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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. MAURICE GLYNN HAMPTON, Defendant and Appellant.	B268412 (Los Angeles County Super. Ct. No. MA066528)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles Chung, Judge. Affirmed in part, reversed in part and remanded with directions.

Lise M. Breakey, 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, Shawn McGahey Webb and Nathan Guttman, Deputy Attorneys General, for Plaintiff and Respondent.

Unable to re-start the car he was trying to carjack after its occupants fled, defendant Maurice Hampton stole the driver's wallet and keys from the interior door pocket of the car and left on foot. Defendant then burglarized a nearby home before he was apprehended. The driver's wallet and keys were found in the burgled home.

A jury found defendant guilty of attempted carjacking (Pen. Code, §§ 664, 215, subd. (a)),[1] second degree robbery (§ 212.5, subd. (c)), and first degree burglary (§ 459). The court sentenced defendant to a total prison term of eight years, four months.

Defendant now contends that his robbery conviction should be reversed because there was insufficient evidence that he intended to take the wallet and keys when he applied the force or fear necessary to accomplish the attempted carjacking. In the alternative, defendant argues that his sentence for the attempted carjacking of the driver should be stayed pursuant to section 654. We agree with the latter contention and remand for resentencing. We affirm the remainder of the judgment.

PROCEDURAL HISTORY

An information charged defendant with two counts of attempted carjacking, one count each for the driver and passenger of the car (§§ 664, 215, subd. (a), counts 1 & 2); one count of second degree robbery for theft of personal property (§ 212.5, subd. (c), count 3); and one count of first degree burglary (§ 459, count 4) for his subsequent entry into an occupied home. The information further alleged that defendant suffered two prison priors (§ 667.5, subd. (b)). Counsel stipulated to

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

bifurcating trial of the priors, which defendant ultimately admitted.

A jury convicted defendant of all four charged crimes. The court sentenced defendant to the high term of 5 years for the robbery (count 3), one-half the high term of 9 years on each of the attempted carjacking counts (counts 1 & 2), and one-third the midterm of 4 years on the burglary count (count 4). The court ordered the carjacking sentences to run concurrently to one another and to the robbery sentence, and ordered the 16-month sentence for the burglary count to run consecutively to the others.[2] The court also imposed a consecutive one-year term for each of defendant's prison priors, bringing the total sentence to eight years, four months. The court imposed various fines and fees and awarded defendant 148 days of custody credit. Defendant timely appealed.

RELEVANT FACTS[3]

Victims Jose L. and Karla B. testified to the following. At around 9:00 or 9:30 p.m. on July 15, 2015, they were seated in Jose's car, which was parked and idling outside Karla's mother's apartment in Lancaster. Jose was in the driver's seat, and Karla was in the front passenger seat. The manual transmission car had a push-button ignition that could be started only by pressing the ignition button and clutch simultaneously in the presence of the key fob.

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[2] Although the court stated that the two attempted carjacking counts "merge under [section] 654," it explicitly imposed concurrent sentences for those counts and did not stay either sentence pursuant to section 654.

[3] Because defendant does not challenge his burglary conviction, we do not relate the facts pertinent to that offense.

Defendant, whom both victims identified in court, walked up to Jose's window and knocked on it. When Jose rolled down the window, defendant reached inside and attempted to unlock the door. Jose pushed defendant's arm against the door, and the two men struggled as defendant attempted to enter the car. While they were struggling, Karla reached over and pushed the ignition button, turning off the car.

Jose asked defendant what he was doing, and defendant said, "I'm carjacking you." Defendant then reached his other hand toward his waistband and threatened to stab Jose. Jose released his grip on defendant's arm, raised his hands in a surrendering posture, and told defendant he could have the car.

Defendant opened the driver's door. Jose and Karla got out of the car, and defendant got in and shut the door. Jose testified that he left his wallet and keys inside the interior pocket of the driver's door. He also left his cell phone in the car, and asked defendant to return it. Defendant complied. Jose did not ask defendant for the wallet or keys because he "felt it was unnecessary" since defendant "had already gotten inside the vehicle." Jose testified that although one would not have been able to see the wallet and keys from outside the car, the items would have been visible to someone seated in the driver's seat. However, there was no testimony at trial about the location of the cell phone. At the preliminary hearing, Jose testified that it had been under his leg in the driver's seat, and that he told defendant that defendant was sitting on the phone when he asked for it back.

When defendant returned his cell phone, Jose immediately called 911 and started walking to Karla's mother's apartment with Karla. He testified, "I still felt I was in some sort of

immediate danger," though he did not feel his life was at stake because defendant was inside the car, had ceased making overt threats, and did not display a weapon. Nevertheless, Jose walked away without looking back; that was the last time he saw defendant.

Defendant remained in the car, pushing buttons and "wrestling around" in an attempt to get it to start. Jose believed defendant was unable to start the car because he did not press the clutch. Jose did not see defendant start or get out of the car.

Karla testified that she saw defendant get out of the car when she and Jose were about halfway across the 15-20 feet distance to her mother's apartment. She testified that defendant was "[j]ust walking towards" them, without saying anything or making any gestures. Karla and Jose reached her mother's apartment, and Karla locked the apartment door once they were inside. She looked outside and saw defendant walking toward the building. After stopping briefly and making eye contact with Karla, defendant continued walking and jumped over a nearby brick wall. Karla testified that, on a scale of one to 10, her fear level was a 10 "during this encounter."

Jose testified that when he went back to the car later that night, he noticed that the center console was open and papers were strewn about. The only items missing from the car were the wallet and keys. Defendant left those items in a home he burglarized during his escape, and they eventually were returned to Jose.

DISCUSSION

I. Sufficiency of the Evidence

Defendant contends his robbery conviction must be reversed because there was insufficient evidence that he intended

to take the wallet and keys at the time he used force and fear to attempt to carjack the car. Defendant argues that he did not know the wallet and keys were in the door pocket when he used force and fear to effectuate the carjacking, and therefore "could not have formed the specific intent to take [Jose's] wallet and keys until he got into the car and saw them, by which point he was no longer using force or fear." We disagree.

"'To determine the sufficiency of the evidence to support a conviction, an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citations.]" (*People v. Wallace* (2008) 44 Cal.4th 1032, 1077.) "'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence is 'unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support"' the jury's verdict. [Citation.]" (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) That is, reversal is not warranted if the circumstances reasonably justify the trier of fact's findings, even if they might also be reasonably reconciled with a contrary finding. (*People v. Burney* (2009) 47 Cal.4th 203, 253.)

Robbery is defined as the felonious taking of personal property of some value, however slight, from a person or the

person's immediate presence by means of force or fear, with the intent to permanently deprive the person of the property. (§ 211; *People v. Anderson* (2011) 51 Cal.4th 989, 994; *People v. Marshall* (1997) 15 Cal.4th 1, 34.) It is, in essence, "larceny with the aggravating circumstances that 'the property is taken from the person or presence of another' and 'is accompanied by the use of force or by putting the victim in fear of injury.' (*People v. Gomez* (2008) 43 Cal.4th 249, 254, fn. 2 [Citation].)" (*People v. Anderson*, *supra*, 51 Cal.4th at p. 994.) When either or both of those aggravating circumstances are not present, the taking at most constitutes a theft.

Defendant contends that he committed theft rather than robbery because he did not intend to take the wallet and keys until after he finished using force or fear against Jose. He points to cases holding that the intent to steal must arise "either before or during the commission of the act of force," and that "[t]he wrongful intent and the act of force or fear 'must concur in the sense that the act must be motivated by the intent.' [Citations.]" (*People v. Marshall*, *supra*, 15 Cal.4th at p. 34; see also *People v. Burney*, *supra*, 47 Cal.4th at p. 253; *People v. Davis* (2005) 36 Cal.4th 510, 562.)

We are not persuaded by defendant's narrow characterization of his intent. The concurrence of defendant's intent and act of theft may be proven by inference (see *People v. Marshall*, *supra*, 15 Cal.4th at p. 35), "a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action." (Evid. Code, § 600, subd. (b).) The jury could infer from the evidence that defendant intended to divest Jose of his car and the property in it when he applied force to Jose's arm and threatened

to stab him. Defendant's inability to see the wallet and keys at the time he initiated the force and fear does not prevent this eminently logical inference. Defendant's single application of force caused Jose to relinquish control over both his car and personal property. Courts have long recognized that a defendant who "conceives the intent to steal a different item after he has finished applying the force to his victim, . . . is guilty of robbery not grand theft of that item." (*People v. Brito* (1991) 232 Cal.App.3d 316, 326, fn. 8.)

Moreover, Jose testified he remained fearful the entire time he was in defendant's presence, and that he did not resist defendant's acquisition of the wallet and keys due to defendant's successful entry into the car. Even if the jury accepted defendant's theory that he developed the intent to steal the wallet and keys only after he ceased applying force, it could reasonably infer that the intent arose while defendant was still applying fear. Defendant's use of fear to obtain or retain the personal property supports the conviction; "no artificial parsing is required as to the precise moment or order in which the elements [of the crime of robbery] are satisfied." (*People v. Gomez*, *supra*, 43 Cal.4th at p. 254.)

II. Sentencing

Defendant argues in the alternative that his sentence for attempted carjacking of Jose must be stayed pursuant to section 654. He contends that, if he "formed the intent to take the car and all its contents at the same time in conjunction with his use of force and fear, and if such intent is sufficient to establish a separate robbery, then he committed an indivisible transaction involving a single victim, and the sentence for attempted carjacking in regard to [Jose] violated both sections 654 and 215,

subdivision (c)."[4] We agree that defendant's sentence for attempting to carjack Jose must be stayed.

Section 654, subdivision (a) provides: "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 term of imprisonment, but in no case shall the act or omission be punished under more than one provision." Whether a defendant is subject to multiple punishment under this provision "requires a two-step inquiry, because the statutory reference to an 'act or omission' may include not only a discrete physical act but also a course of conduct encompassing several acts pursued with a single objective. [Citations.] We first consider if the different crimes were completed by a 'single physical act.' [Citation.] If so, the defendant may not be punished more than once for that act. Only if we conclude that the case involves more than a single act – i.e., a course of conduct – do we then consider whether that course of conduct reflects a single 'intent and objective' or multiple intents and objectives. [Citations.] At step one, courts examine the facts of the case to determine whether multiple convictions are based upon a single physical act. [Citation.] When those facts are undisputed – as

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[4] "Section 215, subdivision (c), makes clear that a person may be charged and convicted under both the robbery and carjacking statutes. It also emphasizes that 'no defendant may be punished' under both laws 'for the same act which constitutes a violation of both.' (*Ibid.*) In this way, the Legislature removed any doubt that section 654 applies to these two crimes when they arise from a single physical act. We therefore analyze the multiple punishment issue in this case relying on the well-settled principles governing section 654." (*People v. Corpening* (2016) ___Cal.5th___, ___, fn. 2 [2016 WL 7473803] (*Corpening*).)

they are here – the application of section 654 raises a question of law we review de novo. [Citation.]" (*Corpening*, *supra*, ___Cal.5th at p.___.)[5]

A defendant commits a single physical act for purposes of section 654 if "some action the defendant is charged with having taken separately completes the actus reus for each of the relevant criminal offenses." (*Corpening*, *supra*, ___Cal.5th at p.__.) Thus, in *Corpening*, a defendant who was convicted for carjacking a van and robbing the driver of the rare coins it contained could not be sentenced for both crimes because "the forceful taking of [the] van, and the rare coins contained therein, completed the actus reus for robbery" and carjacking. (*Ibid.*) The Supreme Court also noted that "[i]t was the same show of force—committed at the same time, by the same person—that yielded for Corpening and his coconspirators the rare coins contained within the carjacked van, giving rise to the robbery conviction." (*Ibid.*)

Here, too, defendant used a single show of force and application of fear to accomplish both offenses against victim Jose.[6] "A single criminal act, even if committed incident to

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[5] Defendant and the Attorney General both contend that the substantial evidence standard of review applies. The substantial evidence standard applies to the second stage of the section 654 inquiry, whether a defendant harbored a single intent or objective. (E.g., *People v. Osband* (1996) 13 Cal.4th 622, 730-731.) However, as the Supreme Court reiterated in *Corpening*, "the inquiry into whether a defendant's criminal conduct reflects a single intent or objective . . . is relevant only after it has been determined that such conduct involves more than 'a single act.'" (*People v. Corpening*, *supra*, ___Cal.5th at p. ___ (citing *People v. Jones* (2012) 54 Cal.4th 350, 359-360).)

[6] We reject the Attorney General's suggestion that defendant initiated a second application of fear by walking

multiple objectives, may be punished only once." (*People v. Louie* (2012) 203 Cal.App.4th 388, 397.) Moreover, the "longstanding rule" is that the theft of several items at the same time constitutes a single offense. (*People v. Dominguez* (1995) 38 Cal.App.4th 410, 420.) Defendant's single show of force and incitement of fear against Jose netted him both the car (had he been able to start it) and items of value contained therein. He may not be punished separately for those offenses under section 654.

DISPOSITION

The judgment is reversed as to sentencing, and the case is remanded to the trial court for resentencing. In all other respects, the judgment is affirmed.

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COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.

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behind and staring at Karla. As defendant points out, Karla was not the victim of the robbery. Named victim Jose testified that he did not see defendant after turning and walking toward Karla's mother's apartment, and therefore could not have been placed in fear by defendant's conduct. (See *People v. Mungia* (1991) 234 Cal.App.3d 1703, 1709, fn. 2.)