

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN CRAIG JERNAGIN II,

Defendant and Appellant.

B234841

(Los Angeles County
Super. Ct. No. GA081659)

APPEAL from a judgment of the Superior Court of Los Angeles County, Janice Claire Croft, Judge. Affirmed.

Michele A. Douglass, 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, Senior Assistant Attorney General, Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Steven Craig Jernagin II appeals from a judgment of conviction entered after a jury found him guilty of possession of a controlled substance with a firearm (Health & Saf. Code, § 11370.1, subd. (a)), possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)) and child endangerment (*id.*, § 273a, subd. (a)), and found true the allegation defendant previously was convicted of possession of a firearm by a felon. The trial court sentenced defendant to the middle term of four years for child endangerment; one-third of the middle term for possession of a controlled substance, one year, to run consecutive to the principal term; and one year for the prior conviction (*id.*, §667.5, subd. (b)). The court stayed sentence on the firearm possession under Penal Code section 654. On appeal, defendant contends the trial court also should have stayed the sentence for possession of a controlled substance under Penal Code section 654. We affirm.

FACTS

A. Prosecution

On November 9, 2010, a search warrant was issued for defendant's apartment, which he shared with his girlfriend and their two-year-old son. On the morning of November 11, Pasadena Police Department officers began surveillance on defendant's apartment. The officers were waiting for defendant to leave the apartment so they could execute the search warrant. After defendant, his girlfriend and their son left the apartment and drove away, the officers entered the apartment to conduct the search and notified another officer to pull over defendant's car. Two blocks away from the apartment, the officer stopped defendant's car, arrested defendant and his girlfriend, and brought them and their son back to the apartment.

After being returned to the apartment, defendant said, in a recorded interview, that the officers would find methamphetamine and a pipe in one of several possible locations inside the apartment. Defendant also admitted using methamphetamine on a daily basis.

In searching the apartment, the officers found a sock containing just over one gram of methamphetamine, some empty plastic bags and a digital scale stored inside a kitchen cabinet that was five feet from the floor. A methamphetamine pipe was also recovered. In a hall closet, the officers discovered a 9mm handgun under clothing on a shelf that was about three and a half feet from the floor. The handgun was loaded and a round was chambered. Officers brought the two-year old child to the closet where the handgun was discovered. It appeared to police that if the closet door were open, the child would be able to gain access to the handgun.

Following the search, officers again interviewed defendant. He admitted the methamphetamine and the pipe found in the kitchen belonged to him. Defendant acknowledged that sometimes he and his girlfriend were under the influence of methamphetamine when the child was with them. Defendant also admitted the handgun was his, adding it was the first time he had put it in the hall closet. Normally, defendant kept the handgun outside the apartment.

B. Defense

Defendant testified in his own defense that, in an earlier trial, a jury acquitted him of an attempted murder charge based upon his theory that he had shot the victim, Leroy Cunningham, in self-defense. After the verdict, Cunningham began threatening defendant. When the police refused to intervene, defendant started to carry a handgun to protect himself.

On the day of the search, defendant was no longer residing in the apartment; he was living in his truck and out of his storage unit. However, nearly every day, defendant took care of his son in the apartment while his girlfriend was at work. When defendant was with his son, he kept the handgun in the truck.

On the morning of the search, defendant had picked up his girlfriend and his son to go to lunch. He took the gun with him into the apartment and hid it in some jeans in the hall closet, where it would not be accessible to his son. On cross-examination, defendant admitted telling the police that at various times he hid the handgun in different places inside the apartment. Defendant claimed he was trying to protect his girlfriend when he told police the recovered methamphetamine was his; it actually belonged to her.

DISCUSSION

Penal Code section 654 (section 654)¹ prohibits separate punishment for multiple offenses arising from the same act or from a series of acts constituting an indivisible course of criminal conduct. (*People v. Rodriguez* (2009) 47 Cal.4th 501, 507; *People v. Latimer* (1993) 5 Cal.4th 1203, 1216.) “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.” (*Rodriguez, supra*, at p. 507; accord, *People v. Lewis* (2008) 43 Cal.4th 415, 519.)

Generally, the trial court has broad discretion in determining whether a defendant had multiple criminal objectives independent of, and not merely incidental to, each other for purposes of section 654. On appeal, we will uphold the court’s express or implied finding a defendant held multiple criminal objectives if it is supported by substantial evidence. (See *People v. Osband* (1996) 13 Cal.4th 622, 730-731; *People v. Blake* (1998) 68 Cal.App.4th 509, 512.)

¹ 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 potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.”

Defendant contends his one-year sentence for possession of firearm with a controlled substance should have been stayed pursuant to section 654. Specifically, he argues the “possession of the methamphetamine and firearm was itself the act of child endangerment. The two crimes comprised only a single criminal act, so only one punishment is authorized.”

Defendant kept methamphetamine and a handgun in the apartment, when his two-year-old son, who lived in the apartment was present. While defendant may have merely intended to possess the methamphetamine for his own use, the circumstances support the trial court’s implied finding that while a single act gave rise to both offenses, a separate intent and objective existed for each offense.

The requisite intent for possession of a controlled substance with a firearm is knowledge of the presence and nature of the methamphetamine and knowledge of the presence of a loaded, operable firearm for immediate use. (See CALCRIM No. 2303; *People v. Palaschak* (1995) 9 Cal.4th 1236, 1242.) The possession was complete “once the intent to possess [was] perfected by possession.” (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1146 [possession of firearm by felon].)

The requisite intent for child endangerment is criminal negligence, — i.e., reckless conduct that creates a high risk of death or great bodily harm, whether or not the actor intended to create that risk. (See CALCRIM No. 821; *People v. Hansen* (1997) 59 Cal.App.4th 473, 478.) That intent was separate from, and had to be formed after, defendant’s possession of the controlled substance with a firearm. Defendant had to negligently or intentionally put the controlled substance and firearm in a location where his two-year-old child could gain access to them, placing his son at risk of harm.

Furthermore, the point of section 654 is to ensure that the punishment imposed on the defendants correspond to their culpability. (*People v. Latimer, supra*, 5 Cal.4th at p. 1211.) The two offenses, possession of a controlled substance with a firearm and child endangerment, target different legislative bans — one designed to protect the public from controlled substances, the other intended to protect children from the criminal negligence of their parents. Defendant’s culpability in having these items in the home of his two-

year-old child is obviously greater than if he had them in his possession elsewhere. Thus, the trial court did not violate section 654. (See *People v. Arndt* (1999) 76 Cal.App.4th 387, 398.)

DISPOSITION

The judgment is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.