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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH GARCIA,

Defendant and Appellant.

B270208

(Los Angeles County
Super. Ct. No. KA110542)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stacy L. Wiese, Judge. Affirmed.

Tyrone A. Sandoval, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson and Carl N. Henry, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Joseph Garcia of identity theft of Diane Vuong (count 1; Pen. Code, § 530.5, subd. (a)),¹ felony theft of Diane Vuong's access card (count 2; § 484e, subd. (d)), felony theft of Bin Liu's access card (count 3; § 484e, subd. (d)), and forgery by possessing a completed check (count 4; §§ 457, subd. (c); 473, subd. (a)). The trial court found that Garcia suffered a prior conviction that qualified as a strike and as a prior conviction with a prison term. (§§ 667, subd. (b); 1170.12, subd. (b); § 667.5, subd. (b).)

The trial court granted Garcia's motion to treat his access card theft convictions in counts 2 and 3 as misdemeanors pursuant to Proposition 47. (See § 1170.18.) The court then sentenced Garcia to a term of six years on his identity theft conviction in count 1 comprised of the three year high term, doubled for the prior strike. The court sentenced Garcia to a consecutive 16-month term on his forgery conviction in count 4 comprised of one-third the mid-term of eight months, doubled for the prior strike. The court added one year for the prior prison term, making his total state prison term eight years and four months. The court sentenced Garcia to two consecutive terms of six-months each in county jail on his misdemeanor theft convictions in counts 2 and 3, making Garcia's aggregate sentence nine years and four months.

Garcia contends the trial court erred in sentencing him to a consecutive six-month term on his misdemeanor theft conviction in count 2 because that offense involved the same victim, Vuong, as the victim in his count 1 conviction for identity theft, and his intent "is indivisible." Garcia argues that sentence

¹ All further undesignated section references are to the Penal Code.

on count 2 should be stayed pursuant to section 654. We affirm the judgment.

FACTS

On February 24, 2015, El Monte Police Department Sergeant Richard Luna and other officers searched Garcia's car during a traffic stop after he drove out of a residence on Muscatell Avenue. During the search, officers recovered a Best Buy card in the name of Diane Vuong, a Wells Fargo Visa card in the name of Bin Liu, several additional "pre-paid" credit cards with no name on them, and a check from a heating and air conditioning company made payable to Garcia's girlfriend. Further, the officers recovered a laptop computer inside a shipping package with Vuong's name, but with the Muscatell address from which Garcia had driven. An ensuing investigation revealed that the laptop computer was purchased using Vuong's Best Buy card that was recovered from Garcia.

Vuong did not give permission to Garcia to possess or use her card; it had been ordered, but never received in the mail. Liu did not give permission to Garcia to possess his card; it had been ordered, but never received in the mail. Jeffrey Rohn, the owner of the heating and air conditioning company, did not give Garcia permission to use the company's check; it went missing from the company's warehouse.

DISCUSSION

Garcia contends the trial court erred in imposing a sentence on count 2, petty theft of Vuong's Best Buy card, consecutive to the sentence on count 1, the identity theft from Vuong based on the use of her Best Buy card to buy the laptop computer. We disagree.

Section 654, subdivision (a) (hereafter section 654), reads in relevant part: “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. . . .” In its cleanest application, section 654, forbids multiple punishments for the same act. Further, section 654 “has been extended to cases in which there are several offenses committed during ‘a course of conduct deemed to be indivisible’” (*People v. Harrison* (1989) 48 Cal.3d 321, 335.) Garcia’s arguments in his present appeal invoke this latter scenario.

“It is defendant’s intent and objective, not the temporal proximity of his offenses, which determine whether [his or her conduct] is indivisible.” (*People v. Harrison, supra*, 48 Cal.3d at p. 335.) Where the defendant had only a single intent and objective and all of his or her offenses were incidental to that single intent and objective, he or she may be punished only once. Where, on the other hand, the defendant harbored multiple criminal objectives, he or she may be punished for each statutory violation “even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.” (*Ibid.*) The determination whether the defendant harbored a single or multiple criminal objectives is a question of fact for the trial court, and its findings will not be reversed on appeal when there is substantial evidence to support them. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.)

Here, the trial court found that Garcia had separate intents and objectives insofar as he “used” Vuong’s Best Buy card to buy a computer, and then continued his “possession of the . . . card

that he had used to buy that computer.” We find the court’s separate intents finding to be supported by the evidence. By retaining possession of Vuong’s card, Garcia could have used it a second time for another purchase from Best Buy, or could have used it in some other gainful manner, or could have transferred it to another person. Garcia obviously did not discard Vuong’s card after using it. The evidence showing multiple cards in Garcia’s possession, including Vuong’s card, strongly supports a conclusion that Vuong’s card had a continuing value and or inherent usefulness separate from its initial use. For this reason, the evidence supports a finding that the act of continuing its possession reasonably had a different intent and objective from its prior use. Because the trial court’s finding not to apply section 654 is supported by substantial evidence, we will not disturb it on appeal. (*People v. Jones, supra*, 103 Cal.App.4th at p. 1143.)

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.