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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

IEON RAYMOND CRAWFORD,

Defendant and Appellant.

B280363

(Los Angeles County  
Super. Ct. No. PA080086)

APPEAL from judgment of the Superior Court of Los Angeles County, David B. Gelfound, Judge. Affirmed as modified with directions.

Law Offices of James Koester and James Koester, 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, Paul M. Roadarmel, Jr. and Allison H. Chung,  
Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

Defendant Ieon Raymond Crawford appeals from the trial court's judgment reimposing sentence on five counts following his first appeal. In the previous appeal, this court found insufficient evidence to support defendant's street terrorism conviction and gang enhancements (Pen. Code,<sup>1</sup> §§ 186.22, subd. (a), 186.22, subd. (b)(1)). (*People v. Crawford* (Sept. 21, 2016, B267354) [nonpub. opn.].) We remanded for resentencing and otherwise affirmed.

We agree with defendant that, under section 654, his sentence for his criminal street gang conspiracy constituted multiple punishment for the same conduct as his sentences for his substantive crimes. We also agree that one of his firearms convictions constituted multiple punishment for a single act of possessing a firearm. We modify defendant's sentence and otherwise affirm.

## BACKGROUND

Defendant was arrested in a bedroom of a house that had been under surveillance for suspected gang narcotics sales. From

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<sup>1</sup> All further statutory references are to the Penal Code except where otherwise noted.

that bedroom, police recovered methamphetamine, marijuana, narcotics paraphernalia, two digital scales, and \$50 in cash together with two semiautomatic handguns. Specifically, under the mattress that defendant had been laying on when officers entered, police found three individual baggies of methamphetamine, a loaded .380-caliber handgun, and ammunition. Additionally, a .45-caliber handgun was in a brown paper bag inside a milk crate. The .45-caliber weapon had been “taken apart a little bit” and “appeared inoperable.”

The prosecution’s gang expert testified defendant was an active member of the San Fer gang. The gang members engaged in a pattern of criminal activity including theft, robbery, battery, deadly weapon assault, shootings, attempted murder, and murder. The gang’s primary activities were the sale and distribution of illicit drugs. These activities produced income for the gang. Gang members carried firearms to defend and protect gang territory, to commit crimes, to protect illicit drugs from theft by rival gang members, and to promote fear and intimidation.

Defendant stands convicted of criminal street gang conspiracy (count 1); methamphetamine possession while armed with a loaded, operable firearm (count 3); misdemeanor methamphetamine possession (count 4);<sup>2</sup> firearm possession with a prior violent felony conviction (count 5); firearm possession by a felon (count 6); and ammunition possession by a felon (count 7). (§§ 182.5, 29800, subd. (a)(1), 29900, subd. (a)(1), 30305, subd. (a)(1); Health & Saf. Code, §§ 11370.1, subd. (a), 11377, subd. (a).)

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<sup>2</sup> The jury convicted defendant of a lesser offense. He had been charged with methamphetamine possession for sale.

The court imposed prior conviction and prison term enhancements, and sentenced defendant to a total of 15 years 8 months in state prison.

## DISCUSSION

### A. Section 654

Section 654, subdivision (a) provides in part: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” Section 654 prohibits multiple punishment for a single physical act or for a course of conduct pursuant to a single intent or objective. (*People v. Corpening* (2016) 2 Cal.5th 307, 311.) “The divisibility of a course of conduct depends upon the intent and objective of the actor, and if all the offenses are incident to one objective, the defendant may be punished for any one of them but not for more than one.’ [Citation.]” (*People v. Coleman* (1989) 48 Cal.3d 112, 162.)

As to conspiracy, whether section 654 prohibits a sentence depends upon the crime’s objective. “[I]t would violate [section 654] to sentence a defendant for conspiracy to commit several crimes and for each of those crimes where the conspiracy had no objective apart from those crimes. If, however, a conspiracy had an objective apart from an offense for which the defendant is punished, he may properly be sentenced for the conspiracy as well as for that offense. [Citation.]” (*In re Cruz* (1966) 64 Cal.2d 178, 180-181.) “Thus, punishment for both conspiracy and the

underlying substantive offense has been held impermissible when the conspiracy contemplated only the act performed in the substantive offense [citations], or when the substantive offenses are the means by which the conspiracy is carried out [citation]. Punishment for both conspiracy and substantive offenses has been upheld when the conspiracy has broader or different objectives from the specific substantive offenses. [Citations.] [Fn. omitted.]” (*People v. Vargas* (2001) 91 Cal.App.4th 506, 571.)

Our review is for substantial evidence to support the trial court’s express or implied determination as to the application of section 654. (*People v. Coleman, supra*, 48 Cal.3d at p. 162.)

*B. The Punishment for Defendant’s Criminal Street Gang Conspiracy Conviction Must be Stayed*

Defendant argues punishment for his criminal street gang conspiracy conviction should have been stayed under section 654. We agree.

A criminal street gang conspiracy consists of three statutory elements: “[A]ny person who [(1)] actively participates in any criminal street gang, . . . [(2)] with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, . . . [(3)] and who willfully promotes, furthers, assists, or benefits from any *felonious criminal conduct* by members of that gang is guilty of *conspiracy to commit that felony* and may be punished . . . .” (§ 182.5, italics added.)

A criminal street gang conspiracy differs from a traditional conspiracy in five significant ways. (*People v. Johnson* (2013) 57 Cal.4th 250, 261-262.) First, the defendant cannot be a stranger to his or her coconspirators; the defendant “must be an active

gang participant with knowledge of other members' pattern of criminal gang activity.” (*Id.* at p. 262.) Second, while a traditional conspiracy may encompass misdemeanors, a section 182.5 conspiracy requires the commission or attempted commission of *felonious* criminal conduct. Third, a criminal street gang conspiracy does not require an agreement with respect to a particular target crime. “[T]raditional conspiracy requires both the specific intent to agree, and specific intent to commit a target crime. [Citation.] A [section] 182.5 conspiracy does not require any prior agreement among the conspirators to promote, further, or assist in the commission of a particular target crime. Even without a prior agreement, an active and knowing gang participant who acts with the required intent to promote, further, or assist in the commission of a felony by other gang members can violate section 182.5. That act of assistance or promotion replaces the required prior agreement to commit a crime that is ordinarily at the heart of a traditional conspiracy.” (*Ibid.*) Fourth, “[T]raditional conspiracy liability attaches once an overt act is committed. A [section] 182.5 conspiracy requires the actual commission of felonious criminal conduct as either an attempt or a completed crime.” (*Ibid.*) And fifth, section 182.5 extends to gang members who merely benefit from crimes committed by other gang members. (*Ibid.*)

The jury was instructed that to prove defendant was guilty of a criminal street gang conspiracy the prosecution was required to prove: “1. The defendant was an active participant in a criminal street gang; [¶] 2. The defendant knew the gang members engaged in a pattern of criminal activity; [¶] 3. The members of the criminal street gang have engaged in a pattern of criminal gang activity; [¶] AND [¶] 4. The defendant willfully

promoted, furthered, assisted in or benefited from *felonious conduct* of the members of that gang.” (Italics added.) The jury was further instructed that, “*Felonious criminal conduct means committing or attempting to commit any of the following crimes: possession of a controlled substance with a firearm; possession for sale of methamphetamine, a controlled substance; possession of a firearm with prior violent conviction; possession of a firearm by felon; and possession of ammunition.*” (Italics added.)

Defendant received an eight-year sentence on count 3 for possessing methamphetamine while armed, and an additional consecutive three years eight months for his other convictions for firearms and misdemeanor methamphetamine offenses. He received a further consecutive two years for his criminal street gang conspiracy conviction.

The additional punishment for the criminal street gang conspiracy would be permissible if it had a broader or different objective than the specific substantive felonies. (*In re Cruz, supra*, 64 Cal.2d at pp. 180-181; *People v. Vargas, supra*, 91 Cal.App.4th at p. 571.) There was no substantial evidence that it did. The evidence and reasonable inferences therefrom established defendant actively participated in the gang with knowledge of the gang’s criminal narcotics-related activities and that he willfully furthered those activities by committing the felonies, that is, by protectively arming himself while engaging in sales of illicit drugs. The trial court instructed the jury that defendant was charged with a conspiracy, the objective of which was the commission of the substantive offenses. Under the instruction given, the jury could not have found defendant guilty of a conspiracy with a broader objective. (*In re Romano* (1966) 64 Cal.2d 826, 829.)

The Attorney General argues the conspiracy had broader objectives. The Attorney General relies on the prosecution’s gang expert’s testimony about gang characteristics typical of gangs generally and of the present gang. These included the gang’s reliance on income from drug sales, and its need to promote fear and intimidation in rival gangs and the community thereby allowing gang members to commit crimes with impunity. However, under section 182.5, the conspiracy’s objective must be the commission of a specific felony by gang members. Section 182.5 provides that a defendant who “willfully promotes, furthers, assists, or benefits from any felonious criminal conduct by members of th[e] gang is guilty of *conspiracy to commit that felony . . .*” (Italics added.) The “that felony” language, by its plain terms (*People v. Licas* (2007) 41 Cal.4th 362, 367) refers to a specific felony committed by gang members. Moreover, our Supreme Court has held that similar language in section 186.22, subdivision (a)—“willfully promotes, furthers, or assists in any felonious criminal conduct by members of th[e] gang”—limits liability to gang members who aid a specific felony committed by gang members: “[S]ection 186.22[, subdivision] (a) limits liability to those who promote, further, or assist a specific felony committed by gang members and who know of the gang’s pattern of criminal gang activity. Thus, a person who violates section 186.22[, subdivision] (a) has also aided and abetted a separate felony offense committed by gang members . . .” (*People v. Castenada* (2000) 23 Cal.4th 743, 749.)<sup>3</sup> Here, the gang expert

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<sup>3</sup> We held in our September 21, 2016, opinion that the evidence was insufficient to support defendant’s street terrorism conviction pursuant to section 186.22, subdivision (a), holding



addressed no specific felony apart from those of which defendant was convicted. The evidence demonstrated that the objective of the present conspiracy was to commit the specific firearms and narcotics offenses of which defendant was convicted, but not particular felonies beyond those.

Because there was no substantial evidence the conspiracy had a broader or different objective, the trial court should have stayed the punishment for defendant's criminal street gang conspiracy conviction. The judgment must be modified to so provide.

*C. The Punishment for One of Defendant's Firearm Possession Counts Must be Stayed*

Defendant was convicted of methamphetamine possession while armed with a loaded, operable firearm (count 3), firearm possession with a prior violent felony conviction (count 5), and firearm possession by a felon (count 6). Defendant contends punishment on counts 5 and 6 should have been stayed. We agree in part.

Defendant possessed two semiautomatic handguns. Section 654 does not preclude multiple punishment for a felon's possession of multiple firearms. (§ 23510, subd. (a); *People v. Correa* (2012) 54 Cal.4th 331, 334, 342-343.) This is because "a felon who possesses several firearms is more culpable than one who possesses a single weapon." (*Id.* at p. 342.)

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that there was no evidence that defendant acted with any other gang member. Defendant did not then challenge the sufficiency of the evidence supporting his criminal street gang conspiracy conviction.

Yet defendant was convicted and punished for three firearms offenses involving those two guns. Defendant's possession of the loaded, operable .380-caliber handgun—stored with baggies of methamphetamine under the mattress on which he was laying—met the elements of count 3, methamphetamine possession while armed with a loaded and operable firearm. (Health & Saf. Code, § 11370.1, subd. (a).) His possession of the .45-caliber weapon supported either count 5 or count 6. But he could not be punished twice for the single act of possessing a single firearm on a single occasion. (*People v. Jones* (2012) 54 Cal.4th 350, 357.) Hence, either the count 5 or count 6 punishment should have been stayed.<sup>4</sup>

We will modify defendant's sentence to stay the punishment on count 6. Both sections 29800, subdivision (a)(1) (count 5) and 29900, subdivision (a)(1) (count 6) carry the same range of punishment—16 months, 2 years, or 3 years (§§ 18, subd. (a), 29800, subd. (a)(1), 29900, subd. (a)(1)). The sentence the trial court imposed on count 5 was a consecutive one-third the midterm, 8 months, doubled due to defendant's prior strike conviction, for a total of 16 months. On count 6, the trial court imposed a *concurrent* midterm sentence of 2 years doubled for a

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<sup>4</sup> Defendant asserts the jury could not rely on his possession of the .45-caliber weapon to convict him on *any* count because the gun was inoperable. The jury was instructed in connection with the felon in possession offenses, sections 29800 and 29900, that “A firearm does not need to be in working order if it was designed to shoot and appears capable of shooting.” (CALCRIM No. 2511.) The .45-caliber handgun was described at trial as having been “taken apart a little bit” and “appear[ing] inoperable.” The jury could reasonably conclude the .45-caliber gun was “designed to shoot” and “capable of shooting” even if not “in working order.”

total of 4 years. Even the imposition of a concurrent sentence is precluded by section 654. (*People v. Jones, supra*, 54 Cal.4th at p. 353.) Therefore, we will modify the count 6 sentence to 16 months stayed.

### **DISPOSITION**

The judgment is modified to stay the sentence on count 1 and to impose and stay a 16-month sentence on count 6. The judgment is affirmed in all other respects. On remand, the trial court is to prepare an amended abstract of judgment and deliver a copy to the Department of Corrections and Rehabilitation.

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RAPHAEL, J.\*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.