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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. EMANUEAL DUANE CRITTLE, Defendant and Appellant.	C053906 (Super. Ct. No. 06F00581)

APPEAL from a judgment of the Superior Court of Sacramento County, Pamela Smith-Steward, Judge. Affirmed as modified.

Randy S. Kravis, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Jane N. Kirkland and Clayton S. Tanaka, Deputy Attorneys General, for Plaintiff and Respondent.

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* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for publication except for the "FACTS" and parts I, II, and V.

A jury convicted defendant Emanueal Duane Crittle of carjacking and robbery, and found he personally used a firearm in committing his crimes. Sentenced to an aggregate term of 13 years in state prison, he appeals.

In the published portions of this opinion, we conclude that (1) a $20 court security fee (Pen. Code, § 1465.8) must be imposed based on a conviction for which punishment has been stayed pursuant to Penal Code section 654, and (2) a $10 crime prevention fine (Pen. Code, § 1202.5, subd. (a)) can be imposed only once in a case, rather than for each conviction in a case. Defendant's other contentions are addressed in the unpublished parts of the opinion. We shall modify the judgment and affirm as modified.

FACTS*

After Javier Castillo drove away from his residence in his Lincoln Navigator, he saw defendant "waiving [*sic*] [him] down." When Castillo stopped and rolled down the window "halfways," defendant pointed a gun at Castillo's head and said: "Hey, Cuz. Get out of the car. If you do something stupid, I'm going to shoot you. Don't do something stupid. Don't move." Fearful for his life, Castillo got out of the Navigator. Defendant directed Castillo to give him any money that Castillo had. Castillo complied, giving defendant $280 in $20 bills.

At that time, Castillo's friend, "Big J," telephoned Castillo's cell phone. When Castillo told Big J to call 9-1-1 because he was being robbed, defendant threatened to kill Castillo. Defendant then chased Castillo as he ran away. However, Castillo successfully fled

to Big J's house, where he called 9-1-1, telling the dispatcher that he had been robbed and his vehicle had been taken at gunpoint. Castillo then returned to his residence, where he called 9-1-1 again.

Police Officer Adam Cunningham responded to the carjacking call and interviewed Castillo, who was very angry and upset. Castillo was shaking, and it took some time to calm him down before Officer Cunningham could talk to him. Castillo spoke loudly and quickly, and appeared to be both traumatized and frightened.

Castillo--who gave some inconsistent statements regarding the number of cell phones that he had in the vehicle, the amount of money that he handed over to defendant, and where he went after the carjacking--admitted having two prior juvenile adjudications, one felony and one misdemeanor, for automobile burglary.

The day after the carjacking, Deputy Sheriff Todd Henry stopped the stolen vehicle while it was being driven by defendant, with three passengers. Heroin and marijuana were found in the vehicle. Castillo testified that those drugs were not in the Navigator when it was stolen.

DISCUSSION

I*

The prosecutor made the following statement in his closing argument to the jurors:

"You weren't there. None of the people on this jury were there that day. It's okay to have doubt. You should have some doubts in your mind. We're not going to eliminate all possible doubts. It's impossible to do that. Okay. But this is not

an impossible standard. People are convicted in this courthouse, in this state, and across this nation every day using the standard of beyond a reasonable doubt.

"So it's a very attainable standard. It's just maybe something that we don't deal with every day. It's something that is kind of unique to the jury system, and that's why we bring in jurors such as this group because we have such a wide variety of people from a wide variety -- you know, different walks of life, different paths. And the collective life experiences of this group offers a huge benefit to the process of answering the question was a crime committed by this defendant."

This, defendant claims, was prejudicial misconduct because it "distorted and trivialized" the beyond-a-reasonable-doubt standard. Acknowledging that his claim of error is forfeited by the failure of his trial attorney to object to the argument (*People v. Hill* (1998) 17 Cal.4th 800, 820), defendant asserts that we nonetheless should address the contention because, he argues, his trial attorney was ineffective in not objecting to the prosecutor's comments.

To prevail on his claim of ineffective assistance of counsel, defendant must demonstrate that counsel's performance was deficient and that defendant suffered prejudice as a result. (*Strickland v. Washington* (1984) 466 U.S. 668, 687, 691-694 [80 L.Ed.2d 674, 693, 696-698].) He has failed to do so.

"In general, a prosecutor commits misconduct by the use of deceptive or reprehensible methods to persuade either the court or the jury. [Citations.]" (*People v. Price* (1991) 1 Cal.4th 324,

447.) When a prosecutor's comments in closing argument are challenged, we review the remarks to determine "'whether there is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion.' [Citations.]" *(People v. Cole* (2004) 33 Cal.4th 1158, 1202-1203.)

Here, the first paragraph of the challenged statements was an accurate comment. Reasonable doubt is not a "mere possible doubt" (Pen. Code, § 1096), and juries do apply this standard to convict criminal defendants every day.

Contrary to defendant's assertion, the second paragraph of the prosecutor's remarks (the beyond-a-reasonable-doubt burden is a "very attainable standard . . . unique to the jury system") did not trivialize the prosecutor's burden of proof and did not impermissibly lower the reasonable doubt standard. Nothing about the comment was like that made in *People v. Nguyen* (1995) 40 Cal.App.4th 28, where a prosecutor argued that proof beyond a reasonable doubt was "'a very reachable standard that you use every day in your lives when you make important decisions, decisions about whether you want to get married, decisions that take your life at stake when you change lanes as you're driving.'" (*Id*. at p. 35.) Here, the prosecutor emphasized that the standard was unique to the decision-making process of jury trials in criminal prosecutions.

In any event, it cannot be said that the remarks prejudiced defendant. The trial court correctly instructed the jury on the definition of reasonable doubt, and told the jurors (1) they must follow the law as explained in the court's instructions, and (2) "If you believe that the attorneys' comments on the law conflict

with [the court's] instructions, you must follow [the] instructions." We presume the jury did so. (*People v. Nguyen, supra*, 40 Cal.App.4th at p. 36-37.)

II*

Pursuant to Government Code section 29550.2, the trial court imposed a booking fee and a jail classification fee. Defendant contends that the fees were unauthorized because the court did not expressly find defendant had the ability to pay them, and the record "does not offer any definitive information demonstrating [his] ability to pay either [fee]." However, he did not object to the fees in the trial court.

A defendant who has not objected to a fee or fine on the ground that he lacks the ability to pay is precluded from raising the issue for the first time on appeal. (See *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468-1469 [restitution fine].)

III

Penal Code section 1465.8 provides for the imposition of a $20 court security fee "on every conviction for a criminal offense." (Further section references are to the Penal Code unless otherwise specified.)

Because defendant was convicted of two offenses, the trial court imposed $40 in court security fees. However, pursuant to Penal Code section 654, the court stayed the punishment for the robbery conviction. According to defendant, the stay precluded the court from imposing a $20 court security fee for that conviction. We disagree.

Section 654, which prohibits multiple punishment for the same act or course of conduct and generally bars the use of a conviction for "any punitive purpose" if the sentence on that conviction is stayed (*People v. Pearson* (1986) 42 Cal.3d 351, 361), does not apply to a court security fee because that fee is not punishment. (*People v. Wallace* (2004) 120 Cal.App.4th 867, 874-878 [the court security fee is part of an extensive statutory scheme applicable to both criminal and specified civil cases, has the nonpunitive objective of funding and coordinating court security, and is not so punitive in effect as to negate the Legislature's intention that the fee constitutes a civil disability].)

Accordingly, even though the trial court stayed the punishment for defendant's robbery conviction, it was required to impose a $20 court security fee based upon that conviction. (See *People v. Schoeb* (2005) 132 Cal.App.4th 861, 865 [section 1465.8 "unambiguously requires a fee to be imposed for each of defendant's convictions. Under this statute, a court security fee attaches to 'every conviction for a criminal offense'"].)

IV

The trial court imposed two $10 crime prevention fines based on section 1202.5, subdivision (a), which states: "In any case in which a defendant is convicted of any of the offenses enumerated in Section 211 . . . , the court shall order the defendant to pay a fine of ten dollars ($10) in addition to any other penalty or fine imposed."

Since defendant did not raise the issue in the trial court, we reject his contention that the fines must be reversed because

the court did not make a finding of defendant's ability to pay them, and nothing in the record shows he had the ability to pay. (See *People v. Gibson, supra,* 27 Cal.App.4th at pp. 1468-1469.)

Nevertheless, we agree with defendant that one of the fines was unauthorized because the crime prevention fine can be imposed only once "[i]n any case." (§ 1202.5, subd. (a).) Although defendant was accused and convicted of committing multiple offenses, this was still a single case. (See § 954.) Thus, only one $10 fee could be imposed. (Compare, § 1465.8, subd. (a) [requiring a court security fee for "every conviction for a criminal offense"]; Health & Saf. Code, § 11372.7, subd. (a) [requiring a drug program fee "for each separate offense"].)

Because the second fine was unauthorized, defendant's failure to object does not forfeit the claim on appeal. (*People v. Smith* (2001) 24 Cal.4th 849, 852.)

V*

The trial court awarded 269 days of actual presentence custody credit and 40 days of conduct credit based upon the probation report, which indicated that defendant was arrested on January 18, 2006. Defendant contends, and the People concede, that this is inaccurate.

The arresting officer testified at trial that defendant was arrested and taken into custody on January 15, 2006. Counting the day of sentencing, there are 272 days from January 15, 2006, to October 13, 2006, the day of sentencing. Hence, defendant is entitled to additional days of custody credit.

DISPOSITION

The judgment is modified by striking one of the $10 crime prevention fines (§ 1202.5, subd. (a)) and awarding 272 days of custody credit for a total of 312 days of presentence credit. As modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment accordingly and to send a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

SCOTLAND, P.J.

We concur:

SIMS, J.

CANTIL-SAKAUYE, J.