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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RENE PARRA,

Defendant and Appellant.

2d Crim. No. B271816  
(Super. Ct. No. 2014018346)  
(Ventura County)

Rene Parra appeals his conviction by jury for felony vandalism over \$400 (count 1; Pen. Code, § 594, subd. (b)(1))<sup>1</sup>, throwing a substance at a vehicle (count 2; Veh. Code, § 23110, subd. (a)), resisting a peace officer (count 3; § 148, subd. (a)(1)), making criminal threats with a deadly weapon enhancement (count 4; §§ 422; 12022, subd. (b)(1)), battery (count 5; § 242), exhibiting a deadly weapon other than a firearm (count 7; § 417,

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

subd. (a)(1)), and vandalism not exceeding \$400 (count 8; § 594, subd. (b)(2)(A)). Appellant admitted an out-on-bail enhancement (§ 12022.1, subd. (b)) on counts 4 through 8 and was sentenced to six years eight months state prison. We modify the sentence to reflect that the 90-day jail terms on count 2 (throwing a substance at a vehicle) and count 7 (exhibiting a deadly weapon) were stayed pursuant to section 654. The judgment, as modified, is affirmed. The aggregate sentence remains the same: six years eight months state prison.

### *Facts*

Appellant's convictions are based on two incidents in which appellant beat or kicked the victim's vehicle.

Counts 1 through 3: On June 13, 2014, Sergio Arias abruptly stopped his car as appellant walked in front of the car on 7th Street in Santa Paula. Appellant was holding a 32 ounce bottle of King Cobra malt liquor and accused Arias of hitting him. Appellant slapped his hands on the car, spit at Arias, and banged the bottle on the driver's window and left side of the car. Arias asked if he was okay and slowly drove off. Angry, appellant threw the bottle at the rear window, shattering the window. It caused more than \$600 damage.

After Santa Paula Police Officers Potter and Gates responded to the 911 call, Arias and a bystander, Braden McKinley, identified appellant as the person who vandalized Arias' car. Appellant smelled of alcohol, refused to show his hands, and resisted arrest. The officers took appellant down to the ground and handcuffed him.

Counts 4, 5, 7 and 8: On August 30, 2015, Guadalupe Caracoza (aka Paloma), Candace Delgadillo, and Saleena Saenz drove to the Vons shopping center in Santa Paula to visit Martin

Ortiz. Appellant was in the parking lot arguing with Martin's sister, Miranda Ortiz. Miranda was appellant's girlfriend and appellant was the father of her child. Martin held the baby as appellant shouted at and shoved Miranda.

Caracoza exited the SUV and took the baby so Martin could stop the fight. Angry, appellant approached the SUV, saw Delgadillo in the front passenger seat, and threatened to kill her, "[j]ust like [her] brother Joseph." Joseph Arellano, Delgadillo's half brother, was killed in 2013 by a rival gang of which appellant was an associate.

Appellant called Delgadillo names, spit in her face, and slammed the car door on her foot. Saenz ordered appellant to calm down and back off. Appellant kicked the car door, drew a large kitchen knife, and threatened to kill Delgadillo. Caracoza and Saenz pushed appellant away and left with Delgadillo.

After the jury returned guilty verdicts on the above counts, the trial court sentenced appellant to six years eight months state prison based on the following sentence calculation: Selecting count 4 (criminal threats) as the principal term, the trial court imposed a three-year upper term, plus one year for personal use of a weapon and a consecutive two years on the out-on-bail enhancement, for a sentence of six years state prison. On count 1 (felony vandalism), the trial court imposed a consecutive eight-month term (one-third the midterm) and ordered appellant to serve concurrent 180-day jail terms on counts 3 and 8, and concurrent 90-day jail terms on counts 2, 5, and 7.

*Concurrent Sentence on Counts 2 and 7*

Appellant contends that the 90-day jail terms on count 2 (throwing a substance at a vehicle) and count 7 (exhibiting a deadly weapon) must be stayed pursuant to section

654. Section 654 allows multiple convictions arising out of a single act or indivisible course of conduct, but bars multiple punishments for those convictions. (*People v. Mesa* (2012) 54 Cal.4th 191, 199 [defendant cannot be punished twice for single act even if defendant harbored multiple criminal objectives]; *People v. Corpening* (2016) 2 Cal.5th 307, 316 [same].) If all of the offenses were incident to one objective, the defendant may be punished for any one of the offenses but not for more than one. (*People v. Leonard* (2014) 228 Cal.App.4th 465, 499.)

Appellant argues that count 2 (throwing a substance at a vehicle) was subsumed by count 1 (felony vandalism over \$400) for purposes of section 654. Arias stated that he drove away as appellant “bang[ed] the bottle all across [the] left panel [of the car] and struck the back of my back window with it, shattering it.” On count 1, appellant was sentenced to eight months (one third the midterm) state prison. On count 2, the trial court sentenced appellant to 90 days jail “concurrent because that’s how basically [appellant] did the damage to the car.” The offenses were committed during a single uninterrupted course of conduct for the single purpose of damaging the car. Tossing the bottle through the rear window facilitated the vandalism. “[T]he fact that one of the crimes may have been an afterthought does not permit multiple punishment where there is an indivisible transaction. [Citation.]” (*People v. Bauer* (1969) 1 Cal.3d 368, 377; see, e.g., *People v. Mitchell* (2016) 4 Cal.App 5th 349, 353-354.) We modify the sentence to reflect that the 90-day jail term on count 2 was stayed pursuant to section 654.

*Count 7 - Exhibiting a Deadly Weapon*

On count 4 (criminal threats), the jury found that appellant made criminal threats on Delgadillo and personally

used a dangerous weapon, i.e., the knife. (§ 12022, subd. (b)(1).) Count 7 charged appellant with exhibiting the knife in an angry and threatening manner in the presence of Delgadillo. In closing argument, the prosecutor told the jury “the knife was used during the commission of the criminal threats case [and] [i]f you find that special allegation true, you should find Count 7 as true.”

The Attorney General argues that section 654 does not apply because Counts 4 and 7 involve crimes of violence against multiple victims. Appellant, however, did not point the knife at anyone and threatened only Delgadillo. The multiple-victims exception to section 654 does not apply unless appellant committed an act of violence with the intent to harm more than one person. (*People v. Oates* (2004) 32 Cal.4th 1048, 1063-1064.)

Exhibiting a deadly weapon in a threatening manner (count 7) does not constitute a crime of violence or satisfy the multiple victim exception. (See *People v. Hall* (2000) 83 Cal.App.4th 1084, 1091-1092 [brandishing a weapon in the presence of police officers did not satisfy multiple victims exception]; *In re Peter F.* (2005) 132 Cal.App.4th 877, 881 [brandishing a knife in a threatening manner with two people present supports only one count of brandishing].) “Where the commission of one offense is merely “a means toward the objective of the commission of the other,” section 654 prohibits separate punishments for the two offenses. [Citation.]” (*People v. Kurtenbach* (2012) 204 Cal.App.4th 1264, 1288.) That is the case here. The singular objective of exhibiting a weapon to make a criminal threat requires that the sentence on count 7 be stayed. The imposition of concurrent sentences is not the correct method of implementing section 654. (*People v. Alford* (2010) 180 Cal.App.4th 1463, 1468; *People v. Kelly* (2016) 245 Cal.App.4th

1119, 1131 [section 654 bars multiple enhancements punishing the same aspect of a criminal act].)

*Disposition*

We affirm the judgment of conviction and modify the sentence to reflect that the 90-day jail terms on counts 2 and 7 were stayed pursuant to section 654. The total aggregate sentence remains the same, six years eight months state prison. The superior court clerk is directed to amend the February 23, 2016 sentencing minute order to reflect the sentence modification and forward a certified copy to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Charles W. Campbell, Judge

Superior Court County of Ventura

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