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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. NONYERE GREGORY OFOEGBU, Defendant and Appellant.	B288220 (Los Angeles County Super. Ct. No. SA094457)

APPEAL from a judgment of the Superior Court of Los Angeles County. Upinder S. Kalra, Judge. Affirmed.

Jennifer A. Mannix, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

In an information filed March 1, 2017, the Los Angeles County District Attorney's Office charged defendant and appellant Nonyere Gregory Ofoegbu with two counts of attempted premeditated murder of a peace officer (Pen. Code, §§ 664, subds. (a), (e)-(f), 187; counts 1 & 2),[1] two counts of assault on a peace officer with a semiautomatic firearm (§ 245, subd. (d)(2); counts 3 & 4), and two counts of assault with a semiautomatic firearm (§ 245, subd. (b); counts 5 & 6). As to counts 1 through 4, it was further alleged that defendant personally and intentionally discharged a firearm, which proximately caused great bodily injury (§ 12022.53, subd. (d)), personally and intentionally discharged a firearm (§ 12022.53, subd. (c)), and personally used a firearm (§ 12022.53, subd. (b)). As to counts 5 and 6, the information alleged that defendant personally used a firearm, to wit, a semiautomatic firearm (§ 12022.5, subd. (a)).

After trial, the jury found defendant guilty of attempted voluntary manslaughter, a lesser included offense, in counts 1 and 2. It also found defendant guilty of two counts of assault on a peace officer with a semiautomatic firearm and two counts of assault with a semiautomatic firearm (victims Venus Moreno (Moreno) and Mark Becerra (Becerra)), as charged in counts 3 through 6. And, the jury found the firearm allegations true.

Defendant was sentenced to 25 years to life, plus 21 years 4 months, in state prison. Various fines and fees were imposed, including a $300 restitution fine (§ 1202.4, subd. (b)), $240 in court operations assessments (§ 1465.8, subd. (a)(1)), and $180 in court facilities assessments (Gov. Code, § 70373).

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

Defendant timely appealed. In his opening brief, defendant asks that we review the sealed *Pitchess*[2] records for error. He also asserts that the trial court erred when it (1) admitted evidence of his statements made to police, and (2) responded to a question from the jury. In a supplemental brief, defendant argues that, pursuant to *People v. Dueñas* (2019) 30 Cal.App.5th 1157, 1163–1173 (*Dueñas*), the trial court erred in imposing the criminal conviction assessment (Gov. Code, § 70373), the court operations assessment (§ 1465.8), and the restitution fine (§ 1202.4) without first determining that defendant was able to pay those fines, in violation of defendant's right to due process.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. *Prosecution evidence*

A. The location

The Public Storage self-storage facility was located on Rosecrans in the City of Hawthorne. Defendant had a storage unit on the second floor at the facility.

B. Police are called to the location

Shortly after 4:00 p.m. on November 19, 2016, two Public Storage employees noticed that the door to defendant's storage unit was partially down and that defendant was laying down inside the unit. The employees approached the unit and told defendant that the rental agreement did not permit him to be inside the unit with the door partially down. In an aggressive tone of voice, defendant responded that the employees were harassing him, that he was a prince and an American citizen, and that he should be left alone. The two employees went down to the first floor office and told Moreno (the manager), Natalie

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[2] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

Reyes (Reyes, an employee), and Becerra (a customer) about the situation with defendant.

Moreno and Reyes went to defendant's storage unit. The door to the unit was mostly closed, and defendant was seated inside the unit. Moreno knocked on the metal door and asked defendant to open it. The door opened and defendant jumped out at Moreno. After Moreno told defendant that he could not be inside the unit with the door closed, defendant screamed that it was his space and she could not tell him what to do. Moreno told defendant that the door needed to be open if he wanted to stay inside the unit, and that she would call the police to escort him off the property if he did not cooperate. Defendant replied that Moreno should call the police. At Moreno's direction, Reyes called 911.

At around 4:35 p.m., Hawthorne Police Sergeant Joel Romero and Hawthorne Police Officer Lawrence Williams arrived at the location; both officers were dressed in full police uniforms. Sergeant Romero, Officer Williams, Moreno, Reyes, and Becerra took the elevator to the second floor.

Defendant was in the second floor hallway, and Moreno confirmed with the officers that defendant was the subject of the phone call. Several items were now located outside defendant's unit, and these items had not been present when Moreno first went to the unit.

Sergeant Romero and Officer Williams walked towards defendant, identified themselves as police officers, and asked defendant to approach them. Defendant walked over to the officers and immediately began screaming and yelling. He stated that he was a prince from Nigeria and told the officers to leave him alone. The officers remained calm and did not draw their weapons. Defendant backed away from the officers and walked towards his storage unit; the officers followed him.

C. Defendant brandishes a machete and then fires gunshots at the officers

Defendant reached into his belongings, grabbed a large, sheathed machete, and held it over his head, causing Sergeant Romero and Officer Williams to draw their guns and point them at defendant. The officers repeatedly ordered defendant to put the machete down, but he did not comply and attempted to remove the machete from its sheath.

Defendant then ran to his storage unit and partially closed the door, leaving a small opening about two feet from the floor. The officers aimed their guns at the storage unit. Sergeant Romero and Officer Williams both heard the "racking" of a gun, i.e., the loading of a round from the magazine into the chamber. The officers were about 15 to 18 feet away from the storage unit.

Sergeant Romero saw a gun appear underneath the door opening, and a shot was fired in the direction of the officers. From inside the unit, defendant then continuously fired his gun at the officers. The officers took cover and fired their weapons. Sergeant Romero made a radio call that shots had been fired.

When the gunfire from defendant briefly stopped, Sergeant Romero and Officer Williams ran down the hallway and took cover in a hallway intersection. Defendant appeared in the hallway and started shooting again at the officers; the officers returned fire. Defendant then ran towards the elevators.

During the exchange of gunfire, Officer Williams was shot in the right leg, just above the knee.[3] Sergeant Romero suffered a laceration on his right elbow that required stitches, and he believed bullet shrapnel caused the injury.

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[3] His femur was shattered by the gunshot. He underwent two surgeries. At the time of the trial, he was still in pain and was not yet able to return to work.

Meanwhile, Moreno, Becerra, and Reyes entered the elevator and went to the first floor lobby, and Moreno heard the gunfire as she entered the elevator and rode it down. Moreno locked the sliding glass doors in the lobby. Defendant exited the elevator on the first floor while carrying a gun and a machete. Defendant was bleeding, stating that he had been shot.

Defendant turned towards Moreno and Becerra, who were next to each other, and pointed the gun at them. Moreno tried to run away, and Becerra grabbed Moreno to shield her. Becerra and Moreno fled to a restroom and locked themselves inside.

Additional Hawthorne police officers responded to the location. Hawthorne Police Officer Jorge Martinez saw defendant holding the gun and machete inside the building, and he ordered defendant at gunpoint to drop his weapons. Defendant dropped his handgun, machete, machete sheath, and an ammunition magazine. Another Hawthorne police officer fired foam bullets into the glass door to gain entry into the building.

D. Defendant's interview at the hospital

At around 8:55 p.m. on the day of the shooting, Los Angeles County Sheriff's Detective Dameron Peyton and his partner Detective Margarita Barron interviewed defendant at Harbor-UCLA Hospital. Defendant was in a hospital bed after suffering wounds to his lower leg and chest. Defendant appeared fairly calm, and he was clear and concise throughout the interview. The interview was recorded on a digital recorder, and the recording was played to the jury.

In the interview, defendant stated that he was inside his storage unit when the police officers arrived and told him to exit the unit. The officers had already drawn their guns. After defendant exited his storage unit, the officers shot him. Defendant ran to his storage unit, retrieved his gun, and fired at the officers. According to defendant, he was "ambushed" in his

storage unit. He believed that "thugs . . . came to kill" him. He did not "even know it was police officers." According to defendant, he was a prince from Nigeria and the police had tried to kill him in Nigeria. After the shooting stopped, defendant had his gun and "sword" and took the elevator downstairs. Defendant saw Moreno and Becerra run into the restroom, and he did not say anything to them.

II. *Defense evidence*

At the time of the incident, defendant was a licensed security guard with a permit to carry an exposed firearm when working as a security guard.

DISCUSSION

I. *Review of Pitchess proceedings*

Defendant asks that we independently review the sealed portion of the reporter's transcript to determine whether the required *Pitchess* procedure was followed. The People do not object.

We have reviewed the transcript of the trial court's in camera proceedings and have determined that the trial court did not err.

II. *The trial court did not err when it admitted evidence of defendant's statements to the police*

Defendant contends that the trial court erred when it failed to suppress defendant's statements to Detectives Peyton and Barron during his interview at the hospital following his arrest and while he was being treated for two gunshot wounds.

A. Relevant procedural background

Prior to trial, defendant moved to suppress evidence of his statements to law enforcement at the hospital, arguing that the statements were involuntary because he was under the effect of drugs administered to him during medical treatment.

1. *Evidence*

At the hearing on defendant's motion, Detective Peyton, the sole witness, testified that he and Detective Barron interviewed defendant at Harbor-UCLA Hospital on November 19, 2016. The detectives advised defendant of his *Miranda*[4] rights, and the entire interview was recorded.

Defendant was in a hospital bed at the time of the interview. He appeared agitated, but "he was lucid." He was able to understand what the detectives were asking him, and he was able to respond to their questions and answer them. Defendant's answers and behavior did not cause Detective Peyton to believe that defendant failed to understand the questions or was under the influence of any narcotic.

2. *Trial court ruling*

The trial court determined that defendant's statements at the hospital were admissible. Based upon the totality of the surrounding circumstances, including (1) the nature, length, and location of the questioning; (2) defendant's physical, mental, and emotional state; and (3) defendant's capacity to understand the questioning, the trial court found that the prosecution had met its burden of showing the voluntariness of defendant's statements.

In so ruling, the trial court explained that it had listened to the recording of the interview and had examined the manner of questioning and the tone of defendant and the detectives. It found that defendant spoke freely and coherently, he did not appear to be physically or mentally exhausted, and the detectives had not made any threats, promises of leniency, or inducements. It also noted that the questioning was not prolonged, with the interview lasting a total of 30 minutes.

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[4] *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

The trial court further explained that there was no evidence to indicate that defendant was under the influence of any medication or that his pain or medication overcame his free will. The trial court also noted that there was nothing to indicate that the detectives interfered with defendant's medical treatment. Therefore, defendant's hospitalization and possible intake of medication did not establish that defendant's free will had been overborne.

B. Relevant law

The "'due process clause of the Fourteenth Amendment precludes the admission of any involuntary statement obtained from a criminal suspect through state compulsion.' [Citation.]" (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1086.) The prosecution has the burden of establishing by a preponderance of the evidence that the defendant's admissions were voluntarily made. (*People v. Williams* (2010) 49 Cal.4th 405, 436.) "The question is whether the statement is the product of an "'essentially free and unconstrained choice'" or whether the defendant's "'will has been overborne and his capacity for self-determination critically impaired'" by coercion." (*Ibid.*)

In evaluating the voluntariness of a statement, the determination is made based on the totality of the circumstances; no single factor is dispositive. (*People v. Williams*, *supra*, 49 Cal.4th at p. 436.) "Relevant considerations are "'the crucial element of police coercion [citation]; the length of the interrogation [citation]; its location [citation]; its continuity" as well as "the defendant's maturity [citation]; education [citation]; physical condition [citation]; and mental health."' [Citation.]" (*People v. Williams*, *supra*, at p. 436.) "A confession is not involuntary unless the coercive police conduct and the defendant's statement are causally related." (*Id.* at p. 437.)

On appeal, the trial court's findings as to the circumstances surrounding the statements are upheld if supported by substantial evidence, but the trial court's finding as to the voluntariness of the statement is subject to independent review. (*People v. Williams*, *supra*, 49 Cal.4th at p. 436.)

C. Analysis

The totality of the circumstances here demonstrates that defendant's statements at the hospital were voluntary. First, there is no evidence of police coercion. The detectives advised defendant of his *Miranda* rights, defendant indicated that he understood his rights, and defendant impliedly waived those rights by immediately discussing the shooting with the detectives. The detectives posed their questions to defendant about the shooting in a calm and nonthreatening manner, the questioning was not prolonged, and the detectives did not make any threats, promises of leniency, or inducements. Also, as noted by the trial court, there was no evidence that the detectives interfered with defendant's medical treatment.

Second, the circumstances that led to defendant being hospitalized (gunshot wounds) did not establish that his statements were involuntary. In light of defendant's detailed and expansive responses to the questioning, including his repeated assertions that the officers "ambushed" him, the officers shot first, and he only fired back in self-defense, it is evident that defendant fully understood the detectives' questions. Also, as again noted by the trial court, there was no evidence to suggest that defendant was under the influence of any medication. In short, there was nothing to indicate that any pain or medication overcame defendant's free will.

It follows that defendant's statements were not involuntary. His will was not overborne, and his capacity for self-determination was not critically impaired by law enforcement

coercion. (See, e.g., *People v. Panah* (2005) 35 Cal.4th 395, 472 [even though the defendant was sometimes irrational during the interrogation at the hospital, his statements were voluntary because he was responsive to police questioning and there was no police coercion]; *People v. Breaux* (1991) 1 Cal.4th 281, 301 [rejecting claim that statement made to police at hospital was involuntary as a result of morphine administration because "there was nothing in the record to indicate that the defendant did not understand the questions that were posed to him"]; *People v. Jackson* (1989) 49 Cal.3d 1170, 1189 [rejecting claim that statements made at hospital were involuntary after defendant ingested drugs because "evidence showed that defendant was able to comprehend and answer all the questions that were posed to him"]; *People v. Perdomo* (2007) 147 Cal.App.4th 605, 618–619 [statements elicited at hospital were voluntary where the defendant did not ask for the interrogation to cease and the officers' tone was conversational and not threatening].)

D. Harmless error

Even if the trial court had erred in admitting defendant's statements to the detectives, which it did not, any error would have been harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 36.) The prosecution's case was mostly based on the testimony of the responding officers and the civilian victims. Defendant's statements in the hospital focused on his claim that the police officers "ambushed" him and that he only fired back at the officers who fired first. In light of the nature of defendant's statements, given the wealth of evidence against defendant, any purported error in admitting defendant's statements was harmless as a matter of law.

III. *The trial court properly exercised its discretion in declining to provide a further definition of the term "detained" during jury deliberations*

Defendant contends that the trial court inadequately responded to the jury's request for a further definition of the term "detained."

A. Relevant procedural background

As set forth above, in counts 1 and 2, defendant was charged with the attempted murder of Officer Williams (count 1) and Sergeant Romero (count 2); it was further alleged that the attempted murder was committed on a peace officer lawfully performing his duties as a peace officer. In counts 3 and 4, defendant was charged with assault on a peace officer with a semiautomatic firearm, with Officer Williams (count 3) and Sergeant Romero (count 4) as the named victims.

1. *Jury instructions*

Near the conclusion of trial, the trial court provided a packet of proposed jury instructions to the parties, including CALCRIM No. 2670. During a discussion of CALCRIM No. 2670, defense counsel argued that (1) the term "detention," as used in the instruction, was a term of art, and (2) the jury should be further instructed that the detention of a person within the meaning of the Fourth Amendment occurs when the police communicate to a reasonable person that the person is not free to ignore the police presence and leave at his will. Defense counsel noted that he had obtained the definition from the Cornell Law School database rather than from a case. The trial court declined to give the requested definition of "detention."

As given to the jury CALCRIM No. 602 instructed that the People had to prove that Officer Williams in count 1 (and Sergeant Romero in count 2) "was a peace officer lawfully performing his duties as a peace officer." The instruction also

informed the jury: "A peace officer is not lawfully performing his or her duties if he or she is unlawfully detaining or attempting to detain someone or using unreasonable or excessive force in his or her duties." CALCRIM No. 860 instructed the jury on the requisite elements of assault on a peace officer with a semiautomatic firearm, including: "When the defendant acted, the person assaulted was lawfully performing his duties as a peace officer."

As given to the jury, a modified version of CALCRIM No. 2670 instructed that the People had the burden of proving that Officer Williams and Sergeant Romero were lawfully performing their duties as peace officers. The instruction further provided: "The phrase 'in the performance of his duties,' means: [¶] Any lawful act or conduct while engaged in the maintenance of the peace and security of the community or in the investigation or prevention of crime. [¶] Lawfully detaining or attempting to detain a person for questioning or investigation."

The instruction further provided that a "peace officer may lawfully detain and question a person when the circumstances are such as would indicate to a reasonable peace officer in a like position that such a course of conduct is within the proper discharge of his duties," and "[t]emporary detention for questioning permits reasonable investigation, without the necessity of making an arrest." The instruction also explained that a peace officer must have "reasonable cause to detain," and listed the requirements for a peace officer to have such a reasonable cause to detain.

2. *Jury question*

During deliberations, the jury sent several notes to the trial court, including the following: "Please elaborate on the definition of 'detained.' Does attempting to converse or engage constitute detention? [] Is that considered temporary detention?"

During the ensuing discussion of the jury's notes, the trial court proposed answering the jury's question with a combination of CALCRIM Nos. 200 and 2670. Specifically, the trial court proposed the following answer:

"Some of these instructions may not apply, depending on your findings about the facts of the case. Temporary detention for questioning permits reasonable investigation without the necessity of making an arrest. The phrase in the performance of his duties as used in this instruction means lawfully detaining or attempting to detain a person for questioning or investigation, or any lawful conduct or while engaged in the maintenance of the peace and security of the community, or in the investigation or prevention of crime."

The prosecution agreed with the trial court's proposed answer. Defense counsel, however, argued that the jury was specifically asking for a definition of the word "detained" and reminded the trial court that he had previously proposed providing the jury with a definition.

Ultimately, the trial court stated that it would not provide a further definition for the term "detention," explaining that any further elaboration would involve Fourth Amendment law that would be "very confusing, particularly since there is no evidence of a detention in this case." The trial court then stated that it would answer "no" to the jury's two questions as to whether attempting to converse or engage constituted detention or temporary detention.

Thereafter, in the jury's presence, the trial court answered "no" to the jury's questions. It then instructed the jury: "Some of these instructions may not apply, depending on your findings about the facts of the case. . . . [¶] Temporary detention for questioning permits a reasonable investigation without the necessity of making an arrest. The phrase in the performance of

his duties as used in the instructions means lawfully detaining or attempting to detain a person for questioning or investigation, or any lawful act or conduct while . . . engaged in the maintenance of the peace and the security of the community, or in the investigation or the prevention of crime."

The jury also received a similar written response.

B. Relevant law

"When a jury asks a question after retiring for deliberation, '[s]ection 1138 imposes upon the court a duty to provide the jury with information the jury desires on points of law.' [Citation.]" (*People v. Eid* (2010) 187 Cal.App.4th 859, 881–882.) "Where the original instructions are themselves full and complete, the court has discretion under section 1138 to determine what additional explanations are sufficient to satisfy the jury's request for information." (*People v. Beardslee* (1991) 53 Cal.3d 68, 97; see also *People v. Smithey* (1999) 20 Cal.4th 936, 1009.) "An appellate court applies the abuse of discretion standard of review to any decision by a trial court to instruct, or not to instruct, in its exercise of its supervision over a deliberating jury." (*People v. Waidla* (2000) 22 Cal.4th 690, 745–746.)

C. Analysis

Here the trial court properly exercised its discretion in declining to provide a further definition of the term "detained." After all, the jury asked for a further definition in conjunction with its question as to whether "attempting to converse or engage" constituted "detention" or "temporary detention." The trial court's answer of "no" to those questions was legally correct and fully responsive. (*People v. Brown* (2015) 61 Cal.4th 968, 974.) No further response was required.

And, notably, the trial court provided the jury with further instructions, with a combination of CALCRIM Nos. 200 and 2670. These instructions, coupled with the trial court's clear answer of

"no" in response to the jury's questions, fell well within the trial court's exercise of its discretion.

The cases cited by defendant are inapposite. In *People v. Loza* (2012) 207 Cal.App.4th 332, "the jury clearly indicated that it had not understood, from the instructions that the court had already provided, that it had to determine [the defendant's] intent as to each offense she was accused of aiding and abetting." (*Id*. at p. 355.) That is a far cry from the jury's question here, which simply asked whether a detention included attempting to converse or engage with the defendant. And the trial court answered that question for the jury. In *People v. Nero* (2010) 181 Cal.App.4th 504, the trial court erred by (1) giving confusing aider and abettor instructions, and (2) then failing to answer a yes or no question with the appropriate one word response; instead, it erroneously reread the confusing jury instruction back to the jury. (*Id*. at p. 518.) Here, in contrast, the trial court answered the jury's questions by correctly responding "no." No further explication was required.

IV. *No cumulative error*

In light of our conclusion that the trial court did not err, it follows that we reject defendant's contention that his conviction must be reversed based upon "cumulative prejudice of the errors."

V. *The trial court properly imposed the restitution fine and assessments*

In his supplemental brief, defendant argues that the trial court erred in imposing various fines, fees, and assessments without first determining whether he had the ability to pay those fines, fees, and assessments. In support, he relies upon *Dueñas*, *supra*, 30 Cal.App.5th 1157.

We are not convinced. Even before *Dueñas*, a trial court could "consider[]" a defendant's "[i]nability to pay" whenever it "increase[ed] the amount of the restitution fine" in excess of the

minimum of $300 applicable here. (§ 1202.4, subds. (b)(1), (c).) As defendant concedes, he did not object or otherwise present any evidence regarding his ability to pay to the trial court at sentencing. As a result, the issue has been forfeited on appeal. (See, e.g., *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468–1469; *People v. Bipialaka* (2019) 34 Cal.App.5th 455, 464 [by failing to object to fees or fines in the trial court, the defendant forfeited his objection on appeal]; *People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1153–1155.)

Moreover, there is no indication that any objection would have been futile. "Although [the] statutory provisions mandate the assessments be imposed, nothing in the record of the sentencing hearing indicates that [defendant] was foreclosed from making the same request that the defendant in *Dueñas* made in the face of those same mandatory assessments. [Defendant] plainly could have made a record had his ability to pay actually been an issue. Indeed, [defendant] was obligated to create a record showing his inability to pay the maximum restitution fine, which would have served to also address his ability to pay the assessments." (*People v. Frandsen*, *supra*, 33 Cal.App.5th at p. 1154.)

"More fundamentally, we disagree with [defendant's] description of *Dueñas* as 'a dramatic and unforeseen change in the law . . . .' [Citation.]" (*People v. Frandsen*, *supra*, 33 Cal.App.5th at p. 1154.) "*Dueñas* was foreseeable." (*People v. Frandsen*, *supra*, at p. 1154.)

Setting aside this procedural obstacle, defendant's argument fails on the merits. Based on the constitutional guarantees of due process and ban against excessive fines, *Dueñas* held that trial courts may not impose three of the standard criminal assessments and fines—namely, the $30 court operations assessment (§ 1465.8), the $40 criminal conviction

assessment (Gov. Code, § 70373), and the $300 restitution fine (§ 1202.4)—without first ascertaining the "defendant's present ability to pay." (*Dueñas*, *supra*, 30 Cal.App.5th at pp. 1164, 1171, fn. 8, 1172, fn. 10.) We need not decide whether we agree with *Dueñas* because defendant is not entitled to a remand even if we accept *Dueñas*. That is because the record in this case, unlike the record in *Dueñas*, indicates that defendant has the ability to pay the assessments and fines imposed in this case. A defendant's ability to pay includes "the defendant's ability to obtain prison wages and to earn money after his release from custody." (*People v. Hennessey* (1995) 37 Cal.App.4th 1830, 1837; *People v. Gentry* (1994) 28 Cal.App.4th 1374, 1376.) Prisoners earn wages ranging from $12 per month (for the lowest skilled jobs) to $56 per month (for the highest). (Cal. Dept. of Corrections & Rehabilitation, Operations Manual, §§ 51120.6, 51121.10 (2019).) At these rates, given defendant's lengthy sentence, he will have enough to pay the assessments and fines.[5]

It follows that we reject defendant's argument that the restitution fine must be stayed unless and until the People prove he has a present ability to pay.[6]

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[5] Even if defendant does not voluntarily use his wages to pay the amounts due, the state may garnish between 20 and 50 percent of those wages to pay the restitution fine. (§ 2085.5, subds. (a) & (c); *People v. Ellis* (2019) 31 Cal.App.5th 1090, 1094.)

[6] In so concluding, we note that defendant "points to no evidence in the record supporting his [present or future] inability to pay." (*People v. Gamache* (2010) 48 Cal.4th 347, 409.) And, defendant offers no legal authority in support of his suggestion that because he was represented by appointed counsel at trial, he necessarily cannot afford to pay the court-ordered fines. In fact, the law holds otherwise. (See, e.g., *People v. Douglas* (1995) 39 Cal.App.4th 1385, 1397 ["a defendant may lack the 'ability to pay'

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
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_____, J.
HOFFSTADT

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the costs of court-appointed counsel yet have the 'ability to pay' a restitution fine"].)