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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND GABRIEL REYES,

Defendant and Appellant.

F062173

(Super. Ct. No. BF134579A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. William D. Palmer, Judge.

Eloy I. Trujillo, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Dawson, J., and Poochigian, J.

Appellant, Raymond Gabriel Reyes, was convicted by a jury of carjacking (Pen. Code, § 215, subd. (a))¹ and resisting arrest by means of force or violence (§ 69) and was sentenced to a three-year term. Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On October 30, 2010, at approximately 2:45 a.m., Reyes parked his car by a grocery store parking lot in Bakersfield and got out to talk to some people. Meanwhile someone got into his car and drove off.

Sergio Guerrero was sitting in his sport utility vehicle (SUV) in the parking lot of the grocery store when Reyes ran toward him and asked to use Guerrero's cell phone. Reyes then opened the door, pulled Guerrero out of the SUV, and threw him on the ground. Reyes got in the SUV and drove off, striking a fence and pole as he fled and causing extensive damage to Guerrero's SUV.

Bakersfield Police Officer Edmond Jackson and his partner Brandon Shankle were dispatched to the grocery store in response to the carjacking. After seeing the stolen SUV travelling in the opposite direction, they made a U-turn and followed it. The officers followed Reyes to an alley where Reyes stopped and got out of the SUV. Reyes then ran into a backyard despite the officers yelling out to him several times identifying themselves as police officers and ordering him to stop.

The officers pursued Reyes. When they got close to him, Reyes turned toward them and assumed a fighting stance. Reyes disobeyed Officer Jackson's command to get down, prompting Jackson to strike Reyes twice on the legs with a baton. After Reyes swung at Jackson and missed, Officer Shankle punched Reyes in the face, causing him to fall. Reyes then began kicking at Officer Jackson and flailing his arms in an attempt to

¹ All further statutory references are to the Penal Code.

get up. Jackson hit Reyes twice on the shoulder area with the baton, but Reyes continued to kick and resist. Eventually, the officers were able to subdue Reyes and handcuff him, but not before Reyes grabbed Officer Shankle's arm and dug his fingernails into the officer's forearm.

The officers took Reyes to a hospital to get him medically cleared. As they were walking Reyes out of the hospital back to the patrol car, Reyes asked to call his aunt. Officer Jackson used his personal cell phone to call Reyes's aunt and activated the speaker phone. A woman on the line asked Reyes what he had done and Reyes replied that he had stolen a car. When the woman asked him why, Reyes replied that he was mad because someone had stolen his car.

On December 23, 2010, the district attorney filed an information charging Reyes with the two counts of which he was convicted.

On February 16, 2011, the evidentiary portion of Reyes's trial began.

On February 17, 2011, the jury found Reyes guilty on both counts.

On March 18, 2011, the court sentenced Reyes to the mitigated term of three years on his carjacking conviction and a concurrent two-year term with all but eight months stayed on his resisting arrest with force conviction.

Reyes's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) Reyes has not responded to this court's invitation to submit additional briefing.

However, our review of the record disclosed that the court erred in determining the length of Reyes's concurrent sentence on count two as one-third of the middle term of two years. "Because concurrent terms are not part of the principal and subordinate term computation under section 1170.1, subdivision (a), they are imposed at the full base term, not according to the one-third middle term formula" (*People v. Quintero* (2006) 135

Cal.App.4th 1152, 1156, fn. 3.) Reyes's sentence for count two was therefore unauthorized by law and is "reviewable 'regardless of whether an objection or argument was raised in the trial and/or reviewing court.'" (*In re Sheena K.* (2007) 40 Cal.4th 875, 887, quoting *People v. Welch* (1993) 5 Cal.4th 228, 235.) Accordingly, we will modify the term imposed on count two to a concurrent, middle term of two years.

Further, following an independent review of the record we find that, with the exception of the sentencing issue discussed above, no other reasonably arguable factual or legal issues exist.

DISPOSITION

The concurrent eight-month term imposed on count two is modified to a concurrent two-year term. The trial court is directed to prepare an amended abstract of judgment that is consistent with this opinion and to forward a certified copy to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.