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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW WHITE,

Defendant and Appellant.

C065564

(Super. Ct. No.
08F07444)

A jury found defendant, Andrew White, guilty of five robberies, committed during four separate incidents, and other crimes and weapons use clauses, conducted over several days involving two convenience stores, one targeted on three occasions. The jury also found defendant guilty of evading a peace officer and driving recklessly during a high speed chase following the final robbery. He was sentenced to 26 years eight months in state prison.

Defendant appeals.

We appointed counsel to represent him on appeal. Counsel filed an opening brief setting forth the facts of the case and, pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requesting the court to review the record and determine whether there are any arguable issues on appeal. Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a supplemental brief in which he claims his convictions must be reversed due to the erroneous admission of evidence, insufficient evidence of identification, and prosecutorial misconduct. He also claims various errors were made in his sentencing, including the fines. We conclude all these claims lack merit with the exception of one: the trial court did not apply the correct legal standard when ruling on whether Penal Code section 654¹ prohibited multiple punishment for counts one and two, the robbery and false imprisonment committed during the first incident. We remand solely to permit the trial court to apply the proper analysis in the matter of counts one and two, and resentence if appropriate.

PROCEDURAL AND FACTUAL BACKGROUND

All of the robberies were captured by video surveillance cameras.

The first robbery occurred on July 3, 2008, at American Food Store. A store employee, Onkar Singh, was in the process

¹ Further undesignated statutory references are to the Penal Code.

of turning off the lights and setting the alarm, when two robbers entered the store with their faces covered, holding knives. One robber was wearing a blue hooded sweatshirt, a hat, and gloves; and the other had on a black sweater. The robber in the blue sweatshirt jumped over the front counter, while the other came around the counter. The robbers ordered Singh to open the cash register. They also told him to put some Patron tequila in a bag. When Singh was not able to open the store safe, one of the robbers punched him in the face. The robbers broke the telephone in the store and took Singh's wallet. The robber in the blue sweatshirt grabbed Singh by the neck and walked him to a room at the back of the store, where he pushed Singh onto the floor and locked him inside.² The two robbers then left the store.

After 10 minutes, Singh was able to break out of the back room, at which time he went to the home of the store's owner, Shamsher Sandhu. Sandhu determined that approximately \$1,200 in cash was stolen during the robbery, as well as a bottle of Hennessy cognac, a bottle of Patron tequila, and approximately three cartons of Winston cigarettes.

The second robbery occurred on August 25, 2008, at Circle D, another convenience store. A sheriff's deputy responded to a report of it. The deputy saw the cash register open and the

² Although Singh initially testified it was the robber in black that took him to the back of the store, he acknowledged after watching the videotape of the incident that it was the robber in the blue sweatshirt.

store's telephone broken. The owner of the store, Satpol Deol, who was not present during the robbery, concluded approximately \$1,200 was missing from a drawer underneath the cash register. The clerk on duty at the time was Harbhajan Singh Hothi. With Deol and Hothi, the deputy viewed a surveillance video recording of the robbery, which showed two robbers entering the store, one was wearing a blue hooded jacket, gloves, and a bandana covering the lower part of his face. The other wore a black jacket, a knit mask over his face, and gloves. One of the robbers carried what appeared to be a 12-gauge pump shotgun. The following day, Kanwar Deep Singh, Deol's video equipment operator and technician, "burn[ed] a CD" of the surveillance recording for the police department at the request of Deol. The video recording was authenticated by Singh and by Deol, and played for the jury. It showed the robbers taking cash from the register. Hothi did not testify.

The third robbery occurred on August 28, 2008, at the same American Food Store hit on July 3. Once again, there were two robbers. According to Singh, they wore the same clothing as worn in the first robbery. Singh and Sandhu were both present. The robbers again wore gloves. The one in the blue sweatshirt carried a shotgun. This robber jumped over the front counter as in the previous robbery and told Sandhu to lie down, while poking him with the barrel of the gun. The store phone was again smashed. Sandhu saw some liquor bottles removed from the shelves while he was lying face down on the ground. He did not recall exactly how much cash was taken.

Following the second American Food Store robbery, Sandhu complained of lack of responsiveness, so, on September 2, the sheriff's department placed an electronic tracking device in the store. It would activate if moved. Sandhu hid the device in some currency.

The fourth and final robbery took place on September 8, 2008, at the same American Food Store previously hit twice. Both Singh and Sandhu were present. Two robbers entered the store wearing the same clothes as in the previous robberies. The robber in the blue sweatshirt was carrying a pump shotgun and a duffel bag. Singh was told to lie down. During the robbery, \$500 to \$600 was removed from Sandhu's cash register. A variety of cigarettes and bottles of Hennessy and Patron were taken. The robbers also took \$150 from Singh's wallet. The phone was ripped out of the wall. According to Sandhu, the robber in the blue sweatshirt in each of the robberies had the same build and posture, and the gun was the same on each occasion.

While the robbery was in progress, a peace officer on patrol received an activation signal from an electronic tracking device. He followed it to the parking lot next to the American Food Store. His electronic tracker was pointed right inside the store. While he looked around the parking lot, he "glimpse[d]" someone running out of the front door of the store. A second person then left out of the front door of the store, wearing a blue hooded sweatshirt and holding a shotgun and a duffel bag. The robber in the blue sweatshirt disappeared behind the

building. The officer was unable to follow. A duffel bag was later located in a dumpster behind the store, containing nine packs of "Swisher Sweets" cigars, 10 boxes of Marlboro Lights cigarettes, a bottle of Hennessy, and a bottle of Rémy Martin cognac champagne.

Sometime later, the activation signal was tracked to a moving blue Honda sport utility vehicle (SUV). When marked patrol cars following the SUV activated their overhead lights and sirens, the driver of the SUV accelerated to a high rate of speed, running several stop signs and traffic lights. A "tack strip" set in the path of the SUV finally disabled it.

There were two men in the SUV. They got out and ran, but eventually were apprehended. They were later identified as defendant and Antoine Morrison. Defendant was wearing a blue hooded sweatshirt, black jeans, and a black "du-rag," matching the clothes worn by the armed robber that night. The logo of defendant's employer's name was printed on the sweatshirt, but concealed because the sweatshirt was worn inside out. Defendant had a left-handed black glove in his pocket. A corresponding right-handed glove of the same make was found during a search of the area. Also found in defendant's pocket was a bundle of one dollar bills wrapped around an electronic tracking device. The shotgun used in the robberies was never located.

Singh and Sandhu participated in a field show-up. Both witnesses recognized the clothing worn by defendant and Morrison. Sandhu also recognized their build and posture to be the same as the robbers.

Defendant had a cell phone in his possession when arrested. In addition to two photos of defendant, the phone contained one photo of a bottle of Patron tequila and another photo of a pile of cigarettes, cigars, "a wad of money," rolls of coins, bottles of Hennessy, and other items.

The defense at trial was alibi. Defendant's mother testified she learned her sister had died on July 3 (the date of the first robbery). She said defendant arrived at her home that afternoon and stayed the night. Defendant's brother testified defendant was there the entire evening. Defendant's mother said defendant was at her home on the dates of the first three robberies.

Defendant testified it was not him in the surveillance videos. He claimed he had prearranged to pick up Morrison around 10:30 p.m. on September 8, the date of their final robbery and arrest. He claimed Morrison intended to turn himself in to the police on a warrant the following morning. Defendant said the Morrison gave him "a bunch of loose 1s" to buy gas, which defendant put in his pocket. According to defendant, when he realized he was being pursued by several police cars, he "hit the gas" because Morrison panicked and said, "[W]e got to go."

DISCUSSION

I

Evidentiary Issues

A. Right of Confrontation regarding Victim of August 25 Robbery

Defendant contends he was deprived of his right of confrontation with regard to the August 25, 2008, robbery of Circle D because the store clerk, Hothi, did not testify and, therefore, "was not present to corroborate if the robbery occurred, if he was the victim[, and if it was] him in the video." We disagree.

The prosecution may prove the elements of an offense through any admissible evidence. There is no requirement the testimony of the clerk in a convenience store robbery be presented, or his identity established to prove who committed a crime. Here, a surveillance camera captured the robbery in its entirety, and a copy of the surveillance video recording was fully authenticated and admitted into evidence and played for the jury. Hothi's corroboration was not required to prove defendant committed the crime.

Defendant maintains the testimony of the deputy sheriff regarding the Circle D robbery was hearsay. To the contrary, the deputy testified about what he observed when he entered the convenience store and what he saw on the surveillance recording, which was properly admitted into evidence. The surveillance recording itself was not hearsay. "Photographs and videotapes

are demonstrative evidence, depicting what the camera sees. [Citations.] They are not testimonial and they are not hearsay, that is, 'evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. . . .' [Citation.] Thus, the confrontation clause does not preclude the[ir] admission" (*People v. Cooper* (2007) 148 Cal.App.4th 731, 746, fn. omitted; see *People v. Goldsmith* (2011) 193 Cal.App.4th Supp. 1; see Evid. Code, § 1553 [video images presumed to be accurate representation of images they purport to represent].)

Accordingly, defendant's right of confrontation was not violated.

B. Admissibility of Cell Phone Photos

Defendant also claims the photos on his cell phone of a bottle of Patron tequila and a pile of money, liquor, cigarettes, and other items should not have been admitted because they were more prejudicial than probative. Again, we disagree.

Evidence is relevant if it has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) Under Evidence Code section 352, the trial court has discretion to "exclude evidence if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." "[T]he trial court is

'vested with wide discretion in determining relevance under this standard.' [Citation.]" (*People v. Cain* (1995) 10 Cal.4th 1, 32.) "Prejudice for purposes of Evidence Code section 352 means evidence that tends to evoke an emotional bias against the defendant with very little effect on issues" (*People v. Crew* (2003) 31 Cal.4th 822, 842.) The trial court's determination is reviewed for abuse of discretion.

We conclude the photos in question were properly admitted. The main issue at trial was identity, and the photos were probative on this issue. One of the photos was of a bottle of Patron tequila, an item that was taken in at least two of the robberies. The other photo depicted a pile of money, cigarettes, liquor bottles -- and in particular, bottles of Patron and Hennessy -- and other convenience store type items that were consistent with the types of items stolen in the robberies. Although not all of the items in this photo were specifically described by the robbery victims, this went to the weight of the evidence, not its admissibility. We discern no undue prejudice from the admission of this evidence.³

II

Sufficiency of Evidence of Identification

Defendant argues "there is insufficient evidence to sati[s]fy the eyewitness identification element beyond a

³ Defendant also contends his attorney "failed to properly investigate [the] photos." As defendant does not develop this claim, and as there is nothing in the record to support it, we decline to address it.

reasonable doubt." He relies on factors set forth in CALCRIM No. 315, a jury instruction that lists considerations for the jury when evaluating eyewitness identification. Specifically, defendant contends: "Among the facts required to be proved by the People were whether the defendant was identified by any witness and whether the witness['s] d[e]scription compared to the defendant."

Defendant is correct that identification must be proved beyond a reasonable doubt. However, such proof may be by evidence other than eyewitness identification. Many crimes are committed without any eyewitnesses and are proved utilizing other evidence, such as admissions and circumstantial evidence. CALCRIM No. 315 merely gives a jury guidance on how to evaluate eyewitness identification evidence when it has been admitted, it is not a list of requirements for establishing identity.

Here, in addition to evidence that two of the robbery victims identified the defendant and codefendant shortly after the fourth robbery as wearing the same clothes and having similar builds to the robbers, there was an abundance of circumstantial evidence linking defendant to the robberies. He wore a blue sweatshirt and carried gloves like those worn by one of the robbers. He wore his blue sweatshirt inside out, so the logo of his employer was not visible. For the most part, he carried and used a shotgun. He fled from police on a dangerous, high speed chase, evincing a consciousness of guilt. When apprehended, he possessed bills with the electronic tracking device attached that had been planted in the convenience store.

In sum, there was abundant evidence establishing defendant as one of the perpetrators of the robberies.

III

Prosecutorial Misconduct

Defendant alleges the deputy district attorney committed prosecutorial misconduct during his closing argument by making various alleged misstatements about the evidence. They included: (1) arguing that defendant's mother and brother did not sit with him the entire night of the first robbery and "misstat[ing]" some details of his brother's testimony; (2) suggesting that the jury compare defendant's voice to the voice of the robber on the surveillance videos; (3) noting that defendant fit the general description of the robber; and (4) stating that one of the cell phone photos depicted "the same stuff" as was taken in the robberies. But defendant's trial attorney did not object to any of these comments. "[A] defendant may not complain on appeal of prosecutorial misconduct unless in a timely fashion -- and on the same ground -- the defendant made an assignment of misconduct and requested that the jury be admonished to disregard the impropriety.' [Citations.]" (*People v. Stanley* (2006) 39 Cal.4th 913, 952.) Consequently, defendant has forfeited this argument for purposes of appeal.

Even if we were to ignore the failure to object, we would find defendant's claim meritless. "Regarding the scope of permissible prosecutorial argument, 'a prosecutor is given wide latitude during argument. The argument may be vigorous as

long as it amounts to fair comment on the evidence, which can include reasonable inferences, or deductions to be drawn therefrom.'"' [Citations.]" (*People v. Stanley, supra*, 39 Cal.4th at pp. 951-952.) None of the comments by the prosecuting attorney exceeded these limitations.

IV

Sentencing

Defendant was convicted of five counts of second degree robbery, one count of false imprisonment, and one count of evading a police officer while driving recklessly. He was found to have personally used a deadly weapon (a knife) in the commission of one of the robberies and the false imprisonment and to have personally used a firearm (a shotgun) in the commission of the other robberies. He was ineligible for probation.

The probation department recommended 31 years four months in state prison. The trial court imposed 26 years eight months, after declaring, "[E]ven if defendant were eligible for probation, I wouldn't grant it This case is serious, it's callous, these crimes are dangerous, and he -- and because of his criminal history and he spent most of his time in custody. When he got out, he started up again."⁴

⁴ The court erred in defendant's favor when it ordered the robbery of Sandhu in count six and its associated use clause to run concurrently and stayed it. There were two robberies, one of the clerk, Singh, \$150 taken from his wallet, in count five, and one of the owner, Sandhu, \$500 to \$600 taken from his cash register, in count six, and the court incorrectly applied

A. *Punishment on Both Robbery and False Imprisonment*

Defendant contends it was improper for the trial court to impose sentence on both robbery and false imprisonment in connection with the first incident at American Food Store, the one on July 3, 2008 (counts one and two), because the false imprisonment was committed in furtherance of the robbery. Because the trial court employed an incorrect analysis when ruling on whether section 654 prohibited punishment on both offenses, we conclude the matter must be remanded for resentencing on these counts to allow the court to apply the proper analysis.

Section 654, subdivision (a) provides in part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. . . ." "The purpose of the protection against multiple punishment is to insure that the defendant's punishment will be commensurate with his criminal liability." (*Neal v. State* (1960) 55 Cal.2d 11, 20; *People v. Cleveland* (2001) 87 Cal.App.4th 263, 268.)

Under section 654, multiple punishment is proscribed for offenses arising out of "a course of conduct which violate[s]

section 654 to conclude they were not separate. (*People v. Scott* (2009) 45 Cal.4th 743.) The People have not appealed. The sentence, although in error, was not illegal. Thus we do not address it further.

more than one statute but nevertheless constitute[s] an indivisible transaction. [Citation.]” (*People v. Perez* (1979) 23 Cal.3d 545, 551; *People v. Britt* (2004) 32 Cal.4th 944, 951-952; see *Neal v. State of California, supra*, 55 Cal.2d at p. 19.) “Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.” [Citation.]” (*People v. Britt, supra*, at pp. 951-952.)

Conversely, “a defendant may be punished for separate crimes, if he is deemed to have entertained multiple criminal objectives which were independent of and not merely incident to each other. [Citation.]” (*People v. Coleman* (1973) 32 Cal.App.3d 853, 858.) That the offenses “share common acts or were simultaneously committed is not determinative.” (*Ibid.*) Separate objectives may be found when “the objectives were either (1) consecutive even if similar or (2) different even if simultaneous.” (*People v. Britt, supra*, 32 Cal.4th at p. 952.)

Here, defense counsel filed a sentencing memorandum arguing, in part, that pursuant to section 654, defendant could not be sentenced on both robbery and false imprisonment, counts one and two, based on the July 3 events at American Food Store because these offenses were carried out with a single objective. At sentencing, the trial court made the following statement with regard to the July 3 robbery and false imprisonment: “[T]hese

are different classes of crimes, the elements of one does [*sic*] not necessarily contain that [*sic*] of the other. You can commit a robbery without falsely imprisoning someone, even if it is in the furtherance of the robbery. [¶] This is not a burglary[/]possession of stolen property type case, which is clearly falls [*sic*] within the parameters of 654."

The trial court did not apply the correct analysis for determining whether multiple punishment was proscribed under section 654 for the July 3 robbery and false imprisonment. The question of whether offenses are different classes of crime is relevant to joinder and severance of charges in an accusatory pleading (§ 954), not whether section 654 is applicable. And it is in determining whether a crime is a lesser included offense of another crime (thereby prohibiting multiple *convictions*, as opposed to multiple *punishment*) that a court considers "whether all the statutory elements of the lesser offense are included within those of the greater offense." (*People v. Ramirez* (2009) 45 Cal.4th 980, 985.)

It is true that a trial court's findings regarding section 654 may be implied. (*People v. Lopez* (2011) 198 Cal.App.4th 698, 717; *People v. Racy* (2007) 148 Cal.App.4th 1327, 1336-1337.) Ordinarily, we will uphold such findings, implied or express, if they are supported by substantial evidence. (*People v. Perry* (2007) 154 Cal.App.4th 1521, 1525.) However, in the present matter, the record affirmatively shows that the trial court did not engage in a proper analysis of the issue. As the question of whether a defendant had a single objective or

separate objectives in committing multiple offenses involves a factual determination by the trial court (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135), we remand the matter for the court to make the requisite factual determination, apply the proper analysis, and sentence as appropriate.⁵

B. Consecutive Sentencing on Robbery and False Imprisonment

The trial court imposed a consecutive sentence on defendant's conviction for false imprisonment, count two. Defendant argues, "at a minimum," the trial court should have imposed concurrent sentences for the robbery and false imprisonment counts because they "took place at the same time and place." He has forfeited this issue.

The waiver doctrine applies "to claims involving the trial court's failure to properly make or articulate its discretionary sentencing choices." (*People v. Scott* (1994) 9 Cal.4th 331, 353.) "[A] trial court has discretion to determine whether several sentences are to run concurrently or consecutively. [Citations.]" (*People v. Bradford* (1976) 17 Cal.3d 8, 20.)

In the present matter, the trial court stated: "With regard to concurrent and consecutive sentencing, there were four separate and distinct robberies, different times, some of the venues were the same in that the defendant robbed them more than once, but on different dates and times." The court did not

⁵ In the interest of judicial economy, we address this error without requesting supplemental briefing. A party claiming to be aggrieved may petition for rehearing. (Gov. Code, § 68081.)

specifically address the false imprisonment count in this discussion. Defendant's trial attorney did not object to the court's failure to state its reasons for imposing a consecutive sentence on this count. Accordingly, the issue has been forfeited for purposes of appeal.

C. Upper-Term Sentence

The trial court imposed an upper-term sentence on one of the robbery counts as the principal term. Defendant contends an upper term was unauthorized because the probation report "relies heavily" on the use of weapons as an aggravating factor, even though defendant received enhancements based on this factor. He also disputes the application of various other aggravating factors listed in the probation report. We reject these claims.

"When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. . . . The court shall select the term which, in the court's discretion, best serves the interests of justice. The court shall set forth on the record the reasons for imposing the term selected and the court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. . . ." (§ 1170, subd. (b).)

"Generally, determination of the appropriate term is within the trial court's broad discretion [citation] and must be affirmed unless there is a clear showing the sentence choice was arbitrary or irrational [citation]." (*People v. Lamb* (1988) 206 Cal.App.3d 397, 401.) The sentencing court has wide discretion

to balance mitigating and aggravating circumstances, qualitatively as well as quantitatively. (*Ibid.*) "One factor alone may warrant imposition of the upper term" (*Ibid.*)

In the present matter, the probation report listed five circumstances in aggravation: (1) the crime involved great violence, the threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness (Cal. Rules of Court, rule 4.421(a)(1));⁶ (2) the manner in which the crime was carried out indicates planning, sophistication, or professionalism (rule 4.421(a)(8)); (3) the defendant has engaged in violent conduct that indicates a serious danger to society (rule 4.421(b)(1)); (4) the defendant's prior convictions as an adult or sustained petitions in juvenile delinquency proceedings are numerous or of increasing seriousness (rule 4.421(b)(2)); and (5) the defendant was on probation or parole when the crime was committed (rule 4.421(b)(4)). The probation report did not use the fact defendant was armed with a shotgun during the robberies as an aggravating factor, nor did the trial court. (See rule 4.421(a)(2).)

Defendant disputes the application of three of the factors in aggravation cited in the probation report and relied on by the trial court at sentencing.

⁶ Further references to rules are to the California Rules of Court.

Defendant maintains his offense did not involve a threat of great bodily harm or a high degree of cruelty, viciousness, or callousness because no one was "shot, stabbed or assaulted" and the robberies ended once the money and merchandise were obtained. However, the trial court noted the manner in which the robbery was carried out -- involving defendant jumping over the counter, ordering the clerk to the ground, and pointing a weapon at him -- evinced callousness and viciousness. It was within the court's discretion to conclude such behavior, which clearly was directed at obtaining immediate submission to the perpetrators' demands, was likely to engender terror in the victim, "making the offense distinctively worse than the ordinary." (*People v. Moreno* (1982) 128 Cal.App.3d 103, 110.)

Defendant contends "there is nothing about these facts to indicate sophistication and professionalism." To the contrary, defendant and the codefendant took precautions to avoid detection, wearing gloves and concealing their faces. Moreover, once in the store, their actions were coordinated, such that the offenses could be completed quickly. They disabled the telephone each time, delaying the victims' ability to contact law enforcement. As the trial court observed, although "this wasn't *Oceans 11*," a degree of planning and sophistication went into the commission of these offenses.

Finally, defendant complains that his prior convictions were not numerous in that his only felony conviction took place when he was 13 years old and he had only one misdemeanor conviction as an adult. This argument, too, is unpersuasive.

Defendant was committed to the California Youth Authority (CYA) in 2000 at the age of 15, based on his adjudication in juvenile court for a number of serious crimes, including rape in concert with force or violence, assault with intent to commit a sexual offense, and false imprisonment. He had two prior misdemeanor entries in his record at that time, one involving bringing a "replica firearm" onto school grounds, the other based on an unauthorized entry onto school grounds and exhibiting an imitation firearm. Defendant was paroled from CYA in 2005, but approximately one year later, he was convicted of receiving stolen property as a misdemeanor, based on a report that he removed items from a vehicle in a locked body shop. Less than two years later, when he was 23 years old, defendant committed the first of the robberies charged in the current matter. This history provided ample support for the trial court's conclusion that defendant's prior convictions were numerous and of increasing seriousness.

D. Fees

Defendant asserts the trial court did not consider his ability to pay when imposing a main jail booking fee and a classification fee (Gov. Code, § 29550.2), and a crime prevention program fee (§ 1202.5) without "providing details of the different mandatory assessments" included in the latter fee.

Defendant's trial attorney did not object to imposition of the main jail booking fee or the classification fee, which were recommended in the probation report. This court has held that an objection must be made in the trial court to the imposition

of fines based on the defendant's ability to pay or any claim of error on this basis is forfeited for purposes of appeal.

(*People v. Crittle* (2007) 154 Cal.App.4th 368, 371 [crime prevention fine -- § 1202.5, subd. (a)]; *People v. Hodges* (1999) 70 Cal.App.4th 1348, 1357 [jail booking fee -- Gov. Code, § 29550.2].) The Sixth Appellate District has reached a contrary conclusion (*People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1397), and the California Supreme Court has agreed to resolve the conflict. (See *People v. McCullough* (2011) 193 Cal.App.4th 864, review granted on June 29, 2011, S192513.) However, until the Supreme Court issues further guidance, we continue to adhere to our previous holdings that a failure to object to a fee or fine in the trial court forfeits the issue. Accordingly, we deem the issue forfeited here.

Finally, defendant's contention the trial court imposed a crime prevention program fee without "providing details of the different mandatory assessments" is unfounded. The record does not show any assessments were added to this fine. Section 1202.5, subdivision (a) provides, in part: "In any case in which a defendant is convicted of any of the offenses enumerated in Section 211, 215, 459, 470, 484, 487, 488, or 594, the court shall order the defendant to pay a fine of ten dollars (\$10) in addition to any other penalty or fine imposed." The trial court, here, stated it was imposing a fine of \$50 under section 1202.5 -- \$10 for each of the five robbery convictions. The court did not add any assessments to this fine, nor does the

abstract of judgment reflect any assessments. Thus, this claim has no merit as well.

DISPOSITION

The matter is remanded for resentencing on counts one and two in accordance with the views expressed in this opinion. The trial court is directed to prepare an amended abstract of judgment reflecting the resulting modifications specified herein and, if applicable, any other changes necessarily resulting from resentencing, and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NICHOLSON, Acting P. J.

We concur:

ROBIE, J.

MURRAY, J.