Filed 7/16/18 P. v. Cowell CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. ALLYSON MAURA COWELL, Defendant and Appellant.	2d Crim. No. B284036 (Super. Ct. No. 1476514) (Santa Barbara County)

Allyson Maura Cowell appeals after a jury convicted her on two counts of financial elder abuse (Pen. Code,[1] § 368, subd. (e)), 25 counts of forgery (§ 470, subd. (a)), 24 counts of money laundering (§ 186.10, subd. (a)(2)), and one count of grand theft (§ 487, subd. (a)). The jury also found excess loss and white collar offense enhancements to be true (§§ 186.10, subd. (c)(1)(A), 186.11, subd. (a)(1), 12022.6, subd. (a)(2), 1203.045, subd. (a)). The trial court sentenced her to six years in state prison, consisting of the midterm of three years for the financial elder

[1] All statutory references are to the Penal Code.

abuse charged in count 1 plus a three-year enhancement under section 186.11, subdivision (a)(2). The court also imposed three-year concurrent sentences as to each of the forgery convictions (counts 2 through 25 and 51), and imposed and stayed three-year sentences on each of the money laundering counts (counts 26 through 49), the remaining financial elder abuse charge (count 50), and the count of grand theft (count 52). Appellant was ordered to pay a $1,296,000 white collar offense fine (§ 186.11, subd. (c)), $653,907.50 in victim restitution, and various fines and fees including restitution and parole revocation fines imposed under sections 1202.4, subdivision (b), and 1202.45.

Appellant contends her forgery and money laundering convictions must be reversed because the crimes were committed with the intent and objective of committing the elder abuse of which she was also convicted. She also contends the victim restitution and parole revocation fines were improperly imposed and that the concurrent sentences imposed as to her forgery convictions should have been stayed under section 654. We shall order the judgment corrected as to appellant's sentencing on the forgery counts. Otherwise, we affirm.

FACTS AND PROCEDURAL HISTORY

Appellant is the daughter of Earle and Rosellen Cowell. In 2011, appellant moved back in with her parents to help take care of Earle, who had fallen ill. Earle was eventually moved into a skilled nursing facility and died in July 2013. Appellant continued living with Rosellen. About a month before Earle's death, Rosellen was diagnosed with cancer and immediately began chemotherapy.

When appellant moved back to the family home, her parents had a Charles Schwab investment account and a Union

Bank personal checking account that were collectively worth several million dollars. After appellant moved back in, Rosellen occasionally gave her checks from the Union Bank account that were made out to "cash" so appellant could obtain money for groceries and other expenses. Rosellen also occasionally gave appellant money in exchange for her help around the house.

In 2014, appellant began gambling at casinos in Nevada and on the Chumash Indian reservation. She lost far more than she won. In 2014, she lost a total of $114,000 at the Bellagio casino. In March and April of 2015, she lost about $484,000 at the Chumash casino.

In June 2014, appellant began forging and cashing checks written on Rosellen's Charles Schwab investment account. In early 2015, she cashed several checks made out for between $30,000 and $40,000. In April 2015, John Buckingham, the investment account's fund manager, discovered that a series of checks totaling about $500,000 had recently been cashed. Buckingham called Rosellen to inquire about the transactions. Appellant answered the phone and told Buckingham the withdrawals were legitimate. Appellant also said she would have Rosellen return Buckingham's call.

Buckingham finally spoke to Rosellen about three weeks later. Rosellen told Buckingham she did not know that appellant had written any checks on the investment account. Buckingham obtained copies of some of the forged checks. They were all made out to "cash" and bore Rosellen's forged signature on the front and appellant's endorsement on the back. After Rosellen verified that she had not written or authorized any of appellant's withdrawals, Buckingham froze the investment account. A subsequent review of the account showed that between June 2014

and April 2015, appellant cashed 23 checks totaling about $640,000. All 23 checks were deposited in appellant's personal bank account. Rosellen later determined that appellant had taken the checks from a checkbook Rosellen kept in a file drawer.

Rosellen reported appellant to the police at the beginning of May 2015. On May 18, appellant tried to sell back one of the burial plots Rosellen had purchased for the family shortly after Earle's death. The salesman told appellant Rosellen had to consent to the sale and gave appellant an approval form for Rosellen to sign. Appellant returned with the "signed" form a few hours later. Believing that Rosellen's signature on the form was genuine, the salesman bought back one of Rosellen's plots for $12,000 and gave the money to appellant.

Appellant testified in her own defense. She claimed that she cashed all of the disputed checks with Rosellen's permission. Rosellen wanted to give the money to appellant in that manner to avoid upsetting the rest of the family. Rosellen falsely claimed otherwise because she was surprised that her gifts to appellant had been discovered and was embarrassed that appellant had squandered the money. Appellant also asserted that she had the authority to sell back the burial plot because it belonged to her.

DISCUSSION

The Bailey *Doctrine*

Appellant contends her convictions for forgery and money laundering must be reversed because they were committed with the single intent and plan of committing the financial elder abuse of which she was convicted in count 1. Appellant's contention is premised upon *People v. Bailey* (1961) 55 Cal.2d 514 (*Bailey*)), which established the doctrine that multiple offenses of petty theft must be aggregated into a single count of grand theft when

each theft was committed pursuant to single intent, plan, or purpose. Although *Bailey* was overruled on this point in July 2014 (*People v. Whitmer* (2014) 59 Cal.4th 733 (*Whitmer*)), appellant asserts that each of her forgery and money laundering offenses are governed by *Bailey* because "[t]he facts clearly show that appellant commenced her scheme to steal from her mother while the old law applied."[2]

We are not persuaded. Numerous cases have recognized that the *Bailey* doctrine only applies to crimes of theft. (See, e.g., *In re David D.* (1997) 52 Cal.App.4th 304, 309 [recognizing that application of the *Bailey* doctrine "has been limited . . . to the crime of theft"]; *People v. Drake* (1996) 42 Cal.App.4th 592, 597 [declining "to extend the *Bailey* doctrine beyond theft offenses"]; *People v. Washington* (1996) 50 Cal.App.4th 568, 574, 577 [recognizing that the "test articulated in *Bailey* has been consistently applied in theft cases" and concluding that the test did not apply to crime of burglary because "the difference between theft and burglary makes application of the *Bailey* rule inappropriate"].)

Neither forgery nor money laundering are theft offenses, so the *Bailey* doctrine does not apply to those crimes. (See *People v. Neder* (1971) 16 Cal.App.3d 846, 852 [recognizing that the *Bailey* doctrine was "developed for the crime of theft" and thus should not be "extended to forgery"].) Moreover, appellant offers no authority for the proposition that *Bailey* requires the aggregation of multiple counts of two different offenses into a third offense of

---

[2] Three of appellant's forgery convictions and three of her money laundering convictions are based on checks she forged and cashed before *Whitmer* was decided.

grand theft. Appellant's claim that her forgery and money laundering convictions are barred under *Bailey* thus fails.

Victim Restitution and Parole Revocation Fines

Appellant claims the court erred by imposing a victim restitution fine (§ 1202.4, subd. (b)) and a parole revocation fine (§ 1202.45) in addition to the white collar offense fine imposed pursuant to section 186.11, subdivision (c). She asserts that the restitution and parole revocation fines are unauthorized because white collar offense fines "shall be in lieu of all other fines that may be imposed pursuant to any other provision of law for the crimes for which the defendant has been convicted in the action." (§ 186.11, subd. (k).)

The People respond that this claim was considered and rejected over 10 years ago in *People v. Lai* (2006) 138 Cal.App.4th 1227 (*Lai*). Appellant does not mention *Lai* in her opening brief. In her reply brief, she argues that *Lai* was incorrectly decided but that argument is not persuasive. As the court in *Lai* found, section 186.11, subdivision (k) (former subdivision (*l*)) recognizes "[the] distinction between restitution fines that must be imposed for conviction of any crime, and penal fines that may be imposed only for conviction of particular crimes." (*Lai*, at p. 1252.) Subdivision (k) of section 186.11 describes the latter. (*Ibid.*) Moreover, section 186.11 consistently distinguishes between "fines" and "restitution." (*Id.* at p. 1253.) It implicitly follows that the reference to "'other fines'" in section 186.11, subdivision (k) "does not mean *restitution fines*, which are generally considered to be a form of restitution." (*Ibid.*) Because fines imposed under sections 1202.4, subdivision (b) and 1202.45 are restitution fines, they must be imposed notwithstanding whether

a penal fine is also imposed under section 186.11, subdivision (c). (*Ibid.*) Appellant's claim to the contrary fails.

Section 654

In sentencing appellant, the court also imposed three-year concurrent sentences as to each of the forgery convictions (counts 2 through 25 and 51), and imposed and stayed three-year sentences on each of the money laundering counts (counts 26 through 49), one of the financial elder abuse counts (count 50), and the count of grand theft (count 52). Appellant asserts that the sentences on her forgery convictions should have been stayed under section 654 because the crimes were committed incident to a single intent and objective, i.e., to commit the financial elder abuse of which she was separately convicted. We disagree.[3]

Section 654 prohibits multiple punishments for a single act or omission, even when that act or omission violates more than one statute and thus constitutes more than one crime. A defendant may thus be convicted of multiple crimes arising from a single act, but may be sentenced only on the crime carrying the highest punishment; the sentences on the other counts arising from the same act must be stayed. (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135.) However, if the defendant "harbored 'multiple criminal objectives,' which were independent of and not merely incidental to each other, he may be punished for each

---

[3] Although the court orally pronounced concurrent three-year sentences on each of appellant's forgery convictions, the abstract of judgment erroneously indicates that the sentences were stayed under section 654. Pursuant to the People's request, we shall order the error corrected. (See, e.g., *People v. Price* (2004) 120 Cal.App.4th 224, 242 ["the oral pronouncement of [judgment] prevails in cases where it deviates from that recorded in the minutes"].)

statutory violation committed in pursuit of each objective, 'even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.' [Citation.]" (*People v. Harrison (*1989) 48 Cal.3d 321, 335.) We review for substantial evidence the court's implicit finding that section 654 did not bar concurrent terms on appellant's forgery convictions. (*People v. Rodriguez* (2015) 235 Cal.App.4th 1000, 1005.)

The court correctly found that section 654 did not bar the imposition of concurrent terms for the forgery convictions. Section 654 only applies to crimes committed during an indivisible course of conduct. "Under section 654, a course of conduct divisible in time, though directed to one objective, may give rise to multiple convictions and multiple punishment 'where the offenses are temporally separated in such a way as to afford the defendant opportunity to reflect and renew his or her intent before committing the next one, thereby aggravating the violation of public security or policy already undertaken.' [Citation.]" (*People v. Lopez* (2011) 198 Cal.App.4th 698, 717-718.)

Appellant's forgeries were each committed on separate dates over the course of nine months. Each time she signed one of her mother's checks, she committed a new forgery. After committing each forgery, she had ample time to reflect and renew her intent before committing the next one. Accordingly, separate punishment for the forgeries was not barred under section 654. (*People v. Lopez*, *supra*, 198 Cal.App.4th at p. 718; *People v. Felix* (2001) 92 Cal.App.4th 905, 915.)

DISPOSITION

The judgment is modified to reflect the imposition of three-year concurrent sentences on each of appellant's forgery convictions (counts 2 through 25 and 51). The superior court

clerk shall prepare an amended abstract and forward a certified copy to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Pauline Maxwell, Judge
Superior Court County of Santa Barbara

Jolene Larimore, 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, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, and David W. Williams, Deputy Attorney General, for Plaintiff and Respondent.