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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

THE PEOPLE,

Plaintiff and Respondent,

v.

DEANDREA JOVELL FARLOW,

Defendant and Appellant.

C066579

(Super. Ct. No.
CRF092926)

Defendant Deandrea Jovell Farlow and a group of cohorts robbed a bank during business hours. A jury found him guilty of three counts of robbery, three counts of assault with a firearm, and 20 counts of false imprisonment. The jury also found that a principle used a firearm during the commission of the offenses. Sentenced to 11 years eight months in prison, defendant appeals. He contends the trial court erred in permitting two law enforcement witnesses to testify that it was defendant who appeared in a video tape and in a still photo, there was

insufficient evidence of false imprisonment of two of the victims, and that the trial court should have stayed his assault and false imprisonments terms pursuant to Penal Code section 654 (unspecified section references that follow are to the Penal Code). We affirm the judgment.

FACTS AND PROCEEDINGS

On the morning of the robbery, Cory Edwards and George Emseih arranged to meet at a gas station in Fairfield and then drove to Aaron Watts's apartment in Sacramento. Watts joined them and they went to another apartment in the Natomas neighborhood of Sacramento where they met four more men, including defendant.

The group of seven men went in three cars to the Target and Wal-Mart stores in Natomas. They communicated using a set of walkie-talkies. Emseih and Watts waited in the cars while some of the men, including defendant, went into each store. The group then went to a gas station to get fuel. Defendant drove a black Range Rover with two of the other men as his passengers.

Around 8:30 a.m., they started driving to Yuba City. When they arrived in Yuba City, they parked and discussed what their roles would be in the upcoming bank robbery. Emseih was to be the lookout and getaway driver. As arranged, he parked his BMW across the street from the bank. Defendant, driving the Range Rover, dropped off Watts and another man outside the bank and left.

Watts and the other man entered the bank. Watts waved a handgun and yelled "everybody get down." The employees and customers either got on the floor or put their hands in the air. Watts pointed his gun directly at three different individuals and told them to get down or to back away from what they were doing.

The other man jumped behind the counter, took cash from three tellers, and put money in a bag. The two robbers then ran out of the bank where Watts got in the trunk and the other man got in the back seat of Emseih's waiting BMW. There was a fourth man in the BMW. Emseih started driving toward Chico but was instructed, via walkie-talkie, to pull over. After he stopped, the robber who had been in the back seat got out of the car and into the Range Rover.

Shortly thereafter, officers located and stopped the BMW. While Emseih was being arrested, Watts got out of the trunk, jumped into the driver's seat and drove away. Officers pursued the BMW to Colusa County where Watts was apprehended and most of the stolen money was recovered.

Detectives obtained video surveillance footage from the bank, the Target and Wal-Mart stores, and the gas station in Fairfield. The Target store video depicts defendant entering the store with two of the men, purchasing merchandise used in the robbery and leaving. The Wal-Mart store video depicts two of the men purchasing merchandise. The Wal-Mart parking lot video shows the occupants of the three cars, including the Range Rover, meeting in the parking lot and leaving together.

DISCUSSION

I

Officer's Identification Testimony

Defendant contends the trial court erred when it permitted Detective Parker to identify him as one of the people in the Target store video. Defendant also contends the trial court erred in permitting Detective Clinkenbeard to testify that he encountered defendant in the lobby of the courthouse at the preliminary hearing for two of defendant's cohorts, recognized defendant as one of the individuals from the Target store video, and confronted him. These videos were admitted into evidence. He contends the judgment must be reversed because the detectives' testimony constituted improper lay opinion testimony. (Evid. Code, § 800.)

A judgment, however, will not be reversed for the erroneous admission of evidence unless there was a timely objection or motion to strike the evidence that clearly stated the specific ground for the objection or motion and the error resulted in a miscarriage of justice. (Evid. Code, § 353.) Here, defendant did not preserve the contentions for appeal. In any event, no miscarriage of justice resulted.

Pursuant to a motion *in limine*, defense counsel objected to "any photographs or videos" as irrelevant and prejudicial, although he later withdrew his objection to the bank surveillance video. He also requested the court to disallow opinion evidence if it was not supported by a proper foundation.

The trial court reviewed the Target and Wal-Mart store videos outside the jury's presence, describing the contents of the videos for the record and noting that the question of identify was for the jury. Defense counsel continued to object to the videos based on relevance. The court overruled the objection and stated the prosecutor would be permitted to present the videos to the jury.

During the prosecutor's case-in-chief, the prosecutor asked Parker to identify individuals in still shots taken from the Target store video. Parker identified defendant as a person walking out of the store. Defense counsel did not object to this testimony and the photographs were admitted into evidence. Later, after the jury had viewed the Target store video, the prosecutor asked Parker if he was able to recognize the individuals shown in the video. At this point, defense counsel objected, stating the video "speaks for itself." The trial court allowed the "opinion evidence," noting that the jury was free to disagree with Parker on the identification. Parker identified several people, including defendant.

The problem with defendant's objection to the admission of Parker's testimony identifying him in the Target store video is that it was not timely. Parker had already identified defendant in still photographs taken from the Target store video--without objection. Thus, the issue of whether Parker could be permitted to identify defendant from the video was not properly preserved. Once Parker identified defendant in the still photos taken from

the video any objection to Parker doing so from the video itself had been effectively forfeited.

During the prosecutor's case-in-chief, Clinkenbeard testified that he encountered defendant in the lobby of the courthouse on October 9, 2009, at the time of the preliminary hearing for two of defendant's cohorts. He recognized defendant from the Target store video as one of the individuals that had yet to be apprehended in connection with the bank robbery. Clinkenbeard confronted defendant, sliding a still photograph taken from the Target store video in front of defendant and asking defendant if the person in the photograph looked familiar. Defendant told Clinkenbeard he did not recognize the person in the photograph. Clinkenbeard then pressed defendant, pointing out that defendant was wearing the same shirt. When defendant did not respond, Clinkenbeard said, "It's you. This is you, this is you." Defendant denied the accusation and walked away.

Although defendant now contends the admission of this identification testimony was erroneous, it all came in without objection.

Defendant argues that he was excused from making an objection because such objection would have been futile, due to the court's ruling regarding Parker's testimony. The futility exception to the rule requiring an objection and request for curative admonition is applied only in "unusual circumstances." (*People v. Riel* (2000) 22 Cal.4th 1153, 1212-1213.)

We need not decide this point. Even if defendant had properly objected at trial to the identification testimony of which he now complains, any error in admitting the testimony was harmless. We will not set aside a judgment by reason of the erroneous admission of evidence unless, after examination of the entire record, we conclude the error has resulted in a miscarriage of justice. (Evid. Code, § 353; Cal. Const., art. VI, § 13.) "A miscarriage of justice occurs only when it is reasonably probable that the jury would have reached a result more favorable to the [defendant] absent the error. [Citations.]" (*People v. Dieguez* (2001) 89 Cal.App.4th 266, 277-278.)

Here, immediately before Parker's testimony identifying defendant as one of the individuals in the Target store video, the trial court, in ruling on defense counsel's objection stated, "It's opinion evidence, but I don't want to tell the jury. It's like when you show somebody a picture of your newborn child and you say isn't she cute, and the other person has a different opinion. The same thing here. If he says it's whoever he says it is, it's still up to you to decide. You don't have to agree with him, you can disagree."

The record reflects that, while the court's statement is somewhat confusing, it was made in open court with the jury present.

On cross-examination, defense counsel asked Parker, "But from this photo alone you can't be sure that's [defendant], can you?" Parker answered, "Well, by the time from this photo alone

I couldn't--didn't have anything to compare to." Defense counsel countered, "So the answer would be no, with that photo alone?" Parker replied, "Just this photo alone--I never met [defendant], so I wouldn't have anything to compare it to until I saw the D.M.V. photo and the other one."

Thereafter, the trial court instructed the jury with CALCRIM No. 333, which informed the jury it was not required to accept the opinion of witnesses who offered nonexpert or lay opinions during trial as follows:

"A witness who was not testifying as an expert gave his opinion during the trial. You may, but are not required to accept that opinion as true or correct. You may give the opinion whatever weight you think is appropriate. Consider the extent of the witness's opportunity to perceive the matters on which his or her opinion is based, the reasons the witness gave for any opinion and the facts or information on which the witness relied in forming that opinion. You must decide whether information on which the witness relied was true and accurate. You may disregard all or any part of an opinion . . . that you find unbelievable and unreasonable or unsupported by the evidence."

We presume the jury understood and followed the court's instructions. (*People v. Gray* (2005) 37 Cal.4th 168, 231.) In light of the court's admonitions, we conclude the admission of the now disputed evidence was of no consequence to the verdict. There was no miscarriage of justice.

II

Substantial Evidence of False Imprisonment

Defendant also contends there was insufficient evidence of false imprisonment of two employee victims who were in the ATM room inside the bank at the time of the robbery. Through a window with one-way glass, these employees saw Watts with the gun and called 911. They were both afraid and one lay down on the floor. They remained in the ATM room until the robbers left the bank.

Defendant does not argue that these two employees in the ATM room were free to leave during the commission of the robbery. Instead, he argues that Watts did not see those individuals and, therefore, could not have intended to falsely imprison *them*. While that may be so, the evidence remains sufficient to sustain the false imprisonment counts pertaining to those employees.

Section 236 defines false imprisonment as the "unlawful violation of the personal liberty of another." As the criminal offense includes only a description of the particular act, without any reference to an intent to do a further act or achieve a further consequence, it is a "general intent" crime. (*People v. Swanson* (1983) 142 Cal.App.3d 104, 109.) Thus, to have the requisite intent, it is sufficient if the defendant intends to commit an act, the natural and foreseeable consequences of which is the nonconsensual confinement of another. (*People v. Olivencia* (1988) 204 Cal.App.3d 1391, 1399-

1400.) "'Intentionally' is often used as synonymous with 'knowingly,' and when so used an act is intentional if the person who does it is conscious of what he is doing, and its probable consequences, without regard to the motive which induced him to act." (*People v. McCree* (1954) 128 Cal.App.2d 196, 202.)

Applied here, the evidence established that Watts intended to do the proscribed act--an act having as its probable consequences the nonconsensual confinement of others--when he waved and pointed his gun and ordered everyone to get on the ground. It is of no consequence that he did not actually see all of his victims. The natural and probable consequences of his act was the confinement of all individuals present, whether he knew of their presence or not. Moreover, the evidence is sufficient that he intended everyone who was present to be confined by his actions.

The evidence is sufficient to support the judgment.

III

Unstayed Terms for Assaults and False Imprisonment

Defendant contends that, under section 654, Watts's single act of crowd control by ordering everyone to the ground (false imprisonment), including pointing his gun directly at three individuals to get them to comply (assaults), cannot be the basis for imposing multiple, albeit concurrent, sentences. He argues that all of the false imprisonment and assault sentences

must be stayed as those crimes were incidental to the robbery. The trial court sentenced defendant correctly.

Subdivision (a) of section 654 provides in pertinent part that "[a]n 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."

Generally, section 654 is applicable to "limit punishment for multiple convictions arising out of either an act or omission or a course of conduct deemed to be indivisible in time, in those instances wherein the accused entertained a principal objective to which other objectives, if any, were merely incidental." (*People v. Beamon* (1973) 8 Cal.3d 625, 639, fn. omitted.) However, "[n]otwithstanding [a] determination that defendant entertained but a single principal objective during an indivisible course of conduct, he may nevertheless be punished for multiple convictions if during the course of that conduct he committed crimes of violence against different victims. [Citations.] As the purpose of section 654 'is to insure that defendant's punishment will be commensurate with his criminal liability,' when he 'commits an act of violence with the intent to harm more than one person or by means likely to cause harm to several persons,' his greater culpability precludes application of section 654. (*Neal v. State of California* [(1960)] 55 Cal.2d 11, 20-21.)" (*People v. Miller* (1977) 18 Cal.3d 873, 885, overruling on other grounds

recognized in *People v. Oates* (2004) 32 Cal.4th 1048, 1067, fn. 8.) “[T]he limitations of section 654 do not apply to crimes of violence against multiple victims.” (*People v. King* (1993) 5 Cal.4th 59, 78.)

Here, the trial court imposed terms on each of the three robbery counts against the three separate robbery victims (counts 20, 22 and 25). The court then stayed the assault and false imprisonment terms on the counts that involved those same three victims (counts 19, 21, 24 and 26). The court also imposed terms on two assault counts against victims who were not victims of robbery (counts 2 and 17). It then stayed the false imprisonment terms for the counts involving those two victims (counts 3 and 16). The court imposed a consecutive term on one count of false imprisonment (count 1) and imposed concurrent terms on the remaining false imprisonment counts (counts 4-15, 18 and 27)--as each of those counts involved victims *other than* those involved in robbery or assault counts already imposed.

Accordingly, there was no error.

DISPOSITION

The judgment is affirmed.

HULL, J.

We concur:

BLEASE, Acting P. J.

MAURO, J.