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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAYSHAWN ROCHE,

Defendant and Appellant.

B233369

(Los Angeles County
Super. Ct. No. BA370145)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Leslie A. Swain, Judge. Affirmed as modified.

Ann Krausz, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Tannaz Kouhpainezhad, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Jayshawn Roche was tried and convicted of second degree robbery under Penal Code section 211 and felony carjacking under Penal Code section 215.¹ He was sentenced to a prison term of five years for the carjacking and a concurrent term of three years for the robbery. He contends the sentence for robbery was imposed in violation of section 654 and should be stayed. We agree.

BACKGROUND

On the morning of April 9, 2010, Deon Bush stopped at a local restaurant for breakfast. In the parking lot, a man Bush had never met struck up a conversation and offered him \$100 to make a delivery. Bush agreed, and the two loaded Bush's van with goods, the majority of which were illegal fireworks.

When Bush arrived at the delivery address, a grey sedan pulled up to the curb behind him. Roche and another man emerged from the car holding guns and trained them on Bush. One of the men demanded, "'Where the keys at? Get the keys out of his pocket.'" After taking keys, a wallet, cash, a pen, a coin purse and a cell phone from Bush's pockets, Roche told Bush to lie down on the ground, then held him at gunpoint while his accomplice took the keys and started Bush's van. Bush was terrified and pleaded for his life, imploring Roche, "'Just take what you're going to take and get on.'" Roche told Bush to stay where he was and said, "don't do nothing stupid." Roche then walked to the waiting van and drove away with his accomplice.

Unknown to Roche, Bush had a second cell phone in his waistband. After Roche and his accomplice drove away, Bush called 911 to report the carjacking. Police soon located the van, and a chase ensued. Roche and his accomplice abandoned the van and Roche fled into a nearby apartment complex. After a search, Roche was located by a canine unit in the basement of the building.

A jury found Roche guilty of second degree robbery and felony carjacking. At sentencing, the prosecutor described Roche's actions as part of an elaborate, sophisticated scheme to gain Bush's trust and lure him away from the public eye for the purpose of

¹ All further statutory references are to the Penal Code.

stealing his van and its contents. The trial court imposed a five year prison sentence for the carjacking and a three year concurrent sentence for the robbery.

DISCUSSION

Roche contends the concurrent three year prison sentence for robbery violated section 654, which provides in pertinent 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.”

The purpose of section 654 is to ensure that punishment is commensurate with a defendant’s culpability. (*People v. Meeks* (2004) 123 Cal.App.4th 695, 705.) Courts have construed section 654 broadly, restricting punishment for multiple offenses committed with a single objective. In *Neal v. State of California* (1960) 55 Cal.2d 11, 19, the court held where a course of conduct violates more than one statute but is part of an indivisible transaction with a single intent or objective, section 654 applies, and the trial court may impose only one sentence. But where a defendant entertains multiple criminal objectives that are “independent and not incidental to each other,” the court may impose separate punishment even where the violations were otherwise part of an indivisible course of conduct. (*People v. Sok* (2010) 181 Cal.App.4th 88, 99.) “It is the defendant’s intent and objective that determines whether the course of conduct is indivisible. . . . “[i]f all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, the defendant may be found to have harbored a single intent and therefore may only be punished once.”” (*People v. Le* (2006) 136 Cal.App.4th 925, 931; see also, *People v. Alford* (2010) 180 Cal.App.4th 1463, 1466.)

If section 654 applies, the proper procedure is to impose a concurrent term and then stay it. (See *People v. Hernandez* (2005) 134 Cal.App.4th 1232, 1238-1239.) Where a court imposes a concurrent term but does not stay the term, we infer the court found defendant had multiple intents or objectives in committing the offenses and rejected the applicability of section 654. (*People v. Alford, supra*, 180 Cal.App.4th at p. 1466.) Where a court erroneously fails to stay a concurrent term in violation of section

654, it acts in excess of its jurisdiction and the sentence is unauthorized. (*People v. Cuevas* (2008) 44 Cal.4th 374, 380, fn. 3.)

The trial court has broad latitude in determining whether section 654 applies in a given case. (*People v. Garcia* (2008) 167 Cal.App.4th 1550, 1564.) The determination whether the defendant harbored more than one intent or objective is a factual one that will not be reversed on appeal unless unsupported by substantial evidence. (*People v. Saffle* (1992) 4 Cal.App.4th 434, 438.) We review the trial court's factual finding, whether implicit or explicit, in the light most favorable to the prevailing party, presuming the existence of every fact the jury could reasonably deduce from the evidence. (*People v. Tarris* (2009) 180 Cal.App.4th 612, 620.)

Here, Roche and his accomplice advanced on Bush with guns drawn and demanded, "Where the keys at? Get the keys out of his pocket." After Roche took keys and other items from Bush's pockets, his accomplice started Bush's van. Roche held Bush at gunpoint and then joined his accomplice in the van and the two drove away. There is no substantial evidence of a break in the action sufficient to permit the formation of a separate intent or objective for the carjacking. The robbery and carjacking together constituted the means of achieving a common end, and multiple punishment is therefore unauthorized. (*People v. Britt* (2004) 32 Cal.4th 944, 953.)

Respondent concedes the carjacking and robbery were part of a sophisticated, elaborate ruse to deprive Bush of his van and its contents, but contends Roche harbored separate criminal objectives in committing each crime. Respondent argues the separate objects taken during the robbery and carjacking, i.e., Bush's personal property and his van, supported the trial court's implied finding that Roche intended to commit robbery as well as carjacking, establishing two divisible transactions. We disagree.

The taking of several items during the course of a robbery does not alone establish the existence of multiple transactions justifying multiple punishment. (*People v. Bauer* (1969) 1 Cal.3d 368, 376-377.) With regard to section 654, we analyze the number of objectives defendant harbors throughout a course of conduct, not the number of objects he takes. This is true even when the item is a car, the taking of which can be a separate

offense. Unless evidence has been presented that the defendant harbored a separate intent as to each class of items taken, multiple punishment should not be imposed.

Respondent argues the robbery and carjacking were divisible crimes because they were nonsimultaneous. We disagree. Where two offenses are temporally separated in such a way as to afford the defendant an opportunity to reflect and renew his or her intent before committing the second offense, the course of conduct may justify multiple punishment even though the two offenses were directed at one object. (*People v. Gaio* (2000) 81 Cal.App.4th 919, 935.) But temporal separation between offenses is not itself dispositive of the divisibility of transactions. (*People v. Evers* (1992) 10 Cal.App.4th 588, 603, fn. 10.) For example, in *People v. Bauer, supra*, 1 Cal.3d 368, three women were robbed by two gunmen who stole a number of items from the women's home, carried them into the garage, loaded the goods into a vehicle owned by one of the women, and then drove away in the vehicle. (*Id.* at p. 372.) The defendant was sentenced to separate sentences for the robbery and car theft but the appellate court vacated the sentence, holding the car theft was an indivisible part of the robbery and therefore could not be used as a basis for separate punishment. (*Id.* at pp. 376-377.)

Similarly, in *People v. Dominguez* (1995) 38 Cal.App.4th 410, the defendant put a gun to the victim's neck and demanded "everything he had." (*Id.* at p. 420) The defendant then took the victim's jewelry and drove away in the victim's van. (*Ibid.*) The jury found the defendant guilty of carjacking and robbery and the court imposed a prison term for carjacking and a concurrent term for robbery. The appellate court held the trial court should have stayed the robbery term, pursuant to section 654. (*Ibid.*)

Here, the carjacking and robbery occurred with no break in the action that would have given Roche sufficient time to reflect and renew his intent between the taking of the items from Bush's pockets and the taking of the van. Therefore, no evidence suggests Roche harbored separate intents or objectives between the robbery and carjacking, and both offenses were the means of accomplishing one objective and constituted an indivisible transaction for purposes of punishment. (See *People v. Thurman* (2007) 157 Cal.App.4th 36, 43; *People v. Latimer* (1993) 5 Cal.4th 1203, 1215-1216.) Under section

654, to insure the punishment imposed is commensurate with culpability, the three year term for robbery must be stayed.²

DISPOSITION

The conviction for robbery and carjacking is affirmed. The judgment is modified to stay imposition of the sentence on the robbery conviction and the trial court is directed to prepare a corrected abstract of judgment and forward it to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.

² The trial court initially announced a tentative sentence of five years for carjacking and stayed the three year robbery term. It later stated it would not change its tentative ruling and reiterated it would sentence defendant to five years in prison. But the final ruling did not comport with these statements, and the court gave no explanation for the discrepancy. This leads us to conclude the court's failure to stay the robbery term was inadvertent.