

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

TYRELL LEVINE WATSON,

Defendant and Appellant.

F062711

(Super. Ct. No. 10CM2001)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Steven D. Barnes, Judge.

Stephen M. Hinkle, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Sally Espinoza, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

* Before Levy, Acting P.J., Cornell, J., and Kane, J.

STATEMENT OF THE CASE

On May 5, 2011, appellant, Tyrell Levine Watson, was found guilty, at the conclusion of a jury trial, of robbery (Pen. Code, § 211, count one),¹ kidnapping for the purpose of committing robbery (§ 209, subd. (b)(1), count three), and falsely representing himself to a peace officer (§ 148.9, subd. (a), count six).² The jury found true allegations in counts one and three that appellant personally used a deadly weapon in the commission of the offenses (§ 12022, subd. (b)(1)).

The court made a determination that appellant was the person who committed two prior serious felonies, one a prior conviction and one a prior juvenile adjudication. The court instructed the jury concerning the special allegations. The jury found true allegations appellant had a prior serious felony conviction and a prior serious juvenile adjudication within the meaning of the three strikes law (§§ 667, subds. (b)-(i) & 1170.12, subds. (a)-(d)) and that he served a prior prison term within the meaning of section 667.5, subdivision (b).³

On June 10, 2011, the trial court sentenced appellant to an indeterminate prison term of 25 years to life on count one. The court imposed consecutive one-year terms for the weapon enhancement and the prior prison term enhancement. Without objection from appellant, the court granted victim restitution of \$160.

¹ All statutory references are to the Penal Code.

² Count two was dismissed during trial on the prosecutor's motion. Because the jury could not reach a verdict on counts four and five, the trial court declared a mistrial as to those counts. The court granted the prosecutor's motion to dismiss counts four and five.

³ The prior serious felony conviction was for making a criminal threat (§ 422). The prior serious juvenile adjudication was for burglary (§ 459) with a criminal street gang enhancement (§ 186.22, subd. (b)(1)).

Appellant contends there was insufficient evidence to prove that he was the person who suffered the prior serious felony adjudication as a juvenile. Appellant also contends the trial court abused its discretion in awarding victim restitution in an amount greater than the victim's economic loss. We reject both contentions and affirm the judgment.

FACTS

At 10:40 p.m. on July 12, 2010, Randy Rider finished his job at a market in Hanford and walked a mile and a half back to his home.⁴ Five minutes away from his home, Rider heard a group of people ahead of him talking behind a metal gate. Rider heard footsteps behind him. As Rider turned around, appellant came from behind Rider, put his arm around Rider's chest and a knife to Rider's throat. Appellant demanded money. The blade of the knife was three to four inches long.

Appellant told Rider not to try anything funny and to give him all of his money. Rider handed appellant his wallet, with his ATM card inside, his cell phone, and a box cutter. Rider thought he was going to get stabbed. There was a second person with appellant who Rider thought was acting as a lookout.

When Rider told appellant that he had no cash, appellant said he and Cecil would take Rider to an ATM and withdraw all of Rider's money. Rider was led through apartment buildings where Jesus quickly joined the others. Rider was surrounded by the three men. Jesus said he had a shank. Rider was taken to Bubba's Food and Liquor. Appellant told Rider to withdraw \$120 from an ATM machine. Rider was only able to withdraw \$40 from the machine and handed it to Cecil. Rider made a second withdrawal from the machine and handed it to Cecil.⁵

⁴ We only review the facts relevant to the issues raised on appeal.

⁵ On cross-examination and redirect examination, Rider clarified he was able to withdraw \$60 from the ATM machine and that there was a \$2 service fee for the transaction.

Appellant and Cecil had Rider go to the clerk to buy them cigarettes, a lighter, and a Slim Jim. During the purchase, Rider tried to get more cash. Rider obtained \$40 in cash from the register and the transaction for the items he purchased for the assailants was \$55.41. Rider was held for another 20 to 25 minutes by the assailants, who discussed keeping him until 5:00 a.m. until his card began working again. As the group passed people in a driveway across the street, Rider ran up to them and asked them to call the police. The assailants did not notice Rider was gone until after he had run away.

SUFFICIENCY OF THE EVIDENCE OF APPELLANT'S IDENTITY

Appellant contends the trial court erred in finding that he was the person named in a juvenile commitment to the California Youth Authority (CYA) in 2004 for felony residential burglary with a gang enhancement. The youth's name was listed as Terryll Watson with a date of birth of August 23, 1986.⁶ The second amended information in this case listed appellant's names as Tyrell Levine Watson, also known as, Tyrell Levine Wilkinson. Appellant argues that here, there is no identity of names between the information filed here and the commitment to CYA. There was also no evidence of fingerprints or witness testimony setting forth that the juvenile Terryll Watson was the same person as appellant. Appellant maintains, therefore, there was insufficient evidence that he suffered a prior serious juvenile adjudication.

The abstract of judgment for appellant's adult conviction for feloniously making a criminal threat lists appellant's name as Terryll Levine Watson, also known as, Tyrell Levin Wilkinson/Tyrell Levine Watson. Appellant's date of birth in this document is stated as August 23, 1986. In making its findings that appellant was the person described in both the CYA commitment order and the adult abstract of judgment, the court noted there were different spellings of appellant's first and middle names, and one alias last

⁶ Appellant's birth date in the probation report is also listed as August 23, 1986.

name, but that both individuals had the identical birthdates. The court found that the unusual type of name and unusual spellings of appellant's name, along with the identical birth date, led the court to conclude that appellant was the person described in the CYA commitment order and adult abstract of judgment.

California is a common law state. The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States and the Constitution or laws of California, is the rule of decision in all courts of our state. (Civ. Code, § 22.2; *People v. Mendoza* (1986) 183 Cal.App.3d 390, 400 (*Mendoza*)). In the common law, a legal name consisted of one Christian or given name, and one surname, patronymic, or family name with the given name used first and the surname last. (*Id.* at p. 401.) Middle names and initials generally were held immaterial. Under the early common law a middle name was not recognized. A middle name was frequently held to be immaterial whether a mistake is made to it, or it is entirely omitted from a pleading. (*Ibid.*)

It has long been the rule in California, in the absence of countervailing evidence, that the identity of a person may be presumed, or inferred, from identity of name. (*Mendoza, supra*, 183 Cal.App.3d at p. 401 [extra letter "r" in spelling of middle name immaterial]; *People v. Brucker* (1983) 148 Cal.App.3d 230, 241-242 [defendant Brucker found to be the same person as Bruckner]; *People v. Sarnblad* (1972) 26 Cal.App.3d 801, 805-806 (*Sarnblad*) [middle name omitted in subsequent criminal proceeding]; *People v. Lockett* (1969) 1 Cal.App.3d 248, 253 [unique name sufficient for identification].) Here, there was no countervailing evidence that appellant was not the same person as named in the commitment order to CYA.

Although the name in the CYA commitment order lists appellant's first name as Terryll rather than Tyrell, we do not see the names as wholly different. Indeed, depending on inflection, the two names can be pronounced the same. Also, the

appellant's abstract of judgment sets forth both the given name Terryll and the alias Tyrell. This provides a nexus between the different spellings appellant has used for his name over time. Different spellings for names is immaterial under the rule of *idem sonans*. (*Mendoza, supra*, 183 Cal.App.3d at p. 401.) Furthermore, the trial court accurately found that the commitment order to CYA for the juvenile adjudication, the adult abstract of judgment for the prior serious felony conviction, and the probation report in the instant action all list the identical birth date for appellant.

Finally, there is no requirement that there must be something more than the similarity of a name such as photographs or fingerprints. (*Sarnblad, supra*, 26 Cal.App.3d at p. 806.) We find there was sufficient evidence that appellant suffered both the prior juvenile adjudication and a prior adult conviction for prior serious felonies.

SUFFICIENCY OF EVIDENCE FOR VICTIM RESTITUTION

Appellant contends there is insufficient evidence that the victim suffered a financial loss of \$160. Appellant argues the victim's financial loss was only \$100. This issue is procedurally barred, fails on its merits, and is frivolous.

The California Supreme Court has held that a defendant's failure to object to a victim restitution award, and the defendant's failure to request a hearing on victim restitution, constitutes a forfeiture of the issue on appeal. (*People v. Brasure* (2008) 42 Cal.4th 1037, 1074-1075.) The probation officer's report stated that the victim sought \$160 in restitution for his financial losses. Appellant had notice prior to sentencing that the prosecutor was seeking this amount in direct victim restitution. Appellant failed to request a hearing or to object to the court's imposition of \$160 in victim restitution. Appellant forfeited this issue.

Appellant's argument further fails on the merits. Rider's testimony was not completely clear on direct examination. On cross-examination and redirect examination, however, Rider clarified his earlier testimony. We agree with respondent that the record

demonstrates that Rider obtained \$60 from an ATM machine and was charged an additional \$2 service fee. Rider then purchased \$55.41 at the liquor store and withdrew an additional \$40 cash at the same time. Rider's total economic loss was \$157.41. The difference of less than \$3 over the trial court's award is negligible, *de minimis*, and does not require correction on appeal.⁷ Also, Rider's wallet, cell phone, and box cutter were taken from him. These items presumably have a combined value greater than \$3.

DISPOSITION

The judgment is affirmed.

⁷ Under the well established doctrine of *de minimis non curat lex*, we do not reverse a judgment, correct in its result, for trifling error. (Civ. Code, § 3533; *Gruzen v. Henry* (1978) 84 Cal.App.3d 515, 519.)