Filed 4/18/12 P. v. Sasser CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. GARY EUGENE SASSER, Defendant and Appellant.	B231294 (Los Angeles County Super. Ct. No. NA084759)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles D. Sheldon, Judge. Affirmed in part, reversed in part, and remanded with instructions.

Linda Alcado, by appointment of the Court of Appeal and under the California Appellate Project, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Mary Sanchez and Michael Katz, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Gary Eugene Sasser appeals from a judgment of 345 years to life following multiple convictions for second-degree robbery. He contends he was denied his constitutional right to fully cross-examine the prosecution's first witness, a former codefendant. He also raises numerous sentencing issues. We will affirm the convictions, and remand for resentencing.

STATEMENT OF THE CASE

A jury found appellant guilty of 13 counts of second-degree robbery (Pen. Code, § 211).[1] The jury acquitted appellant of two counts of second-degree robbery and of one count of attempted second-degree robbery. The jury also found true firearm enhancement allegations as to one of the robbery counts (§§ 12022, subd. (a)(1); 12022.53, subd. (b)), and found true the allegation that a principal was armed with a firearm as to two other robbery counts (§ 12202, subd. (a)(1)). The jury found not true the remaining firearm enhancement allegations.

After appellant waived jury trial on the prior conviction allegations, the trial court found true that appellant had three prior "strike" convictions for robbery within the meaning of section 667, subdivisions (b) through (i), and section 1170.12, subdivisions (a) through (d); two prior serious felony convictions for robbery within the meaning of section 667, subdivision (a)(1); and four prior convictions for which he served terms in prison within the meaning of section 667.5, subdivision (b).

The trial court denied appellant's motion pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*), which was based upon the age of the prior "strike" convictions. The court sentenced appellant to a total of 345 years

---

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

to life in state prison, as follows: on the first robbery count, 25 years to life, plus 10 years for the section 667, subdivision (a)(1) allegations and 10 years for the section 12022.53, subdivision (b) firearm enhancement for a total of 45 years to life; on the remaining counts, 25 years to life each to be served consecutively. The court stayed the one-year section 667.5, subdivision (b) enhancement on the four prison priors. Appellant filed a timely notice of appeal.

STATEMENT OF THE FACTS

Appellant was convicted of 13 counts relating to eight robberies. The factual circumstances of each of those robberies are set forth below.

1. February 15, 2009 robbery of Public Storage

Andrea Rivas testified that on February 15, 2009, she was working at a Public Storage store with a coworker. Appellant came in and said he wanted to buy some boxes. After Rivas and her coworker gave appellant the boxes, he stated that the store had insurance to cover its losses, "[b]ut if something was to happen to us, nobody would return our lives to us." Appellant asked "if someone was going to come in here and rob us, would we give him the money or would we fight for it?" Rivas and her coworker replied that they would not fight a robber and would just give the robber the money. Appellant then said, "Well, with that, just go ahead and reach over the counter and give me your money." Appellant also said that if they did not comply, "then obviously he would blow our brains out." Rivas gave appellant about $200 from the cash drawer. Rivas did not see a gun but, "we weren't going to find out if he had a gun or not."

Rivas identified appellant as the robber in court. A video-recording of the robbery was also played for the jury.

2. December 15, 2009 robbery of Walgreens

Beth Minnick testified that on December 15, 2009, she was working at a Walgreens store when appellant and a female companion approached her register. Appellant was wearing a black leather coat. He "asked for a type of cigarette." Minnick turned around to check for cigarettes and when she turned back, appellant was pointing a black gun at her. Appellant told her to be quiet and not to say anything. Minnick testified that, "[a]t that point the register had been opened, and I just backed away and let him and the woman take the money." After they took the money, appellant and his female companion left. Minnick made an in-court identification of appellant as the robber. In addition, a video-recording of the robbery was played for the jury.

Lashannon Durr, formerly a codefendant, also testified about the robbery. She had pled guilty to two counts of second-degree robbery prior to appellant's trial. Durr testified that on December 15, 2009, she went with appellant, Lisa Love, and Delano Nelson to a Walgreens. Appellant was wearing a black leather coat and a beanie. Love and appellant went into the Walgreens. Love and appellant were gone between five to 10 minutes. Before Love and appellant went into the Walgreens, the group had no money. After they came out, the group had money to rent a hotel room and buy drugs.

3. January 9, 2010 robbery of Walgreens

Cristian Galindo testified that he was working at the Walgreens store on January 9, 2010. At around 8:55 p.m., Galindo relieved the cashier on duty, Nicole Perdue, so that she could use the restroom. Appellant and Durr approached Galindo's register with cough syrup and a candy bar. Galindo charged them for the merchandise. Appellant handed Galindo a $10 bill, and Galindo rang up the

sale on the register. Appellant then pulled out what appeared to be a black, semi-automatic pistol, and loaded a bullet into the gun. Galindo had been in the military, so he was familiar with handguns.

Appellant asked Galindo for the money in the cash register. Galindo, however, could not open the register because Perdue was still logged in as the cashier. Galindo went to the store phone and called the manager, Michelle Grayson-Anderson, in order to get the register opened. Grayson-Anderson testified that she could not open the register because she was using the wrong password. She saw that Perdue had returned and was nearby, so she told Perdue to open the register. Eventually, the store employees were able to open the cash register. Galindo then gave appellant the money in the register.

Perdue also testified about the robbery, and corroborated the prior testimony of Galindo and Grayson-Anderson. All three witnesses made an in-court identification of appellant as the robber. In addition, a video-recording of the robbery was played for the jury.

Durr testified that on January 9, 2010, her group returned to the Walgreens that they had previously robbed. This time, appellant and Durr went into the store. Appellant approached a register and asked the clerk for four packs of cigarettes. When the clerk turned around with the cigarettes, appellant said it was a robbery. He told the clerk, “Don’t move. Don’t press no buttons or nothing. And you’ll be okay. Give me everything out of the register.” Durr testified she was scared. She grabbed the bag with the cigarettes in it and ran out of the store. Appellant followed her.

4. January 10, 2010 robbery of Radio Shack

Melissa Dastvarz testified that on January 10, 2010, she was working as a manager of a Radio Shack store when appellant and a female companion entered the store. Dastvarz walked outside, and about ten minutes later, she saw the two subjects "walk[] out, rushing, holding a bag." After they left, Dastvarz determined that about $1,400 was missing.

Lisette Nevarez testified that she was working behind the counter at the Radio Shack that day. Appellant and his companion came in and asked her "for help with some cell phones." After some discussion, Nevarez went to the counter to see if the store had the requested cell phone in stock. "And that's when [appellant] showed me his gun." Nevarez testified it was black and appellant was holding it under his jacket. Appellant then "asked for the money in the drawers." Nevarez went to the cash drawer, took out the money and put it into a bag, which she gave to appellant. Appellant and his companion then walked out of the store.

Dastvarz identified appellant as the robber. The video-recording of the robbery was also played for the jury.

Durr testified that the day after they robbed the Walgreens on January 9th, she and appellant went to Radio Shack. Durr went to the section selling cell phones, and appellant went to the cash register. He told the clerk working at the register that he wanted to buy the same cell phone that Durr had. After looking at Durr's cell phone, appellant and the clerk went back to the cash register. Appellant then took out a gun and told the clerk, "This is a robbery." The clerk took everything out of the cash register and put it into a bag, as appellant had directed. Durr and appellant walked out of the store, and then ran toward their car and left the area.

Durr also testified that the gun appellant used during the robberies was black and looked real to her. She was with appellant and Nelson when they purchased it at a sporting goods store. Later, on cross-examination, Durr testified that the gun was a BB or pellet gun, and that it came with a box of bullets.

5. January 16, 2010 robbery of Public Storage

Rivas testified appellant and a black female came into the store at around 1:00 p.m. on January 16, 2010. She recognized appellant from the prior robbery. Rivas stated, "I couldn't do much. I asked him if I could help him with anything, and he said he wanted to purchase some boxes." Rivas's coworker gave appellant the boxes he requested. Rivas totaled up the sale. Appellant took out about seven dollars, and asked Rivas to repeat the total. She did and appellant replied, "'I have some more money in my pocket.'" Appellant then grabbed his gun, came around the counter, and said, "'Ladies, this is a robbery.'" Appellant never pulled out the gun, but Rivas saw the black handle of a gun that was in appellant's waist. Appellant held onto the gun throughout the robbery.

Rivas gave appellant the money from the cash register, about $100. Appellant then noticed a safe that was underneath the counter. He had Rivas open the safe, but there was no money inside. Appellant told Rivas and her coworker, Denice Huerta, not to move. He then left the store with his female companion.

Huerta also testified at trial, and corroborated Rivas's testimony. In addition, a video-recording of the robbery was played for the jury.

Durr testified that on January 16, 2010, she, Nelson, and appellant went to a Public Storage on Airdrome, in Los Angeles. Durr and appellant went into the store. Appellant told the two female employees that he wanted to buy the biggest boxes they had. One woman grabbed three large boxes and told appellant the

price. Appellant took out a gun and said this was a robbery. When he said this, Durr turned around and faced the doorway entrance. After appellant had finished robbing the store, they both left.

6. January 17, 2010 robbery of Rally's Burgers

Eduardo Barron Astorga testified that on January 17, 2010, at around 5:00 p.m., he was working at the front window of a Rally's Burgers restaurant when a man approached. The man placed an order, and Astorga told him what his total was. The man took out a black gun, and ordered Astorga to "empty out my registers." Astorga emptied two registers, and handed the man approximately $300.

Astorga testified that he could not recognize anyone in court as the robber. On further direct examination, Astorga testified he had previously picked a photo out of a photographic lineup. At that time, Astorga wrote, "The suspect in my case is . . . No. 6." He further wrote, "I am 96 percent sure that this is the guy who pointed the gun and told me to give him the money. He was wearing a black leather jacket." The photo was introduced into evidence, and shown to the jury.

Durr testified that on January 17, 2010, she, Nelson, and appellant went to the Rally's Burgers across from the Walgreens that they had previously robbed. Appellant, who was wearing a black leather coat, left the car by himself. He had a gun with him. Appellant was gone for five to 10 minutes. When appellant returned to the car, he crouched down on the floor in the back of the car, and Nelson drove the car away.

7. January 21, 2010 robbery of Walgreens

Gloria Acosta testified that on January 21, 2010, she was working at the front register of the Walgreens appellant had previously robbed. Appellant and a black female, later identified as Durr, approached Acosta. Appellant asked for razors, and Acosta directed him to the aisle where the razors were. Durr stayed by the register and started talking about the weather. Acosta felt nervous. She knew the store had been robbed and had heard about other recent robberies. She also had heard a description of the robbers. Because she "knew something was happening," she hit her alarm button.

Acosta hit the alarm button several times. Appellant returned and placed a razor on the counter before walking away again. The store manager, Julie Tran, was near the register helping another customer. Appellant appeared to be waiting for the manager to leave. When the manager left, appellant placed a one dollar bill on the counter. Acosta said, "'A dollar?'" Durr then approached the register, and appellant and Durr asked Acosta where the stockings were located. Durr left to look at the stockings, while appellant grabbed a candy bar and put it on the counter.

When Durr returned to the register, appellant looked toward where the manager was standing, opened his jacket and pulled out a gun. Appellant said, "Don't say nothing. This is [a] robbery. Just give me all the money that you have and without saying nothing." He showed Acosta the gun, briefly pointed it at her and then put it away. Acosta told appellant that she could not open the register without voiding the transaction, and that she needed to call Tran for assistance. Tran came, voided the transaction, and stood near the register.

Acosta opened her register and gave appellant the money. Appellant told Acosta to lift up the cash drawer, and she did so. He took everything from

underneath the drawer, while Durr grabbed the bag containing the items and walked outside. Appellant told Acosta and Tran not to move and not to say anything before leaving. Appellant took approximately $600.

Acosta identified appellant as the robber. Tran also testified about the robbery, and identified appellant as the robber. A video-recording of the burglary was also played for the jury.

Durr testified that on January 21, 2010, she and appellant returned to the Walgreens they had previously robbed. Durr and appellant went into the store. Appellant went up to a cash register and asked the clerk for two packs of cigarettes. Appellant also got some razors and tamales. After the clerk rang up the prices, appellant pulled out a gun. The clerk told appellant she could not open the cash register without her manager's assistance. Appellant said, "Don't push no buttons, no nothing. Don't call nobody. Go call your manager to come open the register." The clerk did so, and the manager came and opened the register. Appellant told the manager, "'Don't move either. This is a robbery.'" He then took everything out of the cash register. Durr and appellant then left.

8. February 3, 2010 robbery of Payless Shoes

Lorena Navarro testified that on February 3, 2010, she was working at a Payless Shoes store. Appellant came into the store while Navarro was vacuuming. She turned off the vacuum and greeted appellant. He asked for a pair of shoes, and Navarro took appellant to the area where shoes in his size were located. She then took him to the front, rang up the sale, "and then that's when everything happened." Appellant pulled out a gun and showed it to Navarro, although he did not point it at her. He told Navarro to give him the money. Navarro opened the register and gave him the money. Navarro asked if he wanted the change and

appellant said, "'Not unless they're in rolls.'" Appellant had Navarro lift the register so he could see if there were any hundreds in there. Appellant told Navarro not to move or push anything and then walked out. Navarro identified appellant as the robber. In addition, a video-recording of the robbery was played for the jury.

Appellant was acquitted of three counts relating to two robberies and one attempted robbery. The testimony regarding those robberies was as follows.

1. January 25, 2010 robbery of Payless Shoes

Durr testified that on January 25, 2010, she and appellant went to a Payless Shoes store in San Pedro. Durr selected two pairs of sandals. When the clerk rang up the sale, appellant took out a gun and said, "This is a robbery. Give me everything you got in the register. Don't push no buttons and nobody get hurt." The clerk handed appellant everything. Durr and appellant then left the store with the sandals and money.

2. January 25, 2010 attempted robbery of Blockbuster Video

Durr also testified that she and appellant went to a Blockbuster Video store on January 25, 2010. Appellant took a rental movie to the cash register and asked what he needed to do to rent the movie. After the clerk told him, appellant pulled out a gun and said, "Open up the cash register. This is a robbery." The clerk said that she could not open the register without her manager. Appellant told her to get the manager, but the manager never came. After waiting for a while, appellant and Durr left.

Olivia Craig worked at Blockbuster that day. She corroborated Durr's testimony about the attempted robbery, except Craig testified she told appellant

that her manager could not open the register either. Craig also testified that the gun "seemed like it was like a little fake, toy gun." The prosecutor did not ask Craig to identify appellant.

3. January 28, 2010 robbery of Walgreens

Durr testified that on January 28, 2010, she, Nelson, and appellant returned to the same Walgreens they had previously robbed. Appellant got out of the car and walked across the street toward the Walgreens. He returned with a bag containing cigarettes. Because Durr stayed in the car, she did not know what appellant did when he was in the Walgreens.

Appellant did not testify. Defense counsel called only one witness, Detective Patricia Guerra, to rebut testimony by Durr. During her cross-examination, Durr had denied ever meeting with Detective Guerra and the prosecutor regarding this matter. Detective Guerra testified that she and the prosecutor had a conversation with Durr on January 20, 2011. During the conversation, Detective Guerra went through the dates of the robberies with Durr.

DISCUSSION

Appellant contends his convictions should be reversed because he was improperly denied his right to effectively cross-examine Durr. In the alternative, he contends there were multiple sentencing errors. We address each contention in turn.

A. Confrontation clause claim

Appellant contends his constitutional right to cross-examine Durr was violated because the trial court improperly allowed Durr to invoke a Fifth Amendment right to remain silent as to certain questions on cross-examination,

and the court did not strike her testimony. We conclude there was no prejudicial error.

Defense counsel examined Durr on two occasions. The first cross-examination occurred immediately after Durr's direct testimony. Defense counsel asked Durr to clarify and expand on some of her testimony. For example, defense counsel elicited testimony from Durr that the gun appellant was wielding during several of the robberies was a BB or pellet gun. Defense counsel also asked Durr whether she had met with Detective Guerra and the prosecutor at a pre-trial interview. Durr stated she did not recall any such interview.

At the conclusion of the cross-examination, defense counsel stated, "I have no further questions at this time, your honor." The following colloquy then occurred:

> "THE COURT: Okay. If you want to have the person that's the witness held here for a little while --
>
> "MR. KLINK (Defense Counsel): I do.
>
> "THE COURT: -- till you decide if you want more cross, that's fine. We'll do that. . . ."

The next day, after several other witnesses testified, defense counsel examined Durr again. Counsel focused on two areas: (1) Durr's denial that she had met with Detective Guerra and the prosecutor, and (2) her comment during direct examination that, "I haven't even known [appellant] that long, and I got my whole life ruined."

Defense counsel again elicited testimony from Durr that she had not met with Detective Guerra and the prosecutor; specifically, she denied having had a conversation with them on January 20, 2011. The following colloquy then occurred:

"MR. KLINK: Now, with regard to the time that you're doing in state prison, eight years and eight months, you blame Mr. Sasser for the fact that you're doing that eight years and eight months, don't you?

"[MS. DURR:] I don't blame nobody, and I don't have to speak without my lawyer.

"[MR. KLINK:] In other words, you don't want to answer my questions?

"[MS. DURR:] No, sir.

"[MR. KLINK:] You don't want me to ask you any more questions; is that right?

"[MS. DURR:] No, sir.

"[MR. KLINK:] Are you going to answer questions if I ask them?

"[MS. DURR:] No, sir.

"[¶]. . .[¶]

"THE COURT: . . . Ma'am, the 5th Amendment says that you don't have to testify to anything that you don't want to. You take the ramifications though of that if you don't testify.

"Are you asserting your 5th Amendment privilege?

"[MS. DURR:] Yes, sir.

"THE COURT: Okay."

Outside the presence of the jury, defense counsel moved to strike Durr's direct testimony on the ground that she had made clear she was not going to answer additional questions. When the prosecutor noted that Durr had been "cross-examined extensively," defense counsel responded that Durr had denied conversing with Detective Guerra and the prosecutor on January 20. The court

noted that Detective Guerra was present and available to be called by the defense to impeach Durr. Defense counsel indicated he wished to do so.

Immediately thereafter, defense counsel called Detective Guerra. Detective Guerra testified that she and the prosecutor met with Durr on January 20, 2011. During that conversation, Detective Guerra went over the dates of the robberies with Durr.

Later in the trial, the prosecutor sought to recall Durr, but the court denied the motion, partially on the ground that Durr had invoked her Fifth Amendment privilege. The prosecutor stated, "[J]ust to make the record, Lashannon Durr did not invoke the 5th Amendment. She's not subject to prosecution to any of these counts because she pled already. So she does not have a 5th Amendment right in terms of her testimony. And she did not invoke the 5th Amendment. She just became adamant and refused to testify." The court disagreed. Defense counsel stated he had not completed his cross-examination of Durr.

This court has granted a motion to augment the record on appeal. The augmented record shows that appellant did not file an appeal from her guilty pleas within the applicable time limit. On this record, we conclude that the court erred in informing Durr that she had a Fifth Amendment right to refuse to answer any questions by defense counsel. (See *People v. Sisneros* (2009) 174 Cal.App.4th 142, 151 [no privilege against compelled self-incrimination where defendant has already pled guilty to a charge and time to appeal the conviction has run without an appeal being filed].)

The error, however, was not prejudicial, even under the "harmless beyond a reasonable doubt" standard of *Chapman v. California* (1967) 386 U.S. 18, 24.[2]

---

[2] We reject appellant's contention that any violation of the confrontation clause is prejudicial per se. (See *Davis v. Alaska* (1974) 415 U.S. 308, 316-318 [denial of the right
(Fn. continued on next page.)

Appellant was permitted to examine Durr on two separate occasions. After his initial cross-examination, he declared he had "no further questions at this time." He does not suggest this examination was in any way improperly curtailed. When he recalled Durr for additional questioning, he elicited her specific denial that she had conversed with Detective Guerra and the prosecutor on January 20, and thereafter called Guerra to contradict Durr's denial. He further questioned Durr regarding bias against appellant based on the lengthy prison term she was serving, and received an unequivocal denial that she "blamed" appellant for anything.[3] Appellant did not then and does not now suggest any other reason Durr might have been predisposed against him. Indeed, neither at trial nor on appeal has appellant suggested any line of inquiry that he was unable to pursue. On this record, we find no curtailment of appellant's right to effectively cross-examine Durr.

In any event, the jury acquitted appellant of all counts as to which Durr was the only witness who could identify him as the robber. As to the eight robberies of which appellant was convicted, the jury heard at least one eyewitness, other than Durr, identify appellant as the robber.[4] Additionally, the jury was able to view

---

of effective cross-examination "'"would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it."' [Citation.]"]) Federal and California cases have applied harmless error analysis to confrontation clause claims even after *Davis*. (See, e.g., *U.S. v. Ortega* (9th Cir. 2000) 203 F.3d 675, 682 [confrontation clause violations subject to harmless error analysis]; *People v. Jennings* (2010) 50 Cal.4th 616, 651-652 [applying harmless error analysis to claim of "confrontation-clause violation"]; *People v. Steele* (2000) 83 Cal.App.4th 212, 223-224 [same].)

3 Even had Durr "blamed" appellant for her prison sentence, eliciting such an admission would have not helped appellant, as it would have confirmed his involvement in the crimes to which Durr pleaded guilty.

4 Although Astorga did not identify appellant in court, he previously had identified the robber from a photographic six-pack. The jury was able to view the photo that Astorga had selected, and it was asked to identify appellant as the person in the photo.

video-recordings of seven of the eight robberies. On this record, there was no miscarriage of justice requiring reversal, as any error was harmless beyond a reasonable doubt.

B. Sentencing

Appellant raises multiple alleged sentencing errors. Specifically, he contends: (1) the court erred by imposing consecutive sentences because it mistakenly believed it was required to do so; (2) the court erred in staying, as opposed to striking, the one-year enhancements for the prison priors under section 667.5, subdivision (b); (3) the court erred in denying appellant's *Romero* motion to strike his prior "strike" convictions; and (4) his sentence was cruel and unusual. We address each contention in turn.

1. Consecutive or concurrent sentencing

Appellant contends the trial court mistakenly believed that under section 667, subdivision (c)(7), it was required to sentence appellant consecutively on each of the counts. He requests that this court remand the matter to allow the trial court to exercise its discretion regarding consecutive or concurrent sentencing. The People concede the error. On each count related to a separate robbery, the trial court was required to impose a consecutive sentence as to a single count, but had discretion to impose a concurrent or consecutive sentence as to the remaining counts. (See *People v. Hendrix* (1997) 16 Cal.4th 508, 511-515 [trial court retains discretion to impose consecutive or concurrent sentence on all convictions committed on the same occasion].) Our review of the record indicates that the trial court was mistakenly persuaded by the prosecutor that it was required to impose consecutive sentences on all counts. Accordingly, we will remand the matter to the trial court to exercise its discretion in imposing a consecutive or concurrent sentence as to those counts committed during the same robbery.

2. Enhancement on the prison priors

Appellant next contends the trial court erred in staying, as opposed to striking, the one-year enhancement under section 667.5, subdivision (b) for each of the four prison priors. (See *People v. Dejourney* (2011) 192 Cal.App.4th 1091, 1094, fn. 3 [enhancement on prison prior should be stricken as defendant already received five-year enhancement for the same prior serious felony conviction].) The People concede that the trial court could not stay the enhancements, and that the court should have stricken the enhancement on the prison prior that was based on the same underlying conviction as one of the prior serious felony convictions, the 1988 robbery conviction. The People contend, however, that the trial court retains the discretion whether to strike the enhancements on the remaining prison priors. Our review of the record indicates that the trial court decided to stay the enhancements on all the priors, without much explanation. Accordingly, we will remand the matter to the trial court to exercise its discretion to strike or not strike the enhancements on the three remaining prison priors. In the event the trial court decides to strike the enhancements, it should state its reasons for doing so on the record. (*People v. Jones* (1992) 8 Cal.App.4th 756, 758.)

3. *Romero* motion to strike prior "strike" convictions

Appellant also contends the trial court abused its discretion when it denied his *Romero* motion to strike his prior "strike" convictions. Specifically, he contends that because the probation report was abbreviated, and was limited to summarizing his criminal history, the court "failed to consider appellant's background and individualized considerations as required by *Romero*." As explained in the probation report, the report was abbreviated because the probation officer did not receive a "DA packet." The report listed appellant's criminal record and detailed the current convictions, but provided no personal history of appellant,

including his background, present life, or future prospects. In light of our remand on resentencing, we will remand for a new hearing on appellant's *Romero* motion. On remand, appellant is entitled to an updated probation report. (*People v. Conners* (2008) 168 Cal.App.4th 443, 457.)

4. Cruel and unusual punishment

Finally, appellant contends his sentence of 345 years to life in state prison for 13 counts of robbery and related charges is cruel and unusual, and thus should be stricken and the matter remanded for resentencing. Because we have determined that resentencing is required, we need not address this argument. Nevertheless, to forestall any additional appeal in the event that the same or a similar sentence is imposed during resentencing, we will briefly address the merits of appellant's argument that his sentence is cruel and unusual. Appellant's argument has been rejected by California courts. (See, e.g., *People v. Byrd* (2001) 89 Cal.App.4th 1373, 1382-1384 [sentence of 115 years, plus 444 years to life for 12 counts of robberies and related charges not cruel and unusual punishment].)

DISPOSITION

The convictions are affirmed. The matter is remanded to the superior court for resentencing in light of this opinion.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.