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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

EMILIO J. MATA,

Defendant and Appellant.

B270671

(Los Angeles County  
Super. Ct.  
No. KA108861)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert M. Martinez, Judge. Affirmed.

Tracy L. Emblem, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Emilio Mata appeals from the judgment entered after his jury conviction of first and second degree robbery, carjacking, assault with a firearm, and felony firearm possession. His appointed counsel filed a no-issue brief under *People v. Wende* (1979) 25 Cal.3d 436. We notified defendant of his right to respond, but received no response.

The facts of the case are as follows: At about 7:30 a.m. on January 21, 2015, appellant entered the Universal Donuts shop in El Monte. He was carrying a rifle covered with a sweatshirt. Appellant pointed the gun at customer Irma Gonzalez's legs and took her wallet and keys, which she had set on the counter. He waived the rifle at customer Ivan Nava, who had dropped to the floor. Appellant then left in Gonzalez's silver SUV.

At about 8:00 a.m. on the same day, appellant drove the SUV to an ATM machine in Pico Rivera, where Jacob Cortez had just deposited money. He pointed the rifle at Cortez and fired a shot at the ground when Cortez did not immediately comply with his demand for money. At gunpoint, Cortez withdrew \$100 and gave it to appellant, who then drove off in the SUV.

At about 10:14 a.m., appellant drove the SUV into a curb in front of a bus stop in Buena Park. He left the scene after being told that police had been called. The responding officers spotted appellant and arrested him.

Eyewitnesses at all three locations identified appellant, who had a distinctive facial tattoo. A shell casing and .22 caliber bullet were found at the scene of the ATM robbery. A fingerprint from appellant's index finger matched a fingerprint from inside the SUV. Gonzalez's wallet was found inside the SUV, along with a set of keys to appellant's house in Pico Rivera. The

firearm used in the robberies was not recovered, nor was gunshot residue present on appellant's hands.

Upon his arrest, appellant was taken to a hospital because he had high blood pressure and shortness of breath. He tested positive for methamphetamine, opiates, and marijuana. Upon his release from the hospital that afternoon, appellant was interviewed by police. At first, he denied having been in El Monte, but then said he had taken a bus near the donut shop in El Monte to Buena Park. During the interview, appellant rejected an officer's suggestion that he could have blacked out from the large amount of drugs he had ingested.

Appellant was charged with second-degree robbery (Pen. Code, § 211, count 1)<sup>1</sup> and carjacking (§ 215, count 2) as to Gonzalez, assault with a firearm (§ 245, subd. (a)(2), count 3) as to Nava, first degree ATM robbery (§ 211, count 4) as to Cortez, and felon in possession of a firearm (§ 29800, subd. (a)(1), count 5). Firearm enhancement allegations were attached to the first four counts. (§§ 12022.5, subd. (a); 12022.53, subds. (b)-(c).) A prior strike conviction also was alleged.

The investigating officers, as well as Gonzalez, Cortez, an eyewitness to the accident in Buena Park, and the manager of a nearby motel testified at trial. Nava could not be located, but his testimony from the preliminary hearing was read into evidence after the court determined diligent efforts had been made to secure his presence in court.

Appellant testified in his defense that he was a regular methamphetamine user. He claimed to have taken three and a half grams of methamphetamine over four days running up to January 21, 2015, along with three Xanax pills and a painkiller

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

in the early morning hours. He had drunk beer and smoked marijuana as well. Appellant claimed he blacked out as a result and did not remember anything until he woke up at the hospital. A forensic psychiatrist testified that the combination of drugs taken by appellant could cause a blackout, but acknowledged that a heavy drug user could still “function fairly normally.”

The jury convicted appellant as charged and found the firearm allegations to be true. The court then found the prior strike allegation to be true and denied appellant’s request to strike it.

Appellant was sentenced to 47 years in prison as a second striker. The sentence consisted of 12 years on the base count 4 and 20 years on the firearm enhancement attached to that count, followed by 6 years 8 months on count 2 and its enhancement, and 3 years 4 months on count 3 and its enhancement. The sentence on counts 1 and 5 and the enhancement on count 1 were imposed and stayed. An additional five-year term was imposed under section 667, subdivision (a)(1). Appellant was awarded 468 days of presentence credits and was assessed various fines and fees.

Having reviewed the record on appeal, we find no arguable issues. (*People v. Kelly* (2006) 40 Cal.4th 106.)

**DISPOSITION**

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.