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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re K.C., a Person Coming Under the
Juvenile Court Law.

B262780
(Los Angeles County
Super. Ct. No. MJ20660)

THE PEOPLE,

Plaintiff and Respondent,

v.

K.C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Nancy S. Pogue, Commissioner. Affirmed in part and reversed in part with directions.

Gerald Peters, 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, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, and Amanda V. Lopez, Deputy Attorney General, for Plaintiff and Respondent.

K.C., a minor, and his two companions broke the door and lock of the victim's house, entered the house, ripped the alarm system off the wall and put it in the refrigerator, and took \$45 in cash and a phone from the house. The juvenile court sustained a petition against K.C. arising from allegations of first degree burglary (count 1) and vandalism causing over \$400 in damages (count 2). The issue on appeal is whether the juvenile court violated Penal Code section 654¹ in imposing separate punishments on counts 1 and 2. Though a defendant's course of conduct may violate multiple criminal statutes and lead to multiple convictions, section 654 prohibits multiple punishments for the same conduct. (*People v. Correa* (2012) 54 Cal.4th 331, 336–337.) To determine whether section 654 applies, the test is to look at the defendant's criminal objective and intent. (*Id.* at p. 336.) If the defendant had a single criminal objective or multiple criminal objectives merely incidental to one another, the course of conduct is indivisible such that the court cannot punish the defendant for each conviction. (*Id.* at pp. 335–336.) When imposing multiple punishments would violate section 654, the remedy is to impose the sentence that provides for the longest potential term of imprisonment and to stay execution of all other sentences. (*Id.* at p. 337; § 654.) Because K.C. committed the offenses of burglary and vandalism with the same criminal objective and intent and as part of the same indivisible course of conduct, we remand to the juvenile court for resentencing to stay the sentence on count 2.

BACKGROUND

I. Facts of the case

The victim's house has an alarm system and surveillance cameras. On November 27, 2014, the victim locked her door, activated her home alarm system, and left her house.

Three neighbors witnessed the crime. Mr. and Ms. J.S. lived across the street from the victim. In the evening of November 27, when Ms. J.S. heard a loud noise, she went

¹ All further statutory references are to the Penal Code.

into her bedroom, where her husband lay in bed, to inquire whether he had heard the same noise. Mr. J.S. looked out the bedroom window and saw a man dressed in all red clothing (Man 1) outside. When Mr. J.S. ran outside, he observed a different man (Man 2) exit the front of the victim's house, jump over the fence, and run away. Mr. J.S. then witnessed Man 1 and Man 2 approach one another and together walk away from the victim's house. When Mr. and Ms. J.S. went to the middle of the street to locate Man 1 and Man 2, they saw Man 1 and Man 2 run eastbound. Ms. J.S. then called the police. Subsequently, Man 1 and Man 2 returned with a third man (Man 3), and the three went inside the victim's house. The man dressed in all red clothing, Man 1, then came back outside. When a police helicopter arrived and shined a light at the victim's house, Man 1 ran away from the victim's house. One of the two men still in the victim's house, came outside and walked away; the other also came outside but returned inside; Mr. J.S. could not distinguish between these two men.

Witness C.P. lived next door to the victim. On the night of the crime, she observed a man wearing red and black clothing standing outside the victim's house about two feet away from her. After hearing a "loud noise like somebody kicking in something," she went outside and saw someone had kicked in the door of the victim's house. She later observed that same man run out of the victim's house. After C.P. called the police, she witnessed three men run into the victim's house: one wearing red and black clothing, another wearing all red clothing. She could not remember what clothing the third man wore.

Around 10:00 p.m., the alarm company called the victim to alert her to the burglary. When she arrived home, the front door stood "wide open, busted open," "broken open," and "damaged," and someone had broken off the lock on the door. The burglars had ransacked the house and had taken \$45 in cash from the victim's daughter's bedroom as well as a phone from an unknown location in the house. Further, the burglars had ripped off the alarm system from the wall and put it in the refrigerator.

II. Procedural history

A petition alleged K.C. committed first degree burglary (count 1) and vandalism causing over \$400 in damage (count 2). Pursuant to a settlement, K.C. initially admitted the allegations to count 1, and the superior court sustained the petition as to count 1 and dismissed count 2 pursuant to a waiver under *People v. Harvey* (1979) 25 Cal.3d 754. Later, however, K.C. withdrew his admission and denied the allegations.

K.C. had a previously existing maximum term of confinement of six years eight months home on probation from prior offenses; after finding true the allegations in the petition on counts 1 and 2, the juvenile court added 20 months to K.C.'s already-existing sentence from prior offenses. The maximum term of confinement increased to eight years four months, with five to seven months in the camp community placement program. Of the total 20 months, the court did not specify on the record the sentence for count 1 and the sentence for count 2. The court also made no express findings related to section 654 and why it imposed separate punishments on counts 1 and 2.

III. Relevant statutory provisions

Section 459 defines the crime of burglary: "Every person who enters any house . . . with intent to commit grand or petit larceny or any felony is guilty of burglary." Section 594, subdivision (a), defines vandalism: "Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own . . . is guilty of vandalism: [¶] (1) Defaces with graffiti or other inscribed material. [¶] (2) Damages. [¶] (3) Destroys."

As to the prohibition on multiple punishments, section 654 mandates the following: "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."

DISCUSSION

Section 654 prohibits a court from imposing multiple punishments for the same act even though the same act may violate multiple criminal statutes. When a defendant's

actions are a course of criminal conduct, to determine whether section 654 precludes multiple punishments the test is to look at the defendant's criminal objective and intent. (See *People v. Beamon* (1973) 8 Cal.3d 625, 638–639.) If the defendant had multiple criminal objectives independent of and not merely incidental to each other, the course of conduct is divisible into separate acts such that the court may punish the defendant for each violation committed in pursuit of an independent criminal objective. (See *id.* at p. 639.)

K.C. argues that he committed the offenses of burglary and vandalism as part of an indivisible course of conduct with a single criminal objective to steal property from the victim's house. He and his companions broke the door and lock on the victim's house to effectuate the burglary and disconnected the alarm from the wall to avoid detection as they stole property from the victim's house. For the same purpose, they put the alarm system in the refrigerator to prevent neighbors from hearing any sounds emanating from the alarm that would alert the neighbors of their presence in the house. He contends that the juvenile court violated the section 654 ban on multiple punishments and erred in imposing separate sentences on both counts 1 and 2. Accordingly, K.C. requests a stay of the sentence on count 2 for vandalism.

The People respond that K.C. had two criminal objectives: to steal property (count 1 for burglary) and to destroy property (count 2 for vandalism). The People contend that the difference between the two criminal objectives is that the defendant may use stolen property again in the future or sell it for profit; in contrast, the defendant may not use damaged property so readily or exchange it for money. The first criminal intent to steal property covers K.C.'s actions in taking the cash and phone from the victim's house; the second criminal intent to destroy property covers K.C.'s actions in damaging the alarm. Ripping the alarm from the wall and putting it in the refrigerator does not avoid detection of the burglary, but rather is an "act of entertainment" that took time and effort away from and thus is separate from stealing property. The People seek this court to affirm the juvenile court's order.

An alarm has the purpose of notifying an alarm company, police, a property owner or others nearby (or some subset of these) when someone breaks into the alarmed property. Thus, when a burglar disables an alarm to avoid detection of the crime, his act is reasonably deemed part of, and consistent with, the objective of completing the burglary. K.C.'s ripping the alarm off the wall certainly falls within the category of disabling the alarm. But so does his next step—putting the alarm in the refrigerator to ensure that the alarm did not transmit some communication or audible noise despite being disconnected from the wall. In ripping the alarm off the wall and putting it in the refrigerator, K.C.'s singular criminal objective was to prevent law enforcement or others from detecting his actions in the victim's house, thus giving him the time and opportunity to search for and steal the property from the victim's house successfully. We see no evidence to the contrary. His primary motivation was at all times avoidance of detection, not commission of vandalism. As the offense of vandalism was incidental to the offense of burglary and because both crimes constitute an indivisible course of conduct within the scope of K.C.'s single intent to commit burglary, the juvenile court erred in imposing punishments on both count 1 and count 2. As it is unclear from the record what sentence the juvenile court imposed on count 2, we remand to the juvenile court for resentencing.

DISPOSITION

The order is reversed insofar as it imposes and executes consecutive sentences on counts 1 and 2. The matter is remanded to the juvenile court for resentencing with directions to specify and stay the sentence on count 2 pursuant to Penal Code section 654. The order is otherwise affirmed.

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JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.