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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDY ENRIQUE RAMOS,

Defendant and Appellant.

E054782

(Super.Ct.Nos. INF10001219 &  
INF10001429)

OPINION

APPEAL from the Superior Court of Riverside County. Larrie R. Brainard, Judge.  
(Retired judge of the San Diego Super. Ct. assigned by the Chief Justice pursuant to  
art. VI, § 6 of the Cal. Const.) Affirmed as modified.

Alan S. Yockelson, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, William M. Wood and Kathryn  
Kirschbaum, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Randy Enrique Ramos guilty of robbery (Pen. Code, § 211, count 1)<sup>1</sup> with the personal use of a firearm (§ 12022.53, subd. (b)) and assault with a firearm (§ 245, subd. (a)(2), count 2).<sup>2</sup> Defendant subsequently admitted that he had suffered two prior prison terms (§ 667.5, subd. (b)), and the trial court struck the third prior prison term allegation.

Defendant was sentenced to a total term of 15 years in state prison with credit for time served as follows: the middle term of three years on count 1, plus 10 years for the gun use enhancement, plus two one-year terms for the two prior prison term allegations; and a concurrent middle term of three years on count 2. Defendant's sole contention on appeal is that his sentence on count 2 should have been stayed pursuant to section 654. The People agree. We also agree and will modify the judgment.

## I

### FACTUAL BACKGROUND

On April 17, 2010, defendant and his then girlfriend, codefendant Morgan, concocted a plan wherein Morgan would go to the Fantasy Springs Casino in Indio, look for a single man who appeared to be winning a lot of money, and lure the man to a

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

<sup>2</sup> Defendant was originally charged with codefendant Donna Michele Morgan. Defendant's case (case No. INF10001429) and codefendant Morgan's case (case No. INF10001219) were later consolidated into case No. INF10001429. Subsequently, codefendant Morgan pled guilty to theft of a person (§ 487, subd. (c)) and testified at defendant's trial.

chosen location where defendant would be waiting to rob him. Later that night, defendant and Morgan put their plan into action.

The victim went to the casino with some friends and was approached by Morgan after he had won a large sum of chips playing blackjack. After spending a considerable amount of time with Morgan, the victim agreed to give Morgan a ride home. Meanwhile, Morgan had been communicating with defendant throughout the evening on her cellular telephone, telling the victim that she was speaking with the babysitter about when she would be home.

When the victim arrived at the location Morgan represented as her home, defendant approached the car, pointed a rifle at the victim, and ordered him out of the car. Morgan got out of the car and ran. The victim also exited the vehicle, and defendant demanded that the victim give him his wallet. Fearful for his life, the victim gave the \$400 cash he had won at the casino to defendant. After defendant walked away, the victim immediately drove to a police station and reported the incident.

Following a police investigation during which the victim identified Morgan as the blonde woman he had met at the casino and defendant as the robber, defendant was arrested.

## II

### DISCUSSION

Defendant contends that his concurrent three-year sentence on the assault with a firearm conviction (count 2) should have been stayed pursuant to section 654 because that crime arose from the same course of conduct as the robbery (count 1). The People

agree since the evidence at trial showed the robbery and assault were pursuant to a single intent and objective.

Under section 654, “[a]n 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.” The statute thus prohibits punishment for two crimes arising from a single, indivisible course of conduct. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.)

Whether a course of conduct is indivisible for purposes of section 654 depends on the intent and objective of the actor. If all the offenses are incidental to one objective, the defendant may be punished for any one of them, but not for more than one. (*People v. Latimer, supra*, 5 Cal.4th at p. 1208.) On the other hand, if the evidence discloses that a defendant entertained multiple criminal objectives that were independent of and not merely incidental to each other, the trial court may impose punishment for independent violations committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct. (*People v. Centers* (1999) 73 Cal.App.4th 84, 98 [Fourth Dist., Div. Two].) The resolution of this question is one of fact, and the trial court’s finding will be upheld on appeal if it is supported by substantial evidence. (*People v. Osband* (1996) 13 Cal.4th 622, 730.)

Here, the trial court indicated that it did not intend to give defendant additional time on the assault under the circumstances of this case. Moreover, the evidence showed that defendant acted with a single intent and objective: to rob the unsuspecting victim

who had been lured by defendant's accomplice. Defendant pointed a gun at the victim, ordered him out of the car, and demanded his wallet. After the victim gave defendant \$400 in cash, defendant walked away. There was no apparent intention behind the assault with the firearm other than to effectuate the intended robbery. It has long been recognized that where a defendant is convicted of the crime of robbery and other crimes incidental to the robbery (e.g., assault or kidnapping), section 654 precludes punishment for both crimes. (See *People v. Brown* (1989) 212 Cal.App.3d 1409, 1426-1427, disapproved on another ground in *People v. Hayes* (1990) 52 Cal.3d 577, 628, fn. 10 [assault with firearm in course of robbery not separately punishable from robbery conviction]; *People v. Miller* (1977) 18 Cal.3d 873, 885, overruled on another ground in *People v. Oates* (2004) 32 Cal.4th 1048, 1067-1068, fn. 8 [burglary, robbery, and assault were incidental to primary objective of theft of contents of jewelry store]; *People v. Beamon* (1973) 8 Cal.3d 625, 639-640 [kidnapping of truck driver incidental to robbery of truck or its contents]; cf. *People v. Nguyen* (1988) 204 Cal.App.3d 181, 190-191 [gratuitous violence against a helpless, unresisting victim is not incidental to robbery for purposes of section 654]; *In re Jesse F.* (1982) 137 Cal.App.3d 164, 171 [violence or other crimes committed after the loot has been obtained, is unnecessary to facilitate the robbery and may be separately punished].) Accordingly, we will stay the sentence on the assault with a firearm conviction (count 2).

III

DISPOSITION

The sentence imposed on count 2 (assault with a firearm) is stayed pursuant to section 654. The superior court clerk is directed to amend the abstract of judgment and the minute order of the sentencing hearing to reflect the stay of the sentence imposed on count 2, and to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. (§§ 1213, 1216.) In all other respects, the judgment is affirmed.

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RAMIREZ

P. J.

We concur:

KING

J.

MILLER

J.