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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D.S., A Person Coming Under the Juvenile Court Law.	B235708 (Los Angeles County Super. Ct. No. FJ47861)
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. D.S., Defendant and Appellant.	

APPEAL from the orders of the Superior Court of Los Angeles County, Robert J. Totten, Commissioner. Affirmed.

Lynette Gladd Moore, 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, Linda C. Johnson and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court sustained a petition alleging that appellant D.S. made criminal threats and engaged in robbery. He contends the court contravened Penal Code section 654 in determining his maximum period of confinement. We affirm.

RELEVANT PROCEDURAL BACKGROUND

On October 8, 2010, in a prior proceeding, the District Attorney of Los Angeles County filed a petition under Welfare and Institutions Code section 602 charging appellant with a single count of criminal street gang activity (Pen. Code, § 186.26, subd. (c)).[1] On February 16, 2011, pursuant to a settlement, the count was dismissed and the petition was amended to include a count of misdemeanor assault (§§ 240, 241), to which appellant pleaded no contest. Appellant was placed on probation for six months.

On June 7, 2011, the petition in the underlying proceeding was filed, charging appellant with a single count of second degree robbery (§ 211). The petition was later amended to include a count of criminal threats (§ 422). Following a contested hearing, the juvenile court sustained the petition as amended. On July 12, 2011, the court declared appellant to be a ward of the court, removed him from parental custody, and ordered him placed in a camp program. The court set appellant's maximum term of confinement as five years and ten months, comprising five years for felony robbery, eight months for felony criminal threats, and two months for misdemeanor assault.

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1 All further statutory citations are to the Penal Code, unless otherwise indicated.

FACTUAL BACKGROUND

A. *Prosecution Evidence*

In June 2011, Jason Park owned a market on North Virgil Avenue in Los Angeles. According to Park, appellant and Pedro R. entered the market before noon on June 3, 2011. Park had never previously seen them in the market.

While Pedro went to an area containing chips, appellant walked to a fruit counter, where he began eating cherries while staring at a cashier. When Park asked him to stop eating the cherries, appellant said, "Shut up, motherfucker." Park then told him to leave the market. Appellant loudly replied, "Shut up, motherfucker, before I kill you." The remarks created fear in Park and his customers. According to Park, appellant threatened to kill Park and his family.

While appellant spoke to Park, Pedro moved to a line of customers at a cash register. When the cashier asked Pedro to put his backpack down, he slammed the backpack onto a cashier's counter, thereby drawing Park's attention to him and away from appellant. Park walked toward Pedro, who repeatedly threatened to kill Park and his family.

Park grabbed Pedro's backpack, threw it toward the market's door, and told appellant and Pedro to leave the store. Pedro then struck Park in the face. When Park grabbed Pedro in an effort to restrain him, appellant approached and punched Park in the ribs. While Park struggled with Pedro, Park's truck, market, and house keys fell from the front pocket of his jacket.[2] Appellant briefly left the market, re-entered it, and then left again. A video recording of the incident from a market surveillance camera was played for the juvenile court.

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[2] Park holds a black belt in tai kwan do and a third degree jujitsu belt. He testified that he kept himself in check because he did not want to hurt Pedro.

Pedro was eventually restrained, and Park made a 911 call. At some point, Park discovered that his keys were missing. Shortly after the incident, appellant reappeared, and Park detained him in the market. After Los Angeles Police Department (LAPD) Officers Cazadillas and Kim arrived, appellant told Park and the officers that he had taken Park's keys, but when asked to return them, he denied knowing where they were. According to Park, when an officer said appellant would go to jail if he did not return the keys, appellant replied, "What keys?"[3]

B. *Defense Evidence*

Elaine Kwak, a certified law student, testified that when she went to the market to interview Park, he refused to let her view the surveillance camera video recording of the incident. Park said that appellant had threatened to sue him, and that upon the advice of an attorney he had decided not to show the video recording to anyone unless he was provided with proper documents.

LAPD Officer Robert Cazadillas testified that when arrested, appellant said that he took Park's keys because Park hit him.

DISCUSSION

Appellant contends the trial court violated section 654 in determining his maximum term of confinement, insofar as it is based on the offenses of robbery and criminal threats. He argues that punishment was proper only for robbery

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[3] According to Park, he told the officers that appellant threatened him and his family. LAPD Officer Robert Cazadillas, the sole officer who testified at trial, stated that he did not hear Park make this remark. It was stipulated that Officer Kim would have testified that he did not recall that Park made the remark or that Park ever stated that appellant hit him.

because the two offenses occurred within a single indivisible course of conduct. As explained below, we reject this contention.

Subdivision (a) of section 654 prohibits multiple punishment for "'[a]n act or omission which is made punishable in different ways by different provisions of this code . . . .'" However, multiple punishment is proper if the defendant pursues suitably independent criminal objectives. (*People v. Williams* (1992) 9 Cal.App.4th 1465, 1473-1474.) "Whether the defendant held 'multiple criminal objectives is primarily a question of fact for the trial court, whose finding will be upheld on appeal if there is any substantial evidence to support it.' [Citations.]" (*People v. Galvan* (1986) 187 Cal.App.3d 1205, 1218.)

"'"Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the *intent and objective* of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one."' [Citation.] However, if the offenses were independent of and not merely incidental to each other, the defendant may be punished separately even though the violations shared common acts or were parts of an otherwise indivisible course of conduct. [Citations.] If all the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one. [Citation.]" (*People v. Green* (1996) 50 Cal.App.4th 1076, 1084-1085.)

Although appellant raised no objection under section 654 before the juvenile court, his silence did not work a forfeiture of his contention. (*People v. Perez* (1979) 23 Cal.3d 545, 549-550, fn. 3.) Generally, "[i]n the absence of any reference to . . . section 654 during sentencing, the fact that the court did not stay the sentence on any count is generally deemed to reflect an implicit determination that each crime had a separate objective. [Citations.]" (*People v. Tarris* (2009) 180 Cal.App.4th 612, 627.) In such cases, we "'"'view the evidence in a light

most favorable to the respondent and presume in support of the [sentencing] order the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]' [Citation.]" [Citation.]'" (*Ibid*., quoting *People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312-1313.)

Here, the juvenile court conducted a combined adjudication hearing regarding the offenses charged against Pedro and appellant. The court found that Pedro had made criminal threats (§ 422) and committed an assault with force likely to produce great bodily injury (§ 245, subd. (a)(1)). Aside from finding that appellant also made criminal threats, the court concluded that appellant committed a robbery in taking Park's keys. The court stated: "[T]he best way we can look at it is that [Pedro] was being physically held and was preoccupying . . . Park, which resulted in the on-going physical [section] 245 [assault] or on-going physical event which then allowed [appellant] to be able to take the keys. It's a robbery . . . ."

Appellant contends that his criminal threats and robbery served a single purpose. He argues that he entertained "a single objective" in making the threats and taking the cherries and the keys -- that of making off with the property. The crux of his argument is that the evidence conclusively shows that appellant's criminal threats were made to secure the successful theft of the cherries, and that the theft of the keys was merely incidental to this earlier misconduct. We disagree.

Although the theft of several articles at the same time ordinarily constitutes a single offense (*People v. Bauer* (1969) 1 Cal.3d 368, 378), section 654 does not bar multiple punishments for a series of robbery-related offenses when the evidence discloses a change in the perpetrator's intent during the pertinent events. In *People v. Porter* (1987) 194 Cal.App.3d 34, 37-39 (*Porter*), the defendant and an accomplice entered the victim's car and stole his wallet. (*Id*. at p. 36.) After discovering what they believed was an ATM card in the wallet, they forced the victim to drive to a bank and remove cash from his account. (*Id*. at pp. 36-37.)

The appellate court concluded that section 654 did not bar separate punishments for robbery and kidnapping for the purposes of robbery, stating that "[w]hat began as an ordinary robbery turned into something new and qualitatively very different." (*Porter, supra,* at p. 38.) The court reasoned that the defendant had originally intended to steal only the victim's wallet, and only conceived the plan to kidnap the victim to steal cash from his bank account upon discovering what he believed to be an ATM card. (*Id*. at p. 38.)[4]

Here, the evidence shows that appellant's initial misconduct -- his criminal threats and consumption of the cherries -- also "turned into something new and qualitatively very different" after Pedro assaulted Park (*Porter, supra*, 194 Cal.App.3d at p. 38). The record discloses that appellant and Pedro initially entered the market to intimidate its occupants and take some merchandise. Only after their violent encounter with Park began did appellant acquire a new goal and an opportunity to achieve it. According to Officer Cazadillas, appellant said he took Park's keys because Park hit him during the assault on Park. In addition, both Park and Cazadillas testified that appellant refused to return the keys. In view of this testimony, a reasonable factfinder could conclude that during the assault, appellant decided to punish Park for hitting him, and thus took his keys when they fell from Park's pocket. For this reason, the juvenile court properly imposed separate punishments on the criminal threats and the robbery.

Pointing to the principle that a robbery "is a continuing offense that begins from the time of the original taking [and continues] until the robber reaches a place of relative safety" (*People v. Estes* (1983) 147 Cal.App.3d 23, 28), appellant maintains that his robbery formed an indivisible course of conduct that

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[4] *Porter* was followed in *People v. Smith* (1992) 18 Cal.App.4th 1192, 1197-1199, which involved similar facts.

encompassed his consumption of the cherries, criminal threats, and theft of Park's keys. However, as explained above, the juvenile court found that appellant robbed Park in taking his keys; moreover, the evidence supports the reasonable inference that appellant's theft of the keys was the product of an intent not present when appellant began his criminal conduct. (See *People v. Solis* (2001) 90 Cal.App.4th 1002, 1022 [section 654 did not bar multiple punishment for the defendant's criminal threats and his subsequent act of arson because the crimes served different intents: the threats were intended to cause fear, and the arson was intended to cause burning].)

The cases upon which appellant relies are distinguishable, as the defendants in them experienced no analogous change in intent during their crimes. In each case, the defendant participated in the burglary and robbery of a business or residence. (*People v. Le* (2006) 136 Cal.App.4th 925, 929 [drugstore]; *People v. Guzman* (1996) 45 Cal.App.4th 1023, 1025-1026 [residence]; *People v. Collins* (1963) 220 Cal.App.2d 563, 579 [residence] (*Collins*); *Downs v. State* (1962) 202 Cal.App.2d 609, 611 [telephone company]; *In re Dowding* (1961) 188 Cal.App.2d 418, 421 [drugstore]; see *People v. Collins* (1953) 117 Cal.App.2d 175, 178-180, disapproved on another ground in *People v. Elliot* (1960) 54 Cal.2d 498, 503-504 [providing a full statement of the facts in *Collins*].) The appellate courts held that multiple punishments could not be imposed for robbery and the other offenses charged against the defendants because all the offenses were committed under the guidance of a single intent or design to take property. (*People v. Le*, *supra*, 136 Cal.App.4th at pp. 930-931; *People v. Guzman*, *supra*, 45 Cal.App.4th at p. 1028; *Collins*, *supra*, 220 Cal.App.2d at p. 579; *Downs v. State*, *supra*, 202 Cal.App.2d at p. 614; *In re Dowding*, *supra*, 188 Cal.App.2d at pp. 423-424.) That is not the case here. In sum, the juvenile court did not contravene section 654 in determining appellant's maximum period of confinement.

DISPOSITION

The orders of the juvenile court are affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.