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

THE PEOPLE,

Plaintiff and Respondent,

v.

JORDAN ELIJAH LATOUR,

Defendant and Appellant.

C067360

(Super. Ct. No. 09F06018)

A jury found defendant Jordan Elijah Latour guilty of second degree robbery of Wells Fargo Bank (Pen. Code,¹ § 211), evading a police officer (Veh. Code, § 2800.2); assault with a firearm on a peace officer (§ 245, subd. (d)(1)), and misdemeanor resisting arrest (§ 148, subd. (a)(1)). The jury also found true allegations defendant personally used a firearm in the commission of the robbery (§ 12022.53, subd. (b)) and the assault (§§ 1203.06, subd. (a)(1), 12022.5, subd. (a)) and personally inflicted great bodily injury upon someone not an accomplice in the commission of the robbery (§ 12022.7, subd. (a)). The jury found defendant not guilty of assault with a firearm (§ 245, subd. (a)(2)) and

¹ Further undesignated section references are to the Penal Code.

attempted second degree robbery (§§ 664/211) and failed to reach a verdict on four remaining counts, including second degree robbery of bank teller Anne Beaumont and second degree robbery of bank teller Iona Crivineau. The trial court declared a mistrial as to the four remaining counts, and defendant later pleaded no contest to the two robbery counts, admitted allegations he personally used a firearm in the commission of those robberies, and that he suffered a prior strike conviction (§ 667, subd. (a)) in exchange for an aggregate prison term of 46 years.

The trial court sentenced defendant to an aggregate term of 46 years in prison, consisting of 16 years (the upper term doubled for the prior strike) for assault with a firearm on a peace officer, plus an additional 10 years for the firearm enhancement and 3 years for the great bodily injury enhancement; 2 years (one third the middle term doubled for the prior strike) for the robbery of Beaumont, plus 3 years and 4 months (one-third of 10 years) for the firearm enhancement; 2 years (one-third the middle term doubled for the prior strike) for the robbery of Crivineau, plus 3 years and 4 months (one-third of 10 years) for the firearm enhancement; and 1 year and 4 months (one-third the middle term doubled for the prior strike) for evading a peace officer; and a consecutive 5 years for the prior strike conviction. The court sentenced defendant to a concurrent one year in jail on the misdemeanor offense and stayed defendant's sentence for robbery of Wells Fargo Bank pursuant to section 654. The court awarded defendant 551 days of presentence custody credit, plus 82 days of conduct credit, for a total of 633 days. The court also imposed an \$8,200 restitution fine for the felony convictions pursuant to section 1202.4 and a parole revocation restitution fine in the same amount pursuant to section 1202.45. With respect to the misdemeanor, the court imposed "the minimum [restitution] fine of \$100." Finally, the court ordered defendant to "make restitution to the bank, to the Deputy, . . . and/or to the Rocklin police department for any claims of loss that they may allege" in an amount to be determined if any of those entities seek restitution under section 1202.4.

Defendant appeals, contending (1) his conviction for robbery of Wells Fargo Bank must be reversed because the trial court failed to instruct on duress; (2) the trial court erred in ordering him to pay restitution to the Rocklin Police Department because the department is not a direct victim of defendant's crimes; (3) he is entitled to one additional day of presentence custody credit; and (4) the trial court erred in imposing a separate restitution fine for the misdemeanor offense.

We shall reverse defendant's conviction for robbery of Wells Fargo Bank because robbery of a bank is not a crime and modify defendant's sentence to award him one additional day of presentence custody credit. We shall affirm the judgment in all other respects.

FACTUAL AND PROCEDURAL HISTORY

A detailed recitation of the factual and procedural history is not warranted. Suffice it to say that on the afternoon of August 8, 2009, defendant and his nephew Marcus Zapata entered a Wells Fargo Bank in Rocklin wearing masks and carrying guns. Zapata jumped over the teller counter and emptied Beaumont and Crivineau's cash drawers while defendant remained in the customer area. Zapata then jumped back over the counter, and he and defendant ran out of the bank and into a waiting car. Police were dispatched to the bank where they were directed to the getaway car, and a high speed chase ensued. Law enforcement eventually lost sight of the car, which had driven into a shopping mall parking lot. Defendant and Zapata got out of the car and ran behind a building where they were confronted by a Sacramento County Sheriff's Deputy. Defendant shot the deputy in the shoulder, and he and Zapata fled on foot. They were apprehended a short time later.

DISCUSSION

I

Defendant's Conviction for Robbery of Wells Fargo Bank Must Be Reversed Because Robbery of a Bank Is Not a Crime

Defendant contends that his conviction for robbery of Wells Fargo Bank (count 1) must be reversed because the trial court “erroneously refused to instruct on the duress defense.” The People respond that “[c]ount 1, robbery against Wells Fargo Bank, should be reversed because a bank is not a person and cannot be susceptible to robbery under section 211.” We agree with the People, and therefore need not address defendant’s contention regarding the court’s failure to instruct on duress.

The jury convicted defendant of one count of second degree robbery. The amended information named Wells Fargo Bank as the victim.

“Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” (§ 211.) As the statute states, robbery is an offense against a person. (*People v. Weddles* (2010) 184 Cal.App.4th 1365, 1369.) A bank is not a person; thus, defendant’s conviction for robbery of Wells Fargo Bank cannot stand.

II

The Rocklin Police Department Is Entitled to Restitution for Any Losses It Suffered as a Direct Victim of Defendant’s Crimes

Defendant contends “[t]he unauthorized order of restitution to the Rocklin Police Department must be stricken.” As we shall explain, the order is not unauthorized. Accordingly, it need not be stricken.

The trial court ordered defendant “to make restitution to the bank, to the Deputy, . . . and/or to the Rocklin police department for any claims of loss that they may allege.” The court did not order defendant to pay any particular amount, rather the amounts of any such restitution were “to be determined.” Moreover, the court advised defendant that “if

[the bank, the deputy, or the department] make such claims, you're entitled to a hearing if you disagree with the amount of loss they claim." (Italics added.)

Pursuant to section 1202.4, subdivision (a)(3), "The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay . . . [¶] . . . [¶] (B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment." Subdivision (f) states in pertinent part: "[I]n every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court." Finally, as relevant here, section 1202.4, subdivision (k)(2), provides that the term "victim" includes "[a]ny . . . government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime."

"Direct victim of a crime," as used in subdivision (k)(2) of section 1202.4 means " 'entities *against which* the [defendant's] crimes had been committed'—that is, entities that are the 'immediate objects of the [defendant's] offenses.' [Citation.]" (*People v. Martinez* (2005) 36 Cal.4th 384, 393.) "[P]ublic agencies are not directly 'victimized' for purposes of restitution under Penal Code section 1202.4 merely because they spend money to investigate crimes or apprehend criminals." (*People v. Ozkan* (2004) 124 Cal.App.4th 1072, 1077.)

Defendant claims that "[t]he only conceivable economic expenditure made by the Rocklin Police Department . . . is the law enforcement expenses for engaging in the pursuit," which he asserts are not recoverable under section 1202.4. As previously discussed, the amount of any such restitution has yet to be determined. Indeed, there is

no indication in the record that the department has made a claim for restitution. We decline defendant's invitation to prejudge whether there is any "conceivable economic expenditure made by the Rocklin Police Department" that would entitle it to restitution under section 1202.4. We leave that determination to the trial court in the first instance if and when the department seeks restitution under section 1202.4.

III
Defendant Is Entitled to One Additional Day
of Pre-Sentence Custody Credit

Defendant contends, and the People concede, that he is entitled to one additional day of presentence custody credit. We agree.

Defendant was in custody from August 8, 2009, (the date of the crimes) until the resentencing hearing on February 10, 2011 -- a total of 552 days. However, he only was awarded 551 days of actual custody credits. We shall modify his sentence to include one additional day of actual custody credit.²

IV
The Trial Court Properly Imposed a Separate Restitution Fine
for the Misdemeanor Offense

Finally, defendant asserts that "[t]he imposition of a separate restitution fine for the misdemeanor count was unauthorized and must be stricken." He is mistaken.

The trial court imposed an \$8,200 restitution fine and an \$8,200 parole revocation restitution fine for the felony convictions and a \$100 restitution fine for the misdemeanor offense of resisting arrest.

Section 1202.4, former subdivision (b), provides: "In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those

² As defendant acknowledges, "[t]he conduct credit calculation of 82 days pursuant to Penal Code section 2933.1 is correct."

reasons on the record. [¶] (1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars (\$200), and not more than ten thousand dollars (\$10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars (\$100), and not more than one thousand dollars (\$1,000), if the person is convicted of a misdemeanor. [¶] (2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars (\$200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.”

“Where a defendant has been convicted of several felony offenses in one proceeding, a restitution fine is not imposed on ‘each count’ but instead one fine is imposed taking into account all the offenses in the proceeding; this proposition is based on the language of section 1202.4, subdivision (b) which states that in ‘every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine,’ and then sets forth a formula for calculating the total amount. (Italics added.)” (*People v. Holmes* (2007) 153 Cal.App.4th 539, 547 (*Holmes*).

Here defendant was convicted of several felonies and one misdemeanor. He was sentenced to state prison for the felonies and a concurrent one year in jail for the misdemeanor. As we explained in *Holmes*, “Section 1202.45 requires a parole revocation restitution fine [in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4] when a defendant is sentenced to prison and is subject to parole. Defendant is not subject to parole for the misdemeanor and is thus not subject to a parole revocation restitution fine for the misdemeanor.” (*Id.* at p. 547, fn. omitted.)

As in *Holmes*, here the court could not impose a restitution fine in the amount of \$8,300 to cover both the felonies and the misdemeanor because the parole revocation restitution fine had to be in the same amount. (*Id.* at pp. 547-548.) Accordingly, the trial

court did not err in imposing the restitution fines separately for the felonies and misdemeanor. (*Ibid.*)

DISPOSITION

Defendant's conviction for robbery of Wells Fargo Bank (count 1) is reversed, and the judgment is modified to award defendant one additional day of presentence custody credit. In all other respects, the judgment is affirmed. The trial court shall prepare an amended abstract of judgment and forward a certified copy to the Department of Corrections and Rehabilitation.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

ROBIE, J.