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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.

ANTHONY CASTILLO,

Defendant and Appellant.

B236595

(Los Angeles County
Super. Ct. No. PA068091)

APPEAL from a judgment of the Superior Court of Los Angeles County, Cynthia L. Ulfig, Judge. Affirmed with instructions, and remanded.

Jennifer Hansen, by appointment of the Court of Appeal under the California Appellate Project, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette and Lance E. Winters, Assistant Attorneys General, Lawrence M. Daniels and Linda C. Johnson, Supervising Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Anthony Castillo appeals from a sentence of imprisonment following his convictions for grand theft and second degree commercial burglary. He contends the sentence for grand theft should have been imposed and stayed pursuant to Penal Code section 654, as the theft and the burglary were both part of an indivisible course of conduct with a single intent and objective. The People agree, as do we. Accordingly, we will remand the matter to the superior court with instructions to stay the sentence as to count 2. Otherwise, we affirm.

STATEMENT OF THE CASE

A jury found appellant guilty of grand theft of personal property (Pen. Code, § 487, subd. (a); count 2)¹ and second degree commercial burglary (§ 459; count 3).² He was sentenced to three years in county jail on count 3, and two years concurrent on count 2. Execution of the sentence was suspended as to both counts, and appellant was placed on formal probation for five years. There was a minute order for the sentencing hearing, but no abstract of judgment. Appellant timely appealed.

STATEMENT OF THE FACTS

Geisler's Glass Company (Geisler's Glass) is a family-owned business that installs glass products, such as windows, shower doors, and mirrors. Appellant, his father John Castillo, and his younger brother, Johnny Castillo, were former

¹ All further statutory citations are to the Penal Code, unless otherwise indicated.

² Appellant was acquitted of count 1, grand theft auto.

employees of Geisler's Glass. Appellant and his father were fired October 2, 2009. Johnny was laid off for lack of work a week later.

Debra Key was the office manager of Geisler's Glass. On November 20, 2009, a Friday, Key was the last one to leave the office. Key testified that when she left, she ensured that the business's two storage units -- units F and G -- were locked. She also testified there was no business planned for that weekend.

When Key came to work the following Monday (November 23, 2009), she noticed signs of a burglary. The business's large glass polishing machine was missing and a white truck was gone. She also saw that chop saws, routers, drills, and diamond drills were missing. When she tried to close the door to unit G, she could not do so because the dead bolt was bent. There was also damage to unit F's door. She called the police. Dennis Geisler, the owner of Geisler's Glass, estimated that the value of the stolen items totaled \$21,870.

Dan O'Donnell, a machinist who owned a shop in the same industrial park where Geisler's Glass is located, testified he saw appellant on November 22, 2009. That afternoon, he and his wife went to his shop to pick up some boxes. After leaving, O'Donnell drove by units F and G. He saw three trucks and three people in front of the units: one was appellant, one was an older man O'Donnell thought was appellant's father, and the third was an unknown man in his twenties. O'Donnell had seen appellant and his father 20 or more times in the area. On this occasion, O'Donnell saw the older man loading a truck with boxes containing Makita drills. He thought the men were from the glass company. O'Donnell testified that appellant moved a ladder that was blocking O'Donnell's car, and O'Donnell drove away.

The next morning, two uniformed officers came into O'Donnell's shop inquiring as to whether he had seen anything that weekend. O'Donnell told them

he had seen the three men working on Sunday. When O'Donnell left work that afternoon, he stopped by Geisler's Glass and spoke with Key. She told him that they had been burglarized. He told her that he had seen her employees working on Sunday, and he gave her his business card. When O'Donnell was later interviewed by the police, he picked appellant out of a photo lineup.

The parties stipulated that appellant's father pled no contest to grand theft of personal property from Geisler's Glass, occurring between November 20 and November 23, 2009.

DISCUSSION

Appellant contends his sentence on count 2 should be stayed under section 654, as the crimes charged in count 2 (theft) and count 3 (burglary) were part of an indivisible course of conduct with a single intent and objective. The People agree. After reviewing the record, we conclude that section 654 barred multiple punishment for the grand theft and commercial burglary. (§ 654, subd. (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."]; *People v. Cline* (1998) 60 Cal.App.4th 1327, 1336 [ordering abstract of judgment corrected where the People conceded that convictions for grand theft and commercial burglary "arose from an indivisible course of conduct"].)

DISPOSITION

The matter is remanded to the superior court with instructions to stay the sentence imposed on count 2. In all other respects, the judgment is affirmed. The

clerk of the superior court is directed to prepare an abstract of judgment as set forth in this opinion and to forward it to the Department of Corrections and Rehabilitation.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.