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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

THADDEUS WILLIAMS, JR.,

Defendant and Appellant.

D059611

(Super. Ct. Nos. SCD218439,
SCD191214)

APPEAL from a judgment of the Superior Court of San Diego County, Leo Valentine, Jr., Judge. Affirmed.

INTRODUCTION

Thaddeus Williams, Jr. appeals from a judgment following convictions for robbery in San Diego Superior Court case No. SCD218439 and revocation of parole in case No. SCD191214. Appellate counsel requested this court conduct an independent review of the record under *People v. Wende* (1979) 25 Cal.3d 436. After reviewing the entire record, we identified no reasonably arguable appellate issues and affirm the judgment.

PROCEDURAL HISTORY

Case No. SCD218439

In March 2011 a jury convicted Williams of three counts (counts 1, 2 & 5) and acquitted him of two counts (counts 3 & 4) of robbery (Pen. Code,¹ § 211). For each of the former counts, the jury also found true vicarious firearm use enhancement allegations (§ 12022, subd. (a)(1)). Williams additionally admitted having a prior strike conviction in case No. SCD191214 (§ 667, subd. (b)-(i), 1170.12).

The prosecutor initially charged Williams jointly with three codefendants. However, at the prosecutor's request, to avoid exclusion of certain incriminating statements Williams made, the trial court severed Williams's trial from the codefendants' trials. The prosecutor subsequently filed an amended information charging Williams singly. The outcome of the codefendants' trials is not contained in the record.

At the sentencing hearing, the trial court declined Williams's invitation to dismiss the prior strike conviction finding and sentenced Williams to an aggregate term of 11 years and eight months in prison. The sentence consisted of: (1) the midterm of three years for count 1, doubled to six years for the prior strike conviction finding, plus one year for the firearm enhancement; (2) one-third the midterm of three years for count 2, doubled to two years for the prior strike conviction finding, plus one-third the one-year term for the firearm enhancement; and (3) one-third the midterm of three years for count

¹ Further statutory references are also to the Penal Code unless otherwise stated.

5, doubled to two years for the prior strike conviction finding, plus one-third the one-year term for the firearm enhancement.

The trial court awarded Williams 945 days of presentence custody credit, consisting of 822 actual days in custody plus 123 days of conduct credit under section 2933.1. The trial court further ordered Williams to pay the following fines and fees: a criminal justice administration fee of \$154 (Gov. Code, § 29550.1), an Immediate and Critical Needs Account fee of \$90 (Gov. Code, § 70373), a theft fine of \$38 to the San Diego Police Department (§ 1202.5), a court security fee of \$120 (§ 1465.8), a restitution fine of \$6,600 (§ 1202.4, subd. (b)), and a parole revocation restitution fine of \$6,600 (§ 1202.45). The trial court stayed the latter unless and until parole is revoked. The trial court additionally ordered Williams to pay victim restitution (§ 1202.4, subd. (f)) of \$136,807 to U.S. Bank, \$25,544 to Pacific Western Bank, \$13,266 to Bank of America, \$9,754.69 to the Victim's Compensation Fund, and \$30 to one of the individual victims. The trial court ordered liability for the victim restitution payments to be joint and several as to Williams and any codefendants subsequently convicted of the same robberies.

Case No. SCD191214

In September 2005 Williams pleaded guilty to one count of assault with a semiautomatic firearm (§ 245, subd. (b)) and one count of shooting at an unoccupied vehicle (§ 247, subd. (b)). The trial court suspended imposition of sentence and placed Williams on five years of formal probation. As a result of the robbery charges in case No. SCD218439, the trial court revoked Williams's probation. At the sentencing hearing

following revocation of probation, the trial court sentenced Williams to an aggregate term of two years and eight months in prison. The sentence consisted of one-third the midterm of six years for the assault offense and one-third the midterm of two years for the vehicle shooting offense. The trial court declined Williams's request for a concurrent sentence and instead ordered the sentence to be served consecutive to the sentence in case No. SCD218439 because both cases involved Williams knowingly acting as a driver for armed individuals.

The trial court awarded Williams 290 days of presentence custody credit, consisting of 253 actual days in custody plus 37 days of conduct credit under section 2933.1. The trial court also ordered Williams to pay a restitution fine of \$200 (§ 1202.4, subd. (b)), a previously stayed restitution fine of \$200 (§ 1202.44), and a parole revocation fine of \$200 (§ 1202.45). The trial court stayed the latter fine unless and until parole is revoked. The trial court dismissed all other previously ordered fines and fees.

FACTUAL BACKGROUND²

Prosecution Case

Del Mar U.S. Bank Robbery (Count 1)

In the afternoon on September 30, 2008, three armed men ran into a U.S. Bank in Del Mar and told everyone to get down. The men wore black hooded sweatshirts, black pants, and gloves. They also all wore masks and at least one of them wore a "Scream"

² We limit our summary to the facts underlying case No. SCD218439 as the facts underlying case No. SCD191214 are not at issue in this appeal.

mask.³ One of the men went straight to the bank manager and demanded he open the vault. Because the vault required two keys to open, the manager had one of the tellers assist him. The men took \$136,837 from the vault and put it into a blue duffle bag. One of the men took the manager's wallet from the manager's back pocket, looked at the manager's identification, and threatened the manager by telling the manager he now knew where the manager lived. Before leaving the vault area, one of the men sprayed pepper spray into the manager's and teller's eyes.

Meanwhile, bank customer Kevin Mills approached the bank and noticed a medium-sized gold car with its engine running backed into a handicapped parking space. He did not see anyone inside the car. After Mills parked his truck and walked up to the bank, he saw a man standing at the door wearing a Scream mask. The man was holding a gun and a white bag across his chest. Realizing something wrong was going on inside the bank, Mills started to turn and walk away, but the man ordered him into the bank. As Mills entered the bank, he coughed and gagged because of the amount of pepper spray in the air.

After the men left the bank, Mills yelled to the bank employees and called 911. Video surveillance of the gold car showed the brake light of the car was activated from the time the men exited the car until the time they returned, suggesting someone was in the driver's seat the entire time.

³ "Scream" mask means a Halloween mask with an elongated white face and dripping chin like a character seen in the movie "Scream."

The video showed the vehicle was a 2002 gold Saturn with tinted windows. Eva Sanders, Williams's girlfriend at that time, had a 2002 gold Saturn, which she permitted Williams to use anytime. According to Sanders, the car had a transmission leak that prevented it from travelling at speeds of more than five miles an hour. Because of the transmission leak, Sanders parked the car on the street. She reported the car stolen on October 23, 2008. When it was recovered, the entire car was trashed because the transmission leak caused it to catch fire.

Rancho Bernardo Pacific Western Bank Robbery (Count 2)

Around closing time on December 1, 2008, four armed men entered the Pacific Western Bank in Rancho Bernardo and yelled at everyone to get down. The men wore black hooded sweatshirts, black pants, gloves, and masks. One of the men wore a Scream mask. The men demanded to go to the vault and asked for the manager, who was not there. An assistant manager and teller opened the vault. The men then grabbed the money and took off.

The men left a black drawstring bag behind. The bag contained a DNA mixture from at least four people. Dwayne Cummins was a potential contributor to the DNA mixture. Williams, Tranes Goins, and Jeremy Gibbs were possible minor contributors to the mixture. However, the result as to Williams was of "very low significance" because statistically the result would be the same for 1 in 4 Caucasians, 1 in 4 African-Americans, and 1 in 5 Hispanics.

A witness outside the bank saw a white Infiniti speed up to the bank and then saw two individuals in black hooded sweatshirts run from the bank, jump into the car and drive away. Surveillance video of the parking lot showed four individuals getting out of the car and entering the bank. The witness did not see anyone get in or out of the driver's door.

One of the stacks of money the men took contained a dye pack. Within minutes of the robbery, police officers found loose bills coated in red dye floating around an intersection less than half a mile north of the bank. A post office employee found a brick of burning money stained with red dye in the same intersection. Police officers also found a .32-caliber semiautomatic handgun in the intersection. The gun contained a DNA mixture from at least three people. Dwayne Cummins was one of the potential contributors to the mixture.

*El Cajon Wells Fargo Bank Robbery (Count 3)*⁴

In the afternoon on December 13, 2008, four dark-skinned men, three of whom were armed with guns, entered a Wells Fargo in El Cajon and told everyone to "get down, get down." All of the men were dressed in black and wore masks and gloves. One of the men wore a skull mask and skull gloves. One of the men had a black backpack.

⁴ Although the jury acquitted Williams of counts 3 and 4, we include a summary of the facts underlying these counts for context, to aid any future review by a court, and because we are obliged to review the entire record for error. (*People v. Kelly* (2006) 40 Cal.4th 106, 110.)

Two of the men jumped the teller counter, while another sprayed the manager and assistant manager with pepper spray. One of the men who jumped over the teller counter put a gun to a teller's head and told her to open up her money drawer. She complied and he pulled all of the money out of the drawer and put it in a backpack. He then jumped back over the teller line and fled with the other men. The men stole \$12,973.

An off-duty San Diego police officer driving near the bank around the time of the robbery almost hit a young African-American man dressed in a black hooded sweatshirt, who was running across the street. While he was not 100 percent certain, the officer thought Williams was the young man and said Williams was running to join three other individuals dressed in black hooded sweatshirts who had already crossed the street.

San Marcos U.S. Bank Robbery (Count 4)

Near closing time on December 22, 2008, four armed men entered the U.S. Bank in San Marcos. Two of the men jumped over the teller line and told everyone to get down on the floor. One of the men went to the manager's office, grabbed the manager and took him to open the vault. As the manager reached in his pocket to get his key for the security door to the vault area, the man put a gun to the manager's head and told the manager to get his hand out of his pocket. The man then went through the manager's pockets, pulled out the manager's wallet with the manager's identification, and said, "I now know where you live. If you don't do what I say, I will kill you and your family."

The manager opened the initial entrance to the vault and had a teller help him open the vault itself. The teller took the money out of the vault and put it inside a sack. The inside of the sack had a stain from an exploded red dye pack. The men stole \$103,623 from the bank.

One of the men wore a white or faded gray sweatshirt, dark pants, and gloves. Another one also wore a light colored sweatshirt. The two remaining men wore black or dark clothes. They all wore gloves and masks. One of the masks was a rubber, character-type mask.

A witness inside the bank recalled hearing the name "Jamal" yelled by one of the robbers. A witness outside the bank saw three men run from the bank. One of the men carried a bag. The men jumped into a white car and sped away. According to the witness, no one got in or out of the driver's seat.

Later that evening, San Diego County sheriff's sergeant Daniel Deese found a white Infiniti with no license plates in a church parking lot less than a half mile from the robbery. The car was registered to Antoine Warfield of Riverside. No comparable fingerprints or other meaningful forensic evidence was found on or in the Infiniti.

A sheriff's detective found a black-and-white bandana on the ground near the car. The bandana contained a mixture of DNA from multiple people. Williams, Goins, Gibbs and Terry Mixon could not be included or excluded as contributors to the mixture. There was a \$50 bill inside the car and an old, dry red dye stain on the car's passenger side backseat. The San Marcos U.S. Bank branch did not use dye packs.

Del Cerro Bank of America Robbery (Count 5)

At around 11:00 a.m. on January 24, 2009, three armed African-American men dressed in black ran into a Bank of America in Del Cerro and told everyone to get down on the ground. The men wore masks and gloves. One of them wore black and white football or baseball gloves. One of the men approached teller Jonathan Ruiz and asked him for his teller keys and for the manager. When Ruiz said he did not know where the manager was, the man went around the bank looking for the manager. Another of the men went around and sprayed several bank employees and a customer in the face with pepper spray. Although the vault was not opened because the bank manager was not located, the men took approximately \$13,200 from the bank's tellers. Included among the stolen money were two track packs, which are disguised global positioning system (GPS) tracking devices. The devices automatically notified the police of the robbery and began tracking the location of the stolen money.

San Diego police motorcycle officer Michael Haley was about 10 miles from the bank when he heard the radio call about the robbery and began receiving dispatch updates on the location of the track packs. He "started a path to intercept the suspects." While stuck in traffic in Del Cerro near the most recently reported location of the suspects, Haley, who did not have a description of the suspect's vehicle, began watching crossing traffic for anything out of the ordinary. He noticed a silver Monte Carlo with large chrome wheels and jet-black window tint. The car stuck out because it was flashy and because the dark tint was cause for a ticket. Haley made a mental note of the car and then continued following location updates for the track packs to El Cajon.

While driving in the area of El Cajon where the suspects were last detected, Haley saw the silver Monte Carlo again. The driver-side window was down and he could see an African-American male driving. Dispatch had previously indicated that at least one of the robbery suspects was an African-American male. Then, when Haley made eye contact with the driver, the driver gave the officer a "deer in the headlights look" and sped away. Haley requested a nearby patrol car pursue and stop the Monte Carlo. Haley followed the patrol car as it pursued the Monte Carlo, and a police helicopter tracked the Monte Carlo's location from overhead. The Monte Carlo drove into a cul-de-sac and hit a parked car.

Meanwhile, information from the track packs indicated the suspects had stopped near the same location. Haley and other officers conducted a hot stop of the Monte Carlo. Williams was driving it and Gibbs was his passenger.

As Haley and other officers conducted the hot stop of the Monte Carlo, San Diego police officer Chad Houseman noticed a burgundy Suburban across the cul-de-sac. Two African-American men were inside it and they had their arms raised. The men were later identified as Mixon and Goins. Houseman pointed the men out to an El Cajon police officer, who ordered them out of the Suburban. After the men got out of the Suburban, Houseman looked through the window and saw a backpack containing money.

San Diego police detectives searched both the Monte Carlo and the Suburban. In the Monte Carlo, the detectives found a small black and red shoulder pack; a pair of black, white and gray football gloves; a pair of blue jeans; a black hooded sweatshirt; and a black do-rag. The gloves were located in the trunk of the car inside a gym bag along

with a pair of sports shoes. The detectives did not find any money, bank bags, weapons, ammunition, or any other bank items in the Monte Carlo.

In the Suburban, the detectives found, among other items, a backpack containing a blue and beige bag with \$13,246 in it, a black purse belonging to one of the robbery victims, black tennis shoes, a .22 caliber Ruger handgun with black electrical tape around the barrel, a .9 millimeter Smith and Wesson handgun, and a canister of mace. According to witnesses, the guns were the same ones used by the robbers in the Pacific Western Bank and Wells Fargo Bank robberies (counts 2 and 3). The guns contained an insufficient amount of DNA for testing.

The detectives also found black hooded sweaters and sweatshirts, a black and yellow backpack with a Scream mask inside, a "Fat Albert" Halloween-type mask, a black ski mask, a black Easton baseball glove, a pair of black Mizuno batting gloves, a pair of gray and black sports gloves, and black pants. According to one witness, gloves similar to the Mizuno gloves were used by one of the robbers in the Wells Fargo Bank robbery (count 3).

When San Diego police robbery detective Thomas Levenberg arrived at the arrest location, Tanya Edwards came from some nearby apartments and said Williams and Goins were her sons and shared a bedroom in her home. With her permission, Levenberg searched the bedroom and found black stocking masks; bullets for .9 millimeter, .22 caliber, and .32-caliber handguns; a blue Smith and Wesson case; black and white baseball gloves; and a black hooded sweatshirt.

After Levenberg admonished Williams as required by *Miranda v. Arizona* (1966) 384 U.S. 436, Williams agreed to speak with Levenberg and special agent Kevin Strauss of the Federal Bureau of Investigations. During the interview, Williams initially denied any involvement in the robbery. He later admitted he drove Goins, Gibbs, and Mixon to the Bank of America, pulled up to the curb, dropped them off, turned the car around, picked them up as they came out of the bank and returned Goins and Mixon to the Suburban, which was parked down the street.

He also acknowledged he drove the white Infiniti in the Pacific Western Bank robbery. He said Gibbs, Goins, Mixon, and another man he knew as "D" pitched in and bought the Infiniti for \$1,300. He received \$2,000 for his role as the getaway driver.

He denied knowing how many other robberies his brother or the others had committed. He also stated he never went into any of the banks and only agreed to be the driver. He denied owning any of the recovered handguns.

Defense Evidence

Edwards and Williams's stepfather testified Williams attended his younger brother's football banquet and birthday party on the date of the third robbery. They also both testified that, in December 2008, Williams worked during the weekdays for his stepfather as a driver. When shown a picture of the gold Saturn used in the U.S. Bank robbery, Edwards testified it did not look like Sanders's Saturn because the color was different and Sanders's Saturn had lighter window tint. Sanders also testified her Saturn had lighter window tint. Edwards further testified she always saw Williams riding as a

passenger in the car with Sanders driving. However, in April 2008, Williams received a traffic ticket while driving the Saturn.

Williams's stepfather owned the Suburban used in the Bank of America robbery. Williams had a key to the Suburban and both he and Goins had permission to drive it. Williams, Goins, Gibbs, and Mixon were friends and Gibbs lived next door to Williams. Gibbs and Mixon did not have permission to drive the Suburban.

Williams is left-handed. None of the armed robbers carried their weapons in their left hands. In addition, Williams's DNA was not found on any of the recovered handguns.

Although nearly \$300,000 was taken during the five robberies, Levenberg only found \$294 in Williams and Goins' room. He did not find indication Williams and Goins had recently spent tens of thousands of dollars. He also did not find any bank-wrapped bills, bank bags, or anything from the bank manager's wallet in their room, on Williams's person, or in the Monte Carlo. In addition, he did not find any red bank dye on any of Williams's clothes.

Williams's interview with Levenberg and Strauss consisted mostly of Williams giving brief responses to detailed questions asked by Levenberg.

DISCUSSION

Appellate counsel filed a brief summarizing the facts and proceedings below. Counsel presented no argument for reversal, but asked this court to review the record for error as mandated by *People v. Wende, supra*, 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, appellate counsel listed as possible, but not arguable,

issues: (1) whether the trial court should have given Williams a concurrent sentence in case No. SCD191214; (2) whether the trial court abused its discretion by declining to dismiss the prior strike conviction finding in case No. SCD218439; (3) whether there was sufficient evidence to support the count 1 robbery conviction in case No. SCD218439; and (4) whether the trial court erred in severing Williams's trial from his codefendants' trials in case No. SCD218439 (*Anders* issues).

We offered Williams the opportunity to file a brief on his own behalf. He has not responded.

Our review of the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the *Anders* issues, has not disclosed any reasonably arguable appellate issues. Appellate counsel has competently represented Williams on appeal.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

O'ROURKE, J.