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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD DEVONN WEBB,

Defendant and Appellant.

B239549

(Los Angeles County
Super. Ct. No. NA084058)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joan Comparet-Cassani, Judge. Affirmed as modified.

Matthew Alger, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Seth P. McCutcheon, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant Richard Devonn Webb on one count of discharging a firearm at an inhabited dwelling (Pen. Code, § 246), two counts of child abuse (*id.*, § 273a, subd. (a)), one count of murder (*id.*, § 187, subd. (a)), two counts of possession of a firearm by a felon (*id.*, § 12021, subd. (a)(1)), with true findings on related firearm-use and criminal street gang enhancements (*id.*, §§ 186.22, subd. (b)(1)(C), 12022.5, subd. (a), 12022.53, subds. (b), (c) & (d)).¹ The jury also found defendant guilty of three misdemeanor counts of contempt of court (*id.*, § 166, subd. (c)(1)). In a bifurcated proceeding, defendant admitted he had suffered one prior serious felony conviction within the meaning of the “Three Strikes” law (*id.*, §§ 667, subds. (b)-(i), 1170.12) and Penal Code section 667, subdivision (a)(1). The trial court sentenced defendant to an aggregate state prison term of 111 years, 4 months to life. The court ordered defendant to pay a \$360 court security fee (*id.*, § 1465.8), a \$360 criminal conviction assessment (Gov. Code, § 70373, subd. (a)(1)), and a \$10,000 restitution fine (Pen. Code, § 2085.5). The court imposed and stayed a parole revocation fine (*id.*, § 1202.45).

On appeal, defendant contends, the People acknowledge and we agree the trial court erred in failing to strike the firearm-use enhancement on his conviction for discharging a firearm at an inhabited dwelling and in calculating the criminal conviction assessment. We affirm the judgment as modified.

¹ The jury acquitted defendant on one count of attempted murder.

DISCUSSION²

Firearm-Use Enhancement

The trial court stayed sentence on the firearm-use enhancement under Penal Code section 12022.5, subdivision (a), on defendant's conviction for discharging a firearm at an inhabited dwelling in violation of Penal Code section 246. By its express terms, Penal Code section 12022.5, subdivision (a), requires additional punishment be imposed for personal use of a firearm in the commission or attempted commission of a felony "unless use of a firearm is an element of that offense." "The phrase 'element of the offense' signifies an essential component of the legal definition of the crime, considered in the abstract." (*People v. Hansen* (1994) 9 Cal.4th 300, 317, italics omitted, overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1199.) Use of a firearm is an element of a violation of Penal Code section 246, which penalizes anyone "who shall maliciously and willfully discharge a firearm at an inhabited dwelling house" Accordingly, Penal Code section 12022.5, subdivision (a), enhancement on this count must be stricken.

Criminal Conviction Assessment

The trial court ordered defendant to pay a \$360 criminal conviction assessment pursuant to Government Code section 70373, subdivision (a)(1), which states a \$30 assessment "shall be imposed" for "each misdemeanor or felony" offense. Because defendant suffered six felony and three misdemeanor convictions in this case, he should have been required to pay a \$270 rather than a \$360 criminal conviction assessment.

² Because the evidence presented at trial is not relevant to the issues on appeal, we have omitted a statement of facts.

DISPOSITION

The judgment is modified to strike the Penal Code section 12022.5, subdivision (a), enhancement to count 1, discharging a weapon at an inhabited dwelling, and to reduce from \$360 to \$270 the criminal conviction assessment under Government Code section 70373, subdivision (a)(1). As modified, the judgment is affirmed. The trial court is directed to prepare a corrected abstract of judgment and to forward it to the Department of Corrections and Rehabilitation.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.