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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. SEAN ANTHONY CRISHON, Defendant and Appellant.	B264498 (Los Angeles County Super. Ct. No. BA406184)

APPEAL from a judgment of the Superior Court of Los Angeles County, Katherine Mader, Judge. Affirmed.

Jasmine Patel, 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,

Supervising Deputy Attorney General, and Thomas C. Hsieh, Deputy Attorney General, for Plaintiff and Respondent.

Sean Anthony Crishon appeals his convictions of robbery and attempted robbery. We affirm.

BACKGROUND

An information filed March 26, 2013 charged Crishon with attempted murder of George Anderson on or about December 7, 2012 (Pen. Code,[1] §§ 664, 187; count 1), assault with a firearm on Anderson on or about December 7, 2012 (§ 245, subd. (a)(2); count 2), second degree robbery of Anderson on or about December 7, 2012 (§ 211; count 3), felony evading an officer on or about December 7, 2012 (Veh. Code, § 2800.2, subd. (a); count 4), attempted second degree robbery of Jerome Bilderrain on or about December 5, 2012 (§ 211; count 5), kidnapping for carjacking on or about December 7, 2012 (§ 209.5, subd. (a); count 6) and carjacking on or about December 5, 2012 (§ 215, sub. (a); count 7), both of Bilderrain, second degree robbery of Bilderrain on or about December 6, 2012 (§ 211; count 8), three counts of receiving stolen property on or about December 7, 2012 (§ 496, subd. (a); counts 9–11), and aggravated kidnapping to commit robbery of Bilderrain (§ 209, subd. (b)(1); count 12). Counts 5–8, and 12 alleged Crishon personally used a

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

firearm (§ 12022.53, subd. (b)); counts 1 and 3 alleged he personally discharged a firearm (§ 12022.53, subd. (c)); counts 1–11 alleged he was out on bail (§ 12022.1) at the time of the offenses. The information also alleged Crishon had a prior strike conviction, had served a prior prison term, and had a prior conviction of a serious and violent felony.

Crishon pleaded not guilty and denied the special allegations, and trial on prior convictions was bifurcated. The jury found Crishon guilty on counts 3 (robbery of Anderson), 5 (attempted robbery of Bilderrain), 8 (robbery of Bilderrain), and 9 through 11 (receiving stolen property),[2] and found the firearm allegations true. The jury found Crishon not guilty on counts 1, 2, 6, 7, and 12, and Crishon pleaded no contest to count 4 (evading an officer) and admitted the gun allegation and the strike allegation. The court sentenced Crishon to 50 years in state prison, ordered him to pay fines and fees, and awarded presentence custody credit. Crishon filed a timely notice of appeal.

Prosecution case

Bilderrain

At trial, Bilderrain testified that in December 2012 he lived in veterans' housing in Inglewood. Then 65 years old, he used a cane to walk due to back injuries and arthritis. On the evening of December 5, Renee Bright drove Bilderrain's PT Cruiser to the store with Bilderrain in the passenger

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[2] Crishon does not appeal his convictions on counts 9–11.

seat. He then went along for the ride when Bright drove to visit some of her friends. When Bright pulled up to park, Crishon, whom Bilderrain had never seen before, walked up to the driver's side and said, "Let's get this over with" to Bright, which she acknowledged. She swung around, parked the car, and started to get out. Bilderrain asked her for his keys and she said, " 'No, you might take off.' " Bright exited the car saying she was "going to cop some dope," and both she and Crishon disappeared from view.

When Bright and Crishon reappeared, Bilderrain asked for his car keys, and Bright said Crishon had snatched them. Crishon told Bilderrain he owed Crishon $250 for spending two days with Bright and asked him to go to an ATM. Bilderrain, frightened and thinking this was a setup, told him his ATM card didn't work. Crishon got into the car on the driver's side. Crishon jammed in the keys, started the car, and floored the gas pedal, speeding off. Bilderrain tried to open the door, but Crishon floored it again and Bilderrain could not get out.

Crishon's hand rested on a brown-handled revolver on his right leg. When he turned the radio all the way up Bilderrain thought it was a buffer to mask a gunshot; he feared for his life. Crishon shouted that he wanted Bilderrain's jewelry, but when Bilderrain took off his silver rings and watch, Crishon saw they weren't gold and said, " 'I don't want that.' "

Bilderrain tried to calm Crishon down, telling him this was unnecessary and ridiculous. Crishon turned down the

radio, drove a few more blocks, and parked on a quiet residential street in Inglewood, about a mile and a quarter from where he had entered the car.

Crishon sat quietly for a moment, then started the car and started to drive back to where they had started. Bilderrain had been afraid to leave the car because Crishon had a gun. Crishon sped up again and turned the radio back up, and Bilderrain again told him this was ridiculous, and he didn't owe him any money. Crishon appeared to calm down, and told Bilderrain: " 'Here's what we're going to do. We're going over to my girlfriend's house. And we're going to spend the night. And you're going to get up, and you're going to take care of the money situation in the morning.' " Bilderrain was afraid to say no because he didn't want to enrage Crishon. He was "stuck, scared and didn't—didn't have a plan. I didn't know what to do."

Crishon parked the car in a residential area and the two men exited the car. Bilderrain didn't know what to do because Crishon had a weapon. Crishon walked behind Bilderrain until they reached a particular apartment complex unit. Inside, Bilderrain saw a blonde woman whom Crishon called Princess. Crishon put Bilderrain inside a room, telling him that they would get up in the morning and take care of the money situation. The time was midnight.

Bilderrain stayed in the room because there was only one way out and he did not think he could overpower Crishon, who had a gun. At around 9:00 a.m. the next day, December 6, Crishon came to get Bilderrain, saying, " 'you

ready to do that for me?' " (meaning go to the bank and get money). Bilderrain, still afraid, said yes.

Crishon drove Bilderrain's car. Bilderrain was in the passenger seat and Princess sat behind Bilderrain. He felt very shaken up and feared for his life, realizing that Crishon knew Bright and thus knew where Bilderrain lived. With Bilderrain giving directions, Crishon drove to Bilderrain's bank in Santa Monica, about 15 miles away. Bilderrain told him where the key card was to get into the parking lot, and Crishon parked. Crishon and Renee stayed in the vehicle while Bilderrain went inside and withdrew $450 from a teller, intending to keep some money for himself. When he went back outside, they were no longer in the car.

Bilderrain went back inside and upstairs to the lunch room where he ordered a sandwich. He was close to a nervous breakdown and not thinking straight, so he did not seek help. While he waited for his food he went downstairs and saw that Crishon and Princess had returned to the car. Bilderrain went to the driver's side and Crishon lowered the window. Bilderrain asked what was going on and Crishon said, " 'Let me have my money.' " Bilderrain said he was going to go get his food and Crishon said no. Crishon then accompanied Bilderrain as he returned to the lunch room and told him no, he could not get his food and they were leaving. They returned to the car. Bilderrain got into the passenger seat, and Crishon started the car and drove onto the street, where he said, " 'give me the money.' " Bilderrain was counting off $250 when Crishon snatched the entire

$450 from his hands. He did not try to get it back, feeling numb, afraid, and worried about the gun.

Crishon drove for about a half hour and stopped at a liquor store back in Inglewood. Crishon got out of the car with the keys, and after five minutes Bilderrain also got out and entered the store, where Crishon appeared to be intimidating the owner. Still paralyzed with fear, Bilderrain returned to the car. When the three were back in the car, Crishon drove off. Twenty-five minutes later, Crishon stopped at a Ralphs store and went inside with Princess, leaving Bilderrain in the passenger seat. When they returned with groceries, Crishon drove about 30 minutes to a residential area at 89th and Normandie, where he parked the car.

Bilderrain, Crishon and Princess walked to the door of a residence and a man who appeared to be a friend of Princess met them at the door. They entered the residence; thereafter, Princess and Crishon left to go shopping, leaving him in the apartment with the man. Bilderrain did not try to escape because the area was dangerous and he feared for his life. 45 minutes to an hour later, Crishon and Princess returned with food which the man cooked. Bilderrain did not know who had the gun at that point, although it had generally been visible; he trusted no one and decided to remain silent.

At 8:00 p.m. or 9:00 p.m., Crishon and Princess left in Bilderrain's car. Although he did not want them to take the car, he did not protest because, he thought, it would be safer

not to provoke Crishon. Bilderrain remained in the residence, sitting on a sofa chair. Distrustful of the resident, Bilderrain did not ask for help. At sunup, he left and took the bus home.

Bilderrain had told Crishon he was not a "snitch," and he did not tell anyone about his ordeal, throughout which he felt "abducted and jacked." Months later, Bilderrain learned his "totaled" car was at a tow yard. Crishon's hat remained inside the car.

On cross-examination, Bilderrain confirmed his preliminary hearing testimony that he had driven around with Bright for two days before the incident with Crishon.

Anderson

Anderson testified that around 11:30 a.m. on December 7, 2012, he had just finished his shift as a firefighter and had driven his truck to a convenience store, Penny Pinchers, to buy lotto tickets. He parked the truck directly in front of the door and left his driver side door unlocked with his firefighter gear and wallet on the passenger seat, while he stood just inside the store to scratch the tickets. Anderson looked up and saw that his driver side door was open, and Crishon had his upper torso inside Anderson's truck and was going through his stuff. Anderson screamed, " 'Hey,' " and headed out to his truck's driver side. Crishon got out of the truck and walked around the rear truckbed, squared off in front of Anderson, pulled a gun out of his waistband, and said, " 'I don't give a fuck who you are. I'll bust on you." Anderson ducked down, and Crishon fired

a shot from a wooden-handled revolver, which went through Anderson's passenger side side-view mirror and the windshield on the driver's side. Anderson grabbed a revolver out of a manila envelope in the rear cab area[3] and fired a single shot back. Crishon fled. Anderson drove away to a safer area and checked his truck out, saw the damage, and realized his cell phone and wallet were missing.

Anderson drove to his father-in-law's house and used a computer to check an application he had installed on his phone, which took a photograph and sent a location every time someone entered the wrong passcode. In his email account were two emails from the application with photographs of Crishon and the address of the Penny Pinchers; Anderson printed out the emails. After Inglewood police told him he needed to report the shooting to the Los Angeles Police Department (LAPD), Anderson hailed an LAPD squad car and told them what had happened. Anderson identified Crishon in a six-pack photographic lineup.

A surveillance video showed Crishon walk around Anderson's truck and into the store. The tape also showed Anderson exiting the store after he ostensibly saw Crishon

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[3] The gun belonged to Anderson's grandfather and was in a manila envelope with papers retrieved from his grandfather. Anderson was his grandfather's primary caregiver, and had removed the gun because his grandfather's Alzheimer's disease made it unsafe to leave the gun in his home.

in the vehicle, and showed Anderson firing a gun but not Crishon firing a gun.

The parties stipulated that on December 7 at approximately 4:45 p.m., police saw Crishon driving Bilderrain's PT Cruiser in Inglewood and arrested him after a high-speed chase. Crishon jumped from the car and ran, tossing a short-barrel revolver. Investigators found his DNA on the gun barrel. Further, forensic investigators determined that a bullet fragment found in Anderson's truck had been fired by the revolver Crishon discarded.

The prosecution introduced evidence that on July 15, 2012, Joseph Jackson had surprised Crishon as he stood behind Jackson's car in the carport at Jackson's apartment building. The car trunk and all four doors were open. Jackson asked Crishon what he was doing, and started to close the doors; Crishon said he had better ask someone else. Jackson sat in the driver's seat and noticed that the glove compartment was open and a knife he kept inside was missing. Crishon came around to the driver's side shouting obscenities, and Jackson got out and backed away. Crishon reached inside for a bag of stuff and when Jackson tried to grab it back, Crishon snatched the bag and walked away, saying, " 'This is my stuff. I'll fuck your mother fucking ass up.' " Jackson called the police and identified Crishon in a field line-up.

Defense case

James Williams

Williams testified that Crishon came to his house at around 1:00 a.m. in December 2012 with a younger Caucasian woman and an older veteran, Jerome (Bilderrain). Crishon and the woman left and Bilderrain stayed, chatting and then falling asleep in a living room chair. Crishon told Williams that Bilderrain owed Crishon some money, but Williams did not see any coercion. Williams went to the liquor store to get Bilderrain some beer and cigarettes, and made Bilderrain some breakfast. At one point, Bilderrain left with Crishon and the woman, and when they returned Bilderrain gave Williams $20 for the cigarettes and beer.

Renee Bright

Bright testified that she had known Crishon for nine years. Bilderrain was a crazy white guy who took drugs and pretended to be a black person. In December 2012 she drove Bilderrain to a girlfriend's house, where she left the car because he was getting on her nerves. Crishon happened to be there. When she came out of her girlfriend's apartment 20 minutes later, she saw Crishon sitting in the driver's seat and talking and laughing with Bilderrain. She had not seen Bilderrain since.

Crishon

Crishon testified that in December 2012 he was an unemployed drug addict whose only source of income stemmed from borrowing and stealing. He met Bilderrain at

a house in the area of the veteran's building a month earlier, and on two occasions they smoked crack cocaine together and shared "crack whores," women who would perform sexual favors for cocaine. Crishon also supplied Bilderrain with drugs in exchange for using Bilderrain's car.

When Bright arrived driving Bilderrain in his car, Crishon was with two girls who sold drugs in the area. Bright was one of his girlfriends. She went inside and he approached Bilderrain's car to talk about where the party was. Crishon had a little crack and he got into Bilderrain's car and they took some hits together. Crishon had with him a gun he had stolen from a car parked on the street, which was visible once he was in Bilderrain's car. They drove away without Bright so they would not have to share the drugs.

Bilderrain asked for more crack and promised to pay Crishon. They drove to Crishon's girlfriend Princess's house and Bilderrain said he wanted to keep getting high and he would pay in the morning. They then left with Princess for Williams's house, arriving around 1:00 a.m. Crishon left Bilderrain there and he and Princess drove off to get some more money for drugs by prostituting Princess. Crishon returned around 5:00 a.m. with some more crack, intending to "keep the party rolling until Mr. Bilderrain goes to the bank."

In the morning, Crishon, Princess, and Bilderrain drove to a bank in Santa Monica. While they waited for Bilderrain, Crishon and Princess walked around the area. They returned to the car and Bilderrain showed up, asking

Crishon to come in with him to pay the food tab. They paid the tab and left. Once in the car, Crishon snatched the money Bilderrain was supposed to give him, because he was angry that Bilderrain had insisted he go inside while he was "sparked." On the way back to Williams's house they stopped at Ralph's, and also bought some more drugs. They all smoked crack at Williams's house and went out again, leaving behind Bilderrain, who did not want to go with them. Crishon took Princess to turn tricks and they bought more drugs, and went to Princess's house.

The next morning, December 7, Crishon, still carrying the handgun, drove Bilderrain's car to the Penny Pincher. He parked across the street; leaving Princess in the car, he walked into the store with the gun in his pocket. When he left the store, Crishon noticed Anderson's truck with the front driver's door unlocked. He grabbed Anderson's cell phone. When Anderson ran out, Crishon began to move away. Anderson fired first and fired multiple shots, and Crishon fired back a single shot as he ran across the parking lot to Bilderrain's car (which Princess drove up). Crishon believed his life was in danger.

Crishon's mother testified that in 2012, she saw Bilderrain twice, sitting in front of her house in a PT Cruiser, accompanied by a white woman. After she saw Bilderrain testify, Crishon called her, and then she came forward to say she had seen Bilderrain before.

DISCUSSION

I. Crishon was properly convicted of robbery and attempted robbery.

Crishon argues that his conviction of attempted robbery of Bilderrain on or about December 5 (count 5) must be reversed, because the jury based that conviction on the same conduct that was the basis of his conviction for robbery of Bilderrain on or about December 6 (count 8). Crishon argues that separate convictions for attempted robbery and robbery are improper, as all the events over December 5 to 7 constituted a single, continuous indivisible robbery of Bilderrain.

While discussing jury instructions, the trial court asked what evidence supported the December 5 attempted robbery in count 5, and the prosecutor explained that Crishon had demanded the jewelry from Bilderrain but never actually took possession of the jewelry. The court agreed that instructions on attempt were necessary. The trial court stated that it assumed that the December 6 robbery in count 8 referred to the cash, and the prosecutor agreed. The trial court gave instructions on robbery and attempted robbery.

In closing, the prosecutor argued that snatching the money from Bilderrain constituted robbery, but did not discuss the attempted robbery.

During deliberations, the jurors submitted the question "can or should Mr. Bilderrain's vehicle be considered in the attempted robbery or the robbery charges." The trial court

discussed the issue with counsel. Defense counsel stated: "I think the attempted robbery had to do with the jewelry that he rejected." The court agreed the jewelry was the logical subject of attempted robbery, and the prosecutor agreed that was her theory, although she also believed the car could be the subjects of attempted robbery or robbery. The court agreed. The defense objected that it did not make sense to allow the car to be considered for both attempted and completed robbery. The court stated that "[t]he problem that we have is that the People never argued anything about the attempted robbery," and so the jury was confused. The court gave the following answer to the jury: "Any property, including the vehicle, taken from Mr. Bilderrain may be considered to be the subject of an attempted or completed robbery."

Section 954 allows multiple convictions based upon a single criminal act or indivisible course of conduct, but only " 'if neither offense is necessarily included in the other.' " (*People v. Vidana* (2016) 1 Cal.5th 632, 637.) " '[A] defendant cannot be convicted of a greater and a lesser included offense based on the same act or course of conduct.' " (*Id.* at p. 650.) Robbery (count 8) is the taking of property by means of force or fear with the specific intent to permanently deprive the owner of that property. (§ 211; *People v. Dominguez* (1995) 38 Cal.App.4th 410, 417.) Attempted robbery (count 5) is a lesser included offense of robbery (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 609), and as a result, California does not allow multiple convictions for robbery and attempted

robbery if all the acts are part of an indivisible course of conduct. Similarly, courts have concluded that a defendant may not be convicted of multiple counts of robbery if he steals several items by force or fear in a single "continuing transaction." (*People v. Rush* (1993) 16 Cal.App.4th 20, 25, disapproved on other grounds in *People v. Montoya* (2004) 33 Cal.4th 1031, 1036, fn. 4.) "Whether multiple takings are committed pursuant to one intention, one general impulse, and one plan is a question of fact for the jury based on the particular circumstances of each case. [Citations.] As with all factual questions, on appeal we must review the record to determine whether there is substantial evidence to support a finding that the defendant harbored multiple objectives." (*People v. Jaska* (2011) 194 Cal.App.4th 971, 983–984.) We will conclude that the defendant cannot be convicted of more than one count "only in the absence of any evidence from which the jury could have reasonably inferred that the defendant acted pursuant to more than one intention, one general impulse, or one plan." (*Id.* at p. 984.)

In *People v. Rush* (1993) 16 Cal.App.4th 20, the appellate court reversed a conviction for grand theft of an automobile when the defendant approached a man sitting in his automobile, held a gun to his head, and ordered him out. The victim lay face down on the ground and the defendant stole his wallet and car keys. When another man was unable to start the car, the victim told them how to start it, and subsequently heard the car drive away. (*Id.* at p. 23.) The defendant was convicted of grand theft auto and

robbery. The appellate court concluded that the theft of the car was necessarily included in the robbery offense, and reasoned that the defendant took the victim's wallet and car on the same date, "the automobile was part of the loot stolen in the robbery," and the defendant " 'commits only one robbery no matter how many items he steals from a single victim pursuant to a single plan or intent.' " (*Id.* at p. 27.) The court reversed the conviction of grand theft and dismissed the count. (*Ibid.*)

Other cases reversing convictions for multiple thefts and robberies when there is a single victim also involve the taking of several items of personal property within a very short time period and a short distance. In *People v. Irvin* (1991) 230 Cal.App.3d 180, the defendant robbed the victim in her car in a parking lot, drove a short distance across the lot, and forcibly stole her car, and the court held the taking of the automobile was during the course of a continuing robbery. "Although the defendant took more than one item of personal property . . . , the few seconds which elapsed between each taking coupled with the circumstance that her car traveled some small distance across the parking lot are wholly insufficient facts to sustain a finding that defendant can be convicted of both robbery and grand theft in this case. The robbery here was a continuous transaction, and the theft of the automobile was necessarily included within that robbery." (*Id.* at p. 186.)

In *People v. Ortega* (1998) 19 Cal.4th 686, defendants dragged two victims from a van, beat them, and demanded

the driver's wallet. When the driver pulled out his wallet his pager fell out of his pocket; there was no money in the wallet, and the defendant threw it back but he kept the pager. The other defendant beat the passenger and pulled off and kept his sweater. (*Id.* at pp. 690–691.) The court concluded that because the defendants were convicted of robbery of the driver based on the forcible theft of his wallet and pager, they could not also be convicted of robbery and grand theft of the vehicle, because "the property taken in the robbery of [the driver] . . . included the van. 'When a defendant steals multiple items during the course of an indivisible transaction involving a single victim, he commits only one robbery or theft notwithstanding the number of items he steals.' " (*Id.* at p. 699.)

In *People v. Marquez* (2000) 78 Cal.App.4th 1302, the defendant brandished a handgun and robbed a restaurant cashier of $70 of the employee's tip money and $600 from the cash register. The court held that the defendant was improperly convicted for two robberies: "the defendant committed only one larceny against a single victim involving one threatened application of force and occurring at the same place and time. In these circumstances the single larceny can only support a single count of robbery." (*Id.* at p. 1308.) The court noted: "The facts of this case contrast strikingly with those that show a divisible transaction . . . [citation], where the defendant was properly punished for both robbery and kidnapping for purposes of robbery where he initially planned to rob the victims of the

contents of a wallet and then formulated a new plan of kidnapping for purposes of stealing the contents of an automated teller machine." (*Id.* at p. 1308, fn. 5.)

In *People v. Jaska*, *supra*, 194 Cal.App.4th 971, the court listed relevant types of evidence to determine whether the defendant committed a series of thefts pursuant to a single intention: "whether the defendant acted pursuant to a plot or scheme [citations]; whether the defendant stole a defined sum of money or particular items of property [citations]; whether the defendant committed the thefts in a short time span [citations] and/or in a similar location [citations]; and, perhaps most significantly, whether the defendant employed a single method to commit the thefts." (*Id.* at pp. 984–985.)[4] Applying these principles to Crishon's convictions for attempted robbery and robbery, the jury could reasonably have concluded that Crishon did not act pursuant to a plot or scheme, but on impulse, opportunistically and erratically, until he completed the attempted robbery; that he initially demanded $250, but then attempted to rob Bilderrain of his jewelry, and the next day robbed him of $450 in cash; that the attempted robbery and completed robbery occurred a day apart; and that Crishon used different methods, first attempting to take

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[4] In *People v. Whitmer* (2014) 59 Cal.4th 733, 741, the California Supreme Court held (prospectively only) that "a defendant may be convicted of multiple counts of grand theft based on separate and distinct acts of theft, even if committed pursuant to a single overarching scheme."

jewelry, then stashing Bilderrain at his girlfriend's apartment, and then returning the next morning to take Bilderrain to the bank to withdraw cash.

We have examined the record to determine whether substantial evidence exists from which the jury could have concluded that Crishon acted "pursuant to more than one intention, one general impulse, or one plan" when he attempted to rob Bilderrain of his jewelry, and robbed Bilderrain of his cash and his car the next day. (*People v. Jaska*, *supra*, 194 Cal.App.4th at p. 984.) We determine that substantial evidence exists.

Bilderrain testified he was in the passenger seat of his car on December 5, when Crishon (holding the keys to the car) demanded $250. When Bilderrain said his ATM card didn't work, Crishon got into the car, started it, and floored it. With his hand on the gun and the radio turned up all the way, Crishon demanded Bilderrain's jewelry. After Bilderrain took off his silver rings and his watch, Crishon rejected them because they were not gold, and the items remained in Bilderrain's possession.

Crishon parked the car for a moment, started the car again, and began to drive back, speeding with the radio blaring. He later told Bilderrain he had decided they would spend the night at Crishon's girlfriend's house, and in the morning Bilderrain would "take care of the money situation." He repeated that plan when he left Bilderrain in a room in the apartment.

The next day, December 6, Crishon picked Bilderrain up at 9:00 a.m. and drove Bilderrain to the bank, where he withdrew $450 in cash. As Crishon drove away from the bank in Santa Monica with Princess sitting behind Bilderrain, he demanded the money Bilderrain had withdrawn. Before Bilderrain could count out $250, Crishon snatched the entire $450 out of Bilderrain's hands.

After driving around and spending some of the money, Crishon left Bilderrain at Crishon's friend's apartment the night of December 6 and drove off with Princess in Bilderrain's car. Bilderrain was afraid to protest. Crishon never returned Bilderrain's car, which he crashed while evading the police following his robbery of Anderson on December 7.

From these facts, the jury could reasonably have concluded that the attempted robbery of the jewelry was separable from the completed robbery of the cash the next day, rather than part of an indivisible course of conduct. The attempted robbery of the jewelry was complete when Bilderrain realized that robbing Bilderrain of his jewelry would not recoup the $250, and thus he rejected the loot. Crishon then formulated a new plan: to keep Bilderrain overnight, and take him to the bank the next day to withdraw cash. After leaving Bilderrain alone in a room at Princess's apartment, Crishon returned the next morning, drove him to the bank, and Bilderrain withdrew $450. Crishon drove away and snatched the entire amount from

Bilderrain's hands while Bilderrain attempted to count out $250, completing the robbery of the cash.

The jury could also conclude that the attempted robbery of the jewelry on December 5 was separable from the completed robbery of the car on December 6. After driving around on December 6 and spending some of the cash he had snatched from Bilderrain, Crishon again took Bilderrain to a friend's apartment and then he and Princess left that night in Bilderrain's car. Crishon never returned the car, which he totaled the next day while fleeing from the police after he robbed Anderson.

Further, it is relevant that Crishon left Bilderrain stranded in a room in Princess's apartment on December 5, and according to his own testimony, drove off and returned the next day to pick Bilderrain up and drive him to the bank. In *People v. Brito* (1991) 232 Cal.App.3d 316, the defendant pointed a gun at the victim's face and demanded money, the victim escaped from the driver's side of the car, and the defendant shot him in the back and drove away in the car. The appellate court allowed separate convictions for attempted murder and robbery, explaining that "a robbery continues until the defendant has escaped with the stolen goods and has reached a place of temporary safety. [Citation.] Thus, a defendant who applies force with the intent to steal, has committed one robbery notwithstanding the number of items he steals during an indivisible transaction, *until he has reached a place of safety*." (*Id.* at p. 326, fn. 8, italics added.) Here, after attempting to rob

Bilderrain of his jewelry on December 5, Crishon reached a place of safety when he drove away and left Bilderrain overnight in a room in Princess's apartment. The robbery of the cash on December 6, the next day, was not part of an indivisible robbery transaction. Crishon had reached a place of safety by driving off the night of December 5, and then returned the morning of December 6 to commit a robbery of cash, separate from the attempted robbery of the jewelry the day before.

II. The trial court properly sentenced Crishon to consecutive sentences on counts 5 and 8.

The trial court selected count 3 (robbery of Anderson) as the base term, and (including the armed allegations) imposed a consecutive sentence of five years on count 5 (attempted robbery of Bilderrain), and a consecutive sentence of five years and eight months "as to count 8 [robbery of Bilderrain], which is a different occasion." Crishon argues that the robbery and attempted robbery of Bilderrain were part of an indivisible course of conduct and had the same objective, and therefore section 654 prohibited punishment for both. "The question whether section 654 is factually applicable to a given series of offenses is for the trial court, and the law gives the trial court broad latitude in making this determination." (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.) On appeal, we review the record in the light most favorable to the judgment, and we must uphold the trial court's sentencing order if there is substantial evidence to support it. (*Ibid.*) The factual

findings required by section 654 may be implied from the trial court's decision to impose or not impose a stay. (*People v. Palmore* (2000) 79 Cal.App.4th 1290, 1297.)

Section 654, subdivision (a) provides: "[a]n act or omission that is punishable in different ways *by different provisions* 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. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other." (Italics added.) In 2012, before the alleged crimes in this case occurred, the California Supreme Court held that "[b]y its plain language section 654 does not bar multiple punishment for multiple violations of the same criminal statute." (*People v. Correa* (2012) 54 Cal.4th 331,334 (*Correa*).) Section 654 therefore does not apply to a case which "involves multiple violations of the *same* statute, [as] the express language of section 654 applies to an act that is punishable in *different* ways by *different* provisions of law." (*Id.* at p. 337.) The court reconsidered a footnote in *Neal v. State of California* (1960) 55 Cal.2d 11, 18, fn. 1), and disapproved its statement that section 654 also prevented double punishment for more than one violation of the same Penal Code section. (*Correa*, at pp. 334, 337.)

In this case, the jury found Crishon guilty of attempted robbery of Bilderrain on December 5 and robbery of Bilderrain on December 6. As we discussed above, the

attempted robbery occurred when Crishon, with his hand on a gun on his leg, demanded, and then did not take possession of, Bilderrain's jewelry on December 5. The completed robbery occurred either when Crishon snatched the $450 in cash from Bilderrain's hand the next day, December 6, or alternatively when Crishon drove away in Bilderrain's car on the evening of December 6 and never returned the car. "[T]he purpose of section 654 is to ensure that a defendant's punishment will be commensurate with his culpability. [Citations.] . . . 'A person who commits separate, factually distinct, crimes, even with only one ultimate intent and objection, is more culpable than the person who commits only one crime in pursuit of the same intent and objective.' " (*Correa*, *supra*, 54 Cal.4th at p. 341.) The attempted robbery and the robbery occurred a day apart and involved different personal property of Bilderrain. The offenses were factually distinct, and each presented a new possibility of harm to Bilderrain.[5] (*People v. Porter* (1987) 194 Cal.App.3d 34, 38–39.) Even if counts 5 and 8 had not involved multiple

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[5] The facts are easily distinguished from those in *People v. Goode* (2015) 243 Cal.App.4th 484, 486–487), where the defendant was convicted of burglary for opening a residence's metal storm door, and of attempted burglary for, a few seconds later, jiggling a window (but not opening it) to the same room in the residence. The court cited *Correa*, *supra*, 54 Cal.4th 335–336 , but concluded that separate punishment was not permissible because each offense did not create a new risk of harm. (*Goode*, at pp. 492–494.)

violations of the robbery statute, they were factually distinct and each presented new risks of harm. Substantial evidence supports the imposition of separate punishment.

III. The trial court was not required to give a theft instruction.

Crishon contends we must reverse his conviction for the robbery of Anderson (count 3) because the jury was not instructed on the lesser included offense of theft. Substantial evidence did not support a theft instruction.

Theft is a lesser included offense of robbery. (*People v. Ramkeesoon* (1985) 39 Cal.3d 346, 351.) "Instruction on a lesser included offense is required only when the record contains substantial evidence of the lesser offense, that is, evidence from which the jury could reasonably doubt whether one or more of the charged offense's elements was proven, but could find all the elements of the included offense proven beyond a reasonable doubt." (*People v. Moore* (2011) 51 Cal.4th 386, 408–409.) Crishon argues that his testimony that Anderson fired first, and he returned fire as he ran across the parking lot, was substantial evidence that he used force only in self-defense, and the offense was theft, not robbery.

Even if Crishon fired the revolver at Anderson as he ran away across the parking lot with Anderson's cell phone, the offense was still robbery, not theft. "[L]arceny is a necessary element of robbery. . . . [¶] . . . [¶] Because larceny is a continuing offense, a defendant who uses force or fear in an attempt to escape with property taken by larceny

has committed robbery." (*People v. Williams* (2013) 57 Cal.4th 776, 787.) "A theft or robbery remains in progress until the perpetrator has reached a place of temporary safety." (*People v. Flynn* (2000) 77 Cal.App.4th 766, 772.) "Whether a defendant has reached a place of temporary safety is a question of fact for the jury. [Citation.] . . . [A]n objective standard is to be applied." (*People v. Johnson* (1992) 5 Cal.App.4th 552, 559–560.) There is no evidence that Crishon had reached a place of temporary safety: he was running to the car across the parking lot when (according to Crishon) he returned fire. (*People v. Haynes* (1998) 61 Cal.App.4th 1282, 1292.) This constitutes a use of force during an attempt to escape after taking Anderson's property. Thus, the offense was robbery, not theft.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.