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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RAUL RAMFERE BUSTOS,

Defendant and Appellant.

G050875

(Super. Ct. No. 12WF3254)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Thomas A. Glazier, Judge. Affirmed.

Jessica C. Butterick and Howard C. Cohen, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

\* \* \*

We appointed counsel to represent defendant on appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against the client, but advised the court no issues were found to argue on defendant's behalf. Defendant was given 30 days to file written argument in defendant's own behalf. That period has passed, and we have received no communication from defendant.

A jury found defendant guilty of a felony violation of Vehicle Code section 23152, subdivisions (a) and (b), driving under the influence of alcohol and driving with a blood-alcohol level of .08 percent or more with a prior felony conviction of driving under the influence within 10 years. (Unless otherwise indicated, all statutory references are to the Vehicle Code.) In the portion of the bifurcated trial before the court, the court found defendant guilty of violating section 14601.5, driving on a suspended license, a misdemeanor. The court further found defendant guilty of violating section 14601.2, subdivision (a), driving on a suspended license with a prior, also a misdemeanor. The court sentenced defendant to five years in state prison.

Before the jury, Brian Hatfield, a police officer for the City of Garden Grove, testified that at approximately 1:00 a.m. on September 27, 2012, he heard the loud revving of an engine coming from the northwest corner of Haster and Lampson. He looked toward the noise and observed a white Ford F-150 pickup truck pull out from the driveway of a shopping center, and make a left hand turn over two solid yellow lines "that are to prevent vehicles from making a left-hand turn on to Haster Street." Hatfield followed the vehicle. He observed the vehicle drifting and crossing over the white lane divider lines. He said, "it was speeding up and slowing down." Hatfield activated the patrol car's emergency lights and stopped the vehicle.

The officer observed defendant displayed symptoms of alcohol intoxication. His eyes were red and watery, and appeared to be sleepy. There was strong odor of alcohol on his breath and within the cab of the vehicle. His speech was slow and he slurred several words. Defendant told the officer he had been drinking Bud Light

beer, and that he consumed four 12-ounce cans. As defendant exited his pickup, he used the vehicle's door to steady himself. Defendant's clothing was disarranged, there was a wet stain on his pants in the crotch area which appeared to indicate he had urinated in his pants. Defendant's eyes had a "jerking motion [that was] taking place with an onset prior to approximately 45 degrees." The officer explained that when eyes are tracking a stimulus that is extended past the shoulder line, or about 45 degrees, if there is a jerking motion prior to that point, "it indicates that there is a possible impairment over the legal limit." Hatfield further testified that defendant's performance in a field sobriety test also indicated possible impairment.

Hatfield explained the difference between a breath test and a blood test to defendant, and defendant opted for a blood test. A forensic scientist later testified the alcohol in defendant's blood was measured at .22 percent.

We have examined the record and found no arguable issue. (*People v. Wende* (1979) 25 Cal.3d 436.) The judgment is affirmed.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.