

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN ALAN GRAVES,

Defendant and Appellant.

F062393

(Super. Ct. No. VCF245746)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Gerald F. Sevier, Judge.

James H. Dippery, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

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

-ooOoo-

---

\* Before Kane, Acting P.J., Poochigian, J., and Detjen, J.

Appellant, Ryan Alan Graves, appeals from a judgment entered after he pled no contest to possession of an injection device (Health & Saf. Code, § 11364, subd. (a)), a jury convicted him of carrying a concealed dirk or dagger (former Pen. Code, § 12020, subd. (a)(4)),<sup>1</sup> a felony, and the court found true three prior prison term enhancements (§ 667.5, subd. (b)). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441, we affirm.

### **PROCEDURAL AND FACTUAL BACKGROUND**

Katelyn Herron worked as shift manager for a Sonic restaurant in Visalia. On December 7, 2010, at around 9:00 p.m., she went to use the woman's restroom located outside the restaurant and found it unlocked. When she pulled the door open, Herron saw Graves standing next to some clothes on the ground, unclothed from his thighs down. Herron ran back into the restaurant and called police.

Approximately 20 minutes later, Herron went back to the bathroom to make sure all the doors were locked because it was almost closing time. When she opened the door to the woman's restroom, she saw Graves facing the door with his pants pulled down, holding his penis in his hand. Herron went back into the restaurant and called the police to report that the man was still there.

Visalia Police Officer A. Aguallo and another officer responded to the restaurant and contacted Graves in the restroom. Officer Aguallo then patsearched Graves and felt a blunt, hard object on the right side of Graves's jacket. He reached in the pocket and pulled out a pocketknife that had electrical tape wrapped around the handle that prevented the blade from closing. During a search of Graves, incident to his arrest, the officers found a hypodermic needle and a spoon with burn marks on it.

---

<sup>1</sup> Unless otherwise indicated all further statutory references are to the Penal Code. Additionally, effective January 1, 2012, section 12020 subdivision (a)(4) was recodified as section 21310. (Stats. 2010, ch. 711, § 4, p. 4036.)

On December 23, 2010, the district attorney filed an information charging Graves with possession of a concealed dirk or dagger (count 1), loitering near a restroom for the purpose of engaging in lewd or lascivious conduct (count 2/§ 647, subd. (d)), indecent exposure (count 3/§ 314, subd. 1), and possession of an injection device (count 4). The information also alleged three prior prison term enhancements.

On January 27, 2011, defense counsel filed a motion to dismiss counts 1 and 3.

On February 10, 2011, the court denied the motion.

On February 15, 2011, the district attorney dismissed count 2.

On February 22, 2011, prior to the taking of testimony, Graves pled no contest to possession of an injection device. Later that day, the jury convicted Graves of possessing a concealed dirk or dagger and acquitted him of indecent exposure.

On April 13, 2011, the court sentenced Graves to an aggregate term of two years four months, the mitigated term of 16 months on his possession of a concealed dirk or dagger conviction and a one year prior prison term enhancement. The court also dismissed the possession of an injection device charge and an unrelated misdemeanor and it purported to stay execution of sentence on the two remaining prior prison term enhancements.<sup>2</sup>

On August 24, 2011, the trial court issued an order striking the two prior prison term enhancements for which it had previously suspended execution of sentence.

Graves'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.) Graves has not responded to this court's invitation to submit additional briefing.

---

<sup>2</sup> “[T]he imposition of an additional term under section 667.5 is mandatory unless the additional term is stricken. (*People v. White Eagle* (1996) 48 Cal.App.4th 1511, 1521.)

Following an independent review of the record we find that no reasonably arguable factual or legal issues exist.

**DISPOSITION**

The judgment is affirmed.