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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

DEANDRE J. BARNES,

Defendant and Appellant.

B270755

(Los Angeles County  
Super. Ct. No. MA063887)

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

Marta I. Stanton, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler,  
Chief Assistant Attorney General, Lance E. Winters, Senior  
Assistant Attorney General, Margaret E. Maxwell and Marc A.  
Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

Deandre Barnes appeals from the judgment entered after the trial court sentenced him to consecutive prison terms for, among other offenses, three counts of vandalism (Pen. Code, § 594, subd. (a))<sup>1</sup> and five counts of contempt of court (§ 166, subd. (c)(1)). Barnes contends that, under section 654, the trial court should have stayed the terms imposed on three of the contempt counts because those offenses had the same factual basis as the vandalism offenses. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

In October 2013 Barnes's ex-girlfriend, Kiyonie Davis, and her mother, Sandra Cannon, obtained a protective order against Barnes. The order provided that for a period of three years Barnes could not "harass, strike, threaten, assault, follow, stalk, molest, destroy or damage personal or real property [of], disturb the peace [of], keep under surveillance, or block [the] movements [of]" Davis or Cannon, have "personal, electronic, telephonic, or written contact with" them, or "come within 100 yards of" them.

On April 11, 2014 Leslie Smith, a friend of Davis's, went to visit Davis at the home she shared with her mother, brother, and children. When she arrived, Smith saw Barnes sitting on the hood of an SUV in the driveway. Because Smith "knew there [were] issues with him," she called Davis, who was inside the house, to alert her. Smith also called the police. Smith entered the house, and soon after Barnes began banging on the back door.

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

Smith called the police again, but by the time they arrived Barnes was gone.

On July 8, 2014 Davis was at home with her family when she heard tapping at her bedroom window. As she rose to investigate, Barnes threw the headboard of a bed through the window, shattering the glass. Barnes fled down the street.

On July 13, 2014 Davis's son saw Barnes use a knife or piece of glass to scratch the paint on the sides and hood of Cannon's truck, which was parked in the driveway, less than 20 feet from the door of Davis's home. Davis's son alerted Cannon, who was inside the house with the rest of her family, and she called the police. Barnes again fled down the street. A repairman estimated the damage to Cannon's truck was \$1,300.

On August 1, 2014 Cannon came home to find a letter, addressed to Davis, pushed through a broken window near the front door. From the handwriting, the content (including "I love you, Babe" and "just sick of you lying to me all the time") and the signature ("From your real husband"), Davis knew the letter was from Barnes.

On December 25, 2014, after Davis, Cannon, and their family had moved to another home, Barnes again smashed a window, this time with a cinderblock that landed on the bed where Davis was sleeping. "Stupid bitch," Barnes yelled into the room, and he again fled down the street.

Finally, beginning December 30, 2014 and continuing through at least January 20, 2015, Barnes sent Davis a series of threatening messages through a social media site. One of the messages stated: "You know you deserve to be shot laying there while your kids watch you bleeding blood." Another read: "Remember what a rock did? Now imagine bullets breaking your

window to hit you because I will not have no other, and I don't give a fuck about the police.”

Based on these events, the People charged Barnes with one count of felony vandalism, two counts of misdemeanor vandalism, five counts of contempt of court, and one count of stalking (§ 646.9, subd. (b)). Three of the incidents in 2014 were each the basis for one count of vandalism and one count of contempt of court: Barnes's smashing a window with a headboard on July 8, his scratching Cannon's truck on July 13, and his smashing a window with a cinderblock on December 25.

After a court trial in January 2016, the trial court found Barnes guilty on all counts. The court sentenced him to the upper term of four years for stalking, eight months (one-third the middle term) for felony vandalism, and 364 days for each remaining count, all terms to run consecutively, for a total of 11 years 8 months.<sup>2</sup> Barnes timely appealed.

## DISCUSSION

Section 654 provides in relevant 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 precludes multiple punishments for a single act or indivisible course of conduct.’ . . . “The proscription against double punishment . . . is applicable where there is a course of

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<sup>2</sup> The trial court found Barnes also violated his probation in another case, and sentenced him to a consecutive term of eight months.

conduct which violates more than one statute and comprises an indivisible transaction punishable under more than one statute . . . . 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.] ‘On the other hand, if the evidence discloses that a defendant entertained multiple criminal objectives which were independent of and not merely incidental to each other, the trial court may impose punishment for independent violations committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct. [Citations.] The principal inquiry in each case is whether the defendant’s criminal intent and objective were single or multiple. Each case must be determined on its own facts. [Citations.] The question whether the defendant entertained multiple criminal objectives is one of fact for the trial court, and its findings on this question will be upheld on appeal if there is any substantial evidence to support them.” (*People v. Pinon* (2016) 6 Cal.App.5th 956, 967-968; see *People v. Capistrano* (2014) 59 Cal.4th 830, 885-886 [“the purpose of section 654 “is to insure that a defendant’s punishment will be commensurate with his culpability””].)

Barnes contends the trial court should have stayed the terms imposed for the three counts of contempt of court that were based on the incidents of July 8, July 13, and December 25, 2014 because those offenses “were part of the same factual basis” as the three vandalism counts. (See *People v. Kramer* (2002) 29 Cal.4th 720, 722 [“[w]hen a defendant is convicted of two or more offenses for which section 654 prohibits multiple punishment, the trial court must impose sentence for one of them and stay

[execution] of sentence for the others”].) Barnes argues these contempt of court and vandalism offenses “arose from the same acts on the same dates against the same victim” and, on each occasion, his “presence at [Davis and Cannon’s] house to commit vandalism resulted in the same violations of the restraining order.”

Substantial evidence supports the trial court’s finding, however, that Barnes entertained multiple criminal objectives on each of these occasions. On each, Barnes violated the protective order by coming within 100 yards of Davis and Cannon, and the trial court could reasonably infer his objective in doing so was to harass them. The April 11, 2014 incident in which Barnes sat on an SUV in the driveway before banging on the back door and fleeing illustrates that damaging property was not necessary to accomplish that objective. On the occasions in question (July 8, July 13, and December 25), however, Barnes not only came within 100 yards of Davis and Cannon, evincing an intent to harass them, he went further and smashed windows and scratched or “keyed” Cannon’s truck—conduct suggesting an additional, independent objective of damaging their property. (See *People v. Perry* (2007) 154 Cal.App.4th 1521, 1527 “[a]t some point, the degree of force or violence used or threatened may evince ‘a different and a more sinister goal than mere successful commission of the original crime,’ i.e., an independent objective warranting multiple punishment”]; *People v. Cleveland* (2001) 87 Cal.App.4th 263, 271-272 [same].) Substantial evidence supports the trial court’s finding that section 654 did not apply to the contempt of court convictions arising from the incidents on July 8, July 13, and December 25.

## **DISPOSITION**

The judgment is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

SMALL, 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.