

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN KEITH ORR,

Defendant and Appellant.

H039279

(Santa Clara County

Super. Ct. Nos. C1073752, C1074526)

Defendant Brian Keith Orr appeals from a judgment of conviction after he pleaded no contest to two counts of second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c) – counts 1 & 3)¹, two counts of false imprisonment (§§ 236, 237 – counts 4 & 5), and one count of resisting arrest (§ 148, subd. (a)(1) – count 2) in case No. C1073752. Defendant also pleaded no contest to eight counts of second degree robbery (§§ 211, 212.5, subd. (c) – counts 1, 3, 4, 6, 7, 8, 9, & 12) and three counts of false imprisonment (§§ 236, 237 – counts 2, 10, & 11) in case No. C1074526. The trial court denied defendant’s *Marsden* motion² and his motion to withdraw his plea. Pursuant to the negotiated agreement, the trial court sentenced defendant to eight years in state prison. Defendant filed a timely notice of appeal and obtained a certificate of probable cause.

¹ All further statutory references are to the Penal Code.

² *People v. Marsden* (1970) 2 Cal.3d 118.

I. Statement of Facts

A. Case No. C1073752

Counts 3, 4, and 5

At approximately 11:00 p.m. on January 7, 2010, Milpitas Police Detective Steven Fox responded to a Burger King in Milpitas. Martin Parra told Fox that he had been counting money in the office with Enrique Victorio when he heard a commotion in the kitchen. He then saw a man holding a small silver gun to the neck of Abraham Munoz. The man brought Munoz to the office, pointed the gun at Parra, ordered Parra to give him money on the counter, and ordered Munoz and Victorio to lie down on the floor. After Parra gave the robber approximately \$1,800, he asked for the money in the safe. However, the suspect fled when a customer arrived.

According to Parra, the robber was wearing a blond wig, a tan nylon over his face, kitchen gloves, and a black jacket. The surveillance video at the Burger King reflected that the robber wore a black jacket with a "Sean John" label and that his blond wig appeared to have braids woven into it.

Counts 1 and 2

At approximately 1:00 p.m. on April 12, 2010, William Vriend was working at Check 'n Go in Campbell. A man, wearing a black bandanna and sunglasses, entered the store, told Vriend that he had a Taser, and asked for the cash drawer, the safe, and the videotape. Vriend opened the cash drawer and gave the robber about \$600, punched the code for the safe, and told the robber that there would be a 10-minute delay. After 10 minutes, Vriend opened the safe and gave the robber about \$1,100 to \$1,200. During the robbery, the robber appeared to be speaking to someone through a wireless device. The robber was wearing a blue, black, and white jacket, and black gloves.

Campbell Police Officer Mark Cutler received a dispatch at approximately 1:10 p.m. regarding an alarm at Check 'n Go. He went to the location and saw the robber, later identified as defendant, leaving. Cutler ordered defendant to stop at

gunpoint, but he ran away. When defendant was eventually arrested, he had \$1,695 in cash and a silver cap gun. Police officers later found a pair of yellow kitchen gloves and a pair of women's nylon stockings.

Pursuant to a warrant, officers searched defendant's vehicle and found a braided blond wig, two or three pairs of women's knee-high nylon stockings, two "Sean John" brand jackets, a purple paisley-print gown, and "pink material." One of the nylon stockings could function as a head covering because it had holes for a person's eyes. Officers also searched defendant's house pursuant to a warrant and found a black wig, two Bluetooth devices, and yellow kitchen gloves.

B. Case No. C1074526

Counts 1 and 2

At approximately 12:40 p.m. on July 11, 2009, Brandon Vasselin was working at the Check 'n Go in San Jose when a man entered the store. The man was wearing a straw hat, a net covering his face, tan gardening gloves, and a colorful gown. When the robber told him to unlock the safe, Vasselin told him that it was a 10-minute safe. The robber spoke to someone on what Vasselin believed was a Bluetooth. The robber took approximately \$800 from the register and told Vasselin and Reynaldo Sencio to lie on the floor.

Count 3

On July 18, 2009, San Jose Police Officer Anthony Baza went to Clyde's Liquor Store and spoke to Satish Maraboina, who told him that the store had just been robbed. The robber entered the store, grabbed Maraboina's shoulder and said, "[G]ive me the money. Give me the money." Maraboina believed that the robber was holding a weapon that was covered by a towel. The robber told him to fill a black plastic bag with money, which he did. The owner of the store estimated that the robber took \$21,000. Maraboina

stated that the robber was wearing a white mesh facemask, a wide-brim khaki-colored hat, a pink floral dress with long sleeves, and white gloves.

Count 4

On September 23, 2009, Helen Resendez was working at Recycle Fibers in San Jose. At about 6:10 a.m., she was in the process of opening the safe, when someone knocked on the back door. She opened the door and a person, who was wearing floral nurses' scrubs, a blond wig, yellow gloves, and a hat, entered. After Resendez screamed, he told her to stop and asked her where the money was. The next thing that she remembered was opening the back door and yelling. She had a bump on her head and no strength in her legs. After the robbery, two bags that contained approximately \$10,200 were missing from the business.

Police officers later recovered a white kitchen glove and a black beanie on the premises. The surveillance video showed the robber's exit from the business and the glove was found in that area. Defendant was a possible major contributor to the DNA mixture found on the glove.

Count 6

At approximately 8:25 p.m. on November 23, 2009, San Jose Police Officer Brian Jett was dispatched to the Smoke 'n Cash in San Jose. Claude Eid told Jett that he had been robbed at gunpoint. The robber was wearing a gray hood over a black shaggy wig, a black nylon over his face, a white scarf over his mouth, a blue and black jacket, and yellow gloves. After the robber demanded money, Eid led him into the check cashing area. The robber demanded Eid lie on the ground, and the robber put over \$15,000 into a bag. The robber appeared to be talking to someone on a Bluetooth device.

Count 7

At approximately 5:45 p.m. on December 30, 2009, Coriolana Devine was working at Check 'n Go in San Jose. She was preparing to close the business and count the cash drawer when a man entered. His face was covered with gauze and he was

wearing yellow gloves and a hood. After the robber demanded money, Devine opened the drawers, and he took it.

Count 8

At approximately 6:30 a.m. on March 16, 2010, Erika Aquino was working at Carl's Jr. in San Jose. A man, who was completely covered by a red shawl, entered. He also had a red scarf covering his face and was holding a silver gun. He demanded money and Aquino gave him about \$50. During the robbery the man was talking to someone through something over his ear.

Counts 9-11

At approximately 7:00 a.m. on March 16, 2010, San Jose Police Officer Cliff Jepson was dispatched to Jack in the Box in San Jose. He spoke with Vera Clemente who reported a robbery. The robber had a black and gray semiautomatic pistol and was wearing a black baseball cap under a pink scarf over his head, yellow kitchen gloves, a black jacket, and a blue bandanna around the lower half of his face. After the robber took the money from the registers, he ordered Clemente, Angelica Lopez, and Jose Jovel to accompany him upstairs where he demanded that Clemente open the safe for him. Clemente entered the code and told the robber it would take 10 minutes to open. The robber became angry and left. A surveillance video showed that the robber was wearing a black jacket with a "Sean John" logo.

Count 12

At approximately 10:45 p.m. on March 25, 2010, Maria Lopez was working at Taco Bell in San Jose when a man, who holding a silver gun, entered. He was wearing a black jacket, orange pajamas, a black bonnet, yellow gloves, and a handkerchief covering his mouth. The robber told Lopez to put the money from the register in his bag, and she gave him less than \$200. The surveillance video showed that the robber wore a jacket with a "Sean John" logo.

II. Discussion

Appointed appellate counsel has filed an opening brief which states the case and the facts but raises no issues. Defendant was notified of his right to submit written argument on his own behalf but has failed to avail himself of the opportunity. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal.

III. Disposition

The judgment is affirmed

Mihara, J.

WE CONCUR:

Premo, Acting P. J.

Grover, J.