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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. SALVADOR FIGUEROA, Defendant and Appellant.	B271314 (Los Angeles County Super. Ct. No. KA110871)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mike Camacho, Jr., Judge. Affirmed.

G. Martin Velez, 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, Assistant Attorney General, Paul M. Roadarmel, Jr. and Stacy S. Schwartz, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Salvador Santiago Figueroa was convicted by jury in count 1 of second degree burglary of a vehicle (Pen. Code, § 459)[1] and in count 4 of possession of burglary tools (§ 466.) Defendant admitted suffering a prior conviction under the three strikes law (§ § 1170.12, subds. (a)–(d) & 667, subds. (b)–(i).) He also admitted serving two prior prison terms. (§ 667.5, subd. (b).)[2]

The trial court sentenced defendant to the low term of 16 months for burglary, doubled due to the prior strike conviction, for a total of 32 months. The prior prison term allegations were stricken under section 1385. A concurrent term of six months was imposed for the possession of burglary tools conviction.

Defendant presents one issue on appeal. He argues that the trial court erred by failing to stay the concurrent six month term for possession of burglary tools pursuant to section 654. We affirm.

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[1] Statutory references are to the Penal Code unless otherwise indicated.

[2] One of the prior prison terms was based on the same offense constituting a strike prior conviction.

FACTS

Because of the limited scope of the issue on appeal, the facts are stated in summary form. The victim parked and locked her 2001 Honda Odyssey van in the carport area of her townhouse in Diamond Bar on the evening of October 3, 2015. Early in the morning on October 4, a resident of the townhouse complex heard noise outside, looked through his bedroom window, and saw defendant and codefendant Betzy Denise Torres-Astorga walking among the cars in the carport. The resident saw defendant make a quick motion next to the victim's vehicle, breaking the driver's window. Defendant leaned into the car through the window. Torres-Astorga entered the vehicle "like she was reaching for stuff." A few minutes later codefendant Silvio Hernandez drove up in a Ford Focus. Defendant and Torres-Astorga entered the vehicle, which then drove off.

Sheriff's deputies were notified of the vehicle burglary. A short time later the Ford Focus was stopped by sheriff's deputies. Hernandez was driving the vehicle, Torres-Astorga was in the passenger seat, and defendant was in the rear seat. CD's and headphones stolen from the victim's vehicle were recovered in the Ford Focus.

Also discovered in the back seat of the Ford Focus, to the right of where defendant had been sitting, was an open bag of

tools, containing gloves, bolt cutters, six screwdrivers, three pliers, and a lighter. Deputy Sheriff Christopher Acuna, who had been involved in "a couple hundred" burglary investigations, described how tools are used in car burglaries: screwdrivers can be used to "punch the lock" of a vehicle, remove the ignition, or start the ignition; pliers can "take out the ignition," break a window, or remove a "club" from the steering wheel; and bolt cutters can smash windows or remove locking devices. Deputy Acuna opined that he would classify the items as burglary tools.

DISCUSSION

Defendant presents one issue on appeal. He argues "possession of burglary tools and his commission of auto burglary constitute one indivisible course of conduct," and as a result, "the trial court should have stayed the six month sentence on the burglary tools conviction." Defendant reasons that there was no evidence defendant possessed the burglary tools for any purpose other than to break into the victim's vehicle. We disagree.

Section 654's Prohibition Against Multiple Punishment for Separate Acts

Penal Code section 654 provides in pertinent part as follows: "(a) 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."

Application of section 654's prohibition against multiple punishment falls into two general categories. The first category—not present here—arises when a single act or omission which violates two provisions of the Penal Code. (See *People v. Corpening* (2016) 2 Cal.5th 307, 309 [single act constituting carjacking and robbery may be punished only once under section 654; *People v. Jones* (2012) 54 Cal.4th 350, 352 [single act violating various provisions prohibiting possession of a firearm may be punished once under "section 654's plain language"].) Under the second category of section 654 issues, the "statute bars multiple punishment not only for a single criminal act but for a single indivisible course of conduct in which the defendant had only one criminal intent or objective. (*People v. Bauer* (1969) 1 Cal.3d 368, 376; *In re Ward* (1966) 64 Cal.2d 672, 675–676; *Neal v. State of California* (1960) 55 Cal.2d 11, 19.)" (*People v. Moseley* (2008) 164 Cal.App.4th 1598, 1603 (*Moseley*).) Defendant relies on this latter principle in this appeal.

"Our case law has found multiple criminal objectives to be a predicate for multiple punishment only in circumstances that involve, or arguably involve, multiple acts." (*People v. Mesa*

(2012) 54 Cal.4th 191, 199.) "The initial inquiry in any section 654 application is to ascertain the defendant's objective and intent. If he entertained multiple criminal objectives which were independent of and not merely incidental to each other, he may be punished 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." (*People v. Beamon* (1973) 8 Cal.3d 625, 639.)

Standard of Review

"Intent and objective are factual questions for the trial court, which must find evidence to support the existence of a separate intent and objective for each sentenced offense. [Citations.]" (*People v. Jackson* (2016) 1 Cal.5th 269, 354.) "We review under the substantial-evidence standard the court's factual finding, implicit or explicit, of whether there was a single criminal act or a course of conduct with a single criminal objective. (*People v. Coleman* (1989) 48 Cal.3d 112, 162; *People v. Ratcliff* (1990) 223 Cal.App.3d 1401, 1408.) As always, we review the trial court's conclusions of law de novo. (*Hill v. City of Long*

Beach (1995) 33 Cal.App.4th 1684, 1687.)" (*Moseley*, *supra*, 164 Cal.App.4th at p. 1603.) [3]

Analysis

Because no objection under section 654 was made in the trial court, and the court made no express findings, we consider whether the trial court's implied findings that defendant's possession of burglary tools was based on an intent and objective divisible from the vehicle burglary. The trial court could impliedly conclude that defendant possessed burglary tools[4] in

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[3] A contemporaneous objection is not required to preserve the claim that a sentence violates the principles of section 654. (*People v. Scott* (1994) 9 Cal.4th 331, 354, fn. 17.)

[4] The offense of unlawful possession of burglary tools is defined in section 466 as follows: "Every person having upon him or her in his or her possession a picklock, crow, keybit, crowbar, screwdriver, vise grip pliers, water-pump pliers, slidehammer, slim jim, tension bar, lock pick gun, tubular lock pick, bump key, floor-safe door puller, master key, ceramic or porcelain spark plug chips or pieces, or other instrument or tool with intent feloniously to break or enter into any building, railroad car, aircraft, or vessel, trailer coach, or vehicle as defined in the Vehicle Code, or who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument named above so that the same will fit or open the lock of a building, railroad car, aircraft, vessel, trailer coach, or vehicle as defined in the Vehicle Code, without being requested to do so by some person having the right to open

the getaway car for a purpose and use independent of the charged vehicle burglary.

There is no evidence defendant used or even had any of the tools on his person at the time of the burglary of the victim's vehicle. There is also no evidence defendant used any of the tools to break the vehicle's window. All the record reveals is that defendant broke the window with "a quick motion." It is not unreasonable to conclude, given defendant's conduct in this case and the multitude of tools at his disposal in the getaway car, that defendant possessed the tools with the intent to use them for unlawful breaking or entry independent of the charged offense.

Finally, we reject defendant's argument that "[w]ithout evidence that [defendant] had a 'contemporaneous intent' to burglarize other vehicles, multiple punishment is barred by Penal Code section 654." Section 466 does not require the level of intent suggested by defendant. "It is clear from the language of the statute that in order to sustain a conviction for possession of burglary tools in violation of section 466, the prosecution must establish three elements: (1) possession by the defendant; (2) of

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the same, or who shall make, alter, or repair any instrument or thing, knowing or having reason to believe that it is intended to be used in committing a misdemeanor or felony, is guilty of a misdemeanor. Any of the structures mentioned in Section 459 shall be deemed to be a building within the meaning of this section."

tools within the purview of the statute; (3) with the intent to use the tools for the felonious purposes of breaking or entering. (§ 466.)" (*People v. Southard* (2007) 152 Cal.App.4th 1079, 1084–1085.) Defendant cites no authority requiring proof of a contemporaneous intent to commit other vehicle burglaries, and the law is to the contrary. Section 466 is a general intent offense which does not require " ' "an intent to break into a particular building," ' " and " ' "[t]he offense is complete when tools or other implements are procured with intent to use them for a burglarious purpose." ' " (*Id.* at p. 1088.)

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DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P.J. KIN, 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.