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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

PHILLIP LONNELL HUTCHENS,

Defendant and Appellant.

E063748

(Super.Ct.No. FVA1300351)

OPINION

APPEAL from the Superior Court of San Bernardino County. Ingrid Adamson Uhler, Ronald M. Christianson and Cara D. Hutson, Judges. Affirmed.

Kevin Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On December 18, 2014, an information charged defendant and appellant Phillip Lonnell Hutchens with grand theft of a firearm (Pen. Code,¹ § 487, subd. (d)(2); count 1); three counts of attempted second degree robbery (§§ 664, 211; counts 2, 3, 8); four counts of assault with a firearm (§ 245, subd. (a)(2); counts 4-7) and assault by means likely to produce great bodily injury (§ 245, subd. (a)(4)). The information also alleged defendant had used a firearm in the commission of certain of these offenses (§ 12022.53, subd. (b)).

On June 12, 2013, the trial court declared a doubt as to defendant's competence to stand trial under section 1368 and appointed two evaluators under section 1369 to assess defendant's competence. One of the evaluators found defendant competent; the other found defendant incompetent. Consequently, the court appointed a third evaluator, who found defendant competent. The evaluator who had found defendant to be incompetent died; therefore, the court appointed a fourth evaluator to replace the deceased evaluator. The fourth evaluator also found defendant to be competent, based on limited information inasmuch as defendant refused to cooperate with the evaluator.

¹ All statutory references are to the Penal Code unless otherwise specified.

The court held a jury trial on competency. (§ 1369.) The three remaining evaluators testified as well as defendant's parents. Additionally, the court permitted the jury to review the written report of the evaluator who had died. The jury found defendant competent to stand trial.

On February 23, 2015, upon motion by the People, the information was amended by interlineation to allege a new count, count 9, making criminal threats (§ 422). That same day, defendant pled no contest to count 2, second degree burglary; and to count 9, making criminal threats. Defendant also admitted the special allegation in count 2, personally using a handgun in the commission of a robbery (§ 12022.53, subd. (b)). The court dismissed the remaining seven counts under section 1385 Pursuant to the terms of defendant's plea agreement.

On March 30, 2015, the trial court sentenced defendant to a total of 13 years eight months as follows: the midterm of three years for robbery under section 211, plus 10 years for personal use of a handgun as an enhancement under section 12022.53, subdivision (b), plus eight months (one-third the midterm of 24 months) for criminal threats under section 422. The court awarded defendant a total of 880 custody and conduct credits.

At sentencing, defense counsel informed the court that defendant had expressed concerns about the constitutionality of his no contest plea that he had previously entered. Defense counsel also expressed that defendant had the right to raise a claim of ineffective assistance of counsel if he so desired. Thereafter, the trial court imposed defendant's sentence without making any further comments or inquiries.

On May 21, 2015, defendant filed a timely notice of appeal stating that the “appeal challenges the sentence or other matters not affecting the validity of the plea.” Defendant did not request or obtain a certificate of probable cause.

B. FACTUAL HISTORY²

On February 21, 2013, at approximately 11:30 p.m., two men wearing ski masks entered the grounds of a grocery store in Fontana. One of the men approached Diana Rivera, who was overseeing the unloading of a truck behind the store. He displayed a handgun and zip tied her hands. After the man held a phone up to Rivera, for her to call the manger to bring keys to the safe out to the truck, the man locked her in the trailer of the truck. In the trailer, she managed to call 911 from her cell phone. She then escaped from the truck and ran inside the store to seek help.

Meanwhile, inside the back area of the store, the same man encountered another employee, Kristin Nash. She offered to give him the code to the safe. The man said he was not interested in money. Fearing for her safety, Nash struggled with the man; he hit her on the side of her head multiple times with his gun. She escaped to the manager’s office. Nash was bleeding profusely; she had a large cut on her face that required stitches and staples.

While these events were unfolding, the second man maintained watch outside the store. The two men then fled and discarded clothing, gloves, and a backpack in different areas. There was blood evidence found on some of the discarded items.

² The parties stipulated that the police report and preliminary hearing transcripts would provide the factual basis for defendant’s plea.

On the morning of February 23, 2013, a bank manager in Fontana called police to report two males acting suspiciously outside the bank shortly, before its scheduled opening at 9:00 a.m. Out-of-order signs had been placed on the ATM machines; bank employees had not placed the signs. Officers responded and detained defendant and Sean Everett Whiteside II. Whiteside was in possession of an airsoft gun and zip ties. Officers found a backpack, zip ties, ski masks, gloves, and a notebook at the scene. Officers retrieved photographs from the grocery store surveillance camera. The photographs showed two men wearing clothing similar to what defendant and Whiteside were wearing when they were apprehended at the bank.

Whiteside later told officers that defendant had been in possession of a gun at the bank. Officers returned to the bank and found a 9-millimeter handgun on top of a utility box. Defendant had been living with his father; when officers they interviewed defendant's father, he told them that his gun, magazine, and a trigger lock were all missing.

While in custody, Whiteside indicated his willingness to make a statement. Whiteside told officers that on February 21, 2015, defendant went to Whiteside's apartment and said he intended to rob a grocery store, where defendant had previously been employed. Defendant showed Whiteside a gun belonging to defendant's father, which he had taken; defendant also had zip ties, gloves, ski masks, and an airsoft gun. Whiteside agreed to act as an accomplice because he needed the money.

Whiteside stated that he never went into the grocery store; he acted as the lookout. Whiteside heard defendant put one woman in a trailer then heard another woman screaming. When he and defendant fled the store, they hid the gun and clothing. Defendant later told him that he had hit the second woman with the gun five or six times.

On February 23, 2013, after the failed attempt to rob the grocery store, defendant decided they were going to rob a bank. Defendant gave Whiteside an airsoft gun. Whiteside printed the out-of-order signs to place on the ATMs. He and defendant retrieved the previously discarded items, including a jacket, gloves, and a backpack, before going to the bank. He and defendant had planned to tie up the bank manager before the branch opened and take money.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

CODRINGTON
J.