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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.

LONNIE FANTROY,

Defendant and Appellant.

B271149

(Los Angeles County
Super. Ct. No. BA428367)

APPEAL from a judgment of the Superior Court of Los Angeles County, George G. Lomeli, Judge. Affirmed.

Alan S. Yockelson, 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, Noah P. Hill and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Lonnie Fantroy appeals from a judgment following his conviction for second degree robbery. He contends his trial attorney was ineffective for failing to object to an allegedly impermissibly suggestive pretrial identification procedure. He further contends the trial court abused its discretion when it denied his request under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*) to strike one of his prior “strike” convictions. Finding no error, we affirm.

STATEMENT OF THE CASE

Appellant was charged by information with two counts of second degree robbery (Pen. Code, § 211).¹ The information alleged that appellant robbed Kenneth Dumas on August 11, 2014, and that he robbed Walter Rivera-Martinez (Rivera) the following day. As to the Rivera robbery, it also was alleged that appellant inflicted great bodily injury (GBI) on Rivera (§ 12022.7, subd. (a)). The information further alleged that appellant had two prior “strike” convictions within the meaning of the Three Strikes law (§§ 667, subd. (d), 1170.12, sub. (b)), two prior felony convictions (§ 667, subd. (a)(1)), and had served seven prior prison terms (§ 667.5, subd. (b)).

Following trial, the jury was unable to reach a verdict on either counts, and a mistrial was declared. After a second trial, the jury found appellant guilty of second degree robbery of Rivera, and found true the GBI allegation. The jury acquitted appellant of robbery of Dumas. After appellant waived his right

¹ All further statutory citations are to the Penal Code, unless otherwise stated.

to a jury trial on the prior convictions allegations, the court found them true.

Although the trial court denied appellant's *Romero* motion to strike one of his prior strike convictions, it exercised its discretion to strike the prior prison term enhancements. The court sentenced appellant to a total of 38 years to life in state prison. Appellant timely appealed from the judgment.

STATEMENT OF THE FACTS²

Rivera testified that on August 12, 2014, he was walking home when he was confronted by a Black woman wielding a knife. The woman directed Rivera to walk with her to a ramp near a burger joint on Broadway and 47th Street in the City of Los Angeles. At the location, the woman assaulted him and pulled his backpack off. Rivera fell to the ground, and several men, including appellant, approached him and began to assault him. Appellant punched him in the head and took his cell phone. The men then ran away. As a result of the assaults, Rivera's body ached, and he suffered headaches for two to three weeks.

A few days later, Rivera met with Los Angeles Police Detective Teresa Alonso about the incident. Alonso had been given a photographic six-pack prepared by Detective Alcaraz in connection with the Dumas robbery investigation. When shown the six-pack, Rivera identified appellant's photo as that of the man who assaulted and robbed him. Rivera testified he could see appellant's face during the assault because it was illuminated by

² Because appellant was acquitted of the Dumas robbery, we exclude the facts relevant to that incident.

a street light. He also had seen appellant on a prior occasion, sitting on a bench near Broadway and Paramount.

DISCUSSION

A. Ineffective Assistance of Counsel

Appellant contends his trial counsel should have objected to Rivera's identification of him because Detective Alonso improperly used a photographic six-pack developed for the investigation of the Dumas robbery. Specifically, he contends the six-pack was impermissively suggestive because it included his picture when Detective Alonso had not yet identified him as a suspect in Rivera's robbery.

“In assessing claims of ineffective assistance of trial counsel, we consider whether counsel's representation fell below an objective standard of reasonableness under prevailing professional norms and whether the defendant suffered prejudice to a reasonable probability, that is, a probability sufficient to undermine confidence in the outcome. [Citations.]” (*People v. Gamache* (2010) 48 Cal.4th 347, 391.) Appellant has not shown trial counsel was ineffective because he has not demonstrated how the photographic six-pack shown to Rivera was unduly suggestive. Appellant's sole contention is that his inclusion renders the six-pack unduly suggestive because it suggests that he was a suspect in Rivera's robbery, though he had not yet been identified as such. However, it is axiomatic that nonsuspects are included in photographic six-packs, and nothing about appellant's inclusion improperly suggested he was Rivera's assailant. In short, appellant has not shown a reasoned basis to object to Detective Alonso's use of the six-pack. Accordingly, trial counsel was not ineffective for failing to challenge its use.

B. Denial of *Romero* Motion

Appellant contends the court abused its discretion in denying his motion to strike one or both of his prior strikes. “[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, . . . the court in question must consider whether, in light of the nature and circumstances of [the defendant’s] present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161.) “[A] trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances,” such as where the resulting sentence is ““arbitrary, capricious or patently absurd”” under the specific facts of a particular case. (*People v. Carmony* (2004) 33 Cal.4th 367, 378.)

In denying appellant’s *Romero* motion, the trial court stated its reasons for declining to strike the “strike” convictions. The court noted that appellant had numerous convictions, some of which were serious and/or violent, including “two prior robbery cases, coupled with an assault with a deadly weapon and a grand theft.” Additionally, the court observed, “the injuries caused in this case, . . . which the court was privy to through photographs, were substantial.” On this record, there was no abuse of discretion. The trial court considered the relevant facts and properly exercised its discretion in denying appellant’s *Romero* motion.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.