25 Cal.3d 436. We advised defendant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider.

Defendant timely filed a document captioned: "Personal Arguments And Appeal Contentions," in which he set forth the following contentions: (1) he received ineffective assistance of counsel; (2) the judgment was not supported by substantial evidence; (3) there was juror misconduct; and (4) there was sentencing error. Regarding effective assistance of counsel, defendant argues his attorney did not inform him of unspecified important issues, was not prepared to start trial, and did not look into unspecified exculpatory aspects of the case. The record does not support these arguments and they may be more appropriately addressed in a petition for habeas corpus. Regarding the sufficiency of the evidence, defendant argues Portillo identified someone other than defendant as his assailant from the photographic lineup and no weapon was ever found. Regarding juror misconduct, defendant argues that jurors were sleeping during the trial.

Finally, notwithstanding that the trial court imposed the low term, defendant argues it did not consider certain mitigating factors in imposing sentence.

We have examined the entire record and are satisfied that appointed counsel has fully complied with her responsibilities and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d at p. 441.)

### **DISPOSITION**

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.