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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.

DANIEL NATHAN JONES,

Defendant and Appellant.

E054853

(Super.Ct.No. SWF1101312)

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.

James M. Crawford, 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, Garrett Beaumont and Jennifer A.
Jadovitz, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Daniel Nathan Jones guilty of willfully evading a peace officer (Veh. Code, § 2800.2, count 2), and resisting a peace officer (Pen. Code, § 148, subd. (a)(1), count 3).¹ In a bifurcated proceeding, the trial court found true that defendant had served a prior prison term (Pen. Code, § 667.5, subd. (b)), and sustained a prior serious and violent strike conviction (Pen. Code, §§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1)). Defendant was sentenced to a total term of five years in state prison as follows: four years on count 2, a concurrent term of one year on count 3, and one year for the prior prison term allegation. On appeal, defendant contends (1) the sentence imposed on count 3 should have been stayed pursuant to Penal Code section 654; and (2) the abstract of judgment should be corrected to reflect an award of presentence custody credits. The Attorney General concedes both issues. We agree with the parties and will order the judgment modified.

I

FACTUAL BACKGROUND

On May 22, 2011, around 8:00 a.m., the victim discovered that her 1990 red Acura Integra was missing. The previous afternoon, she had parked the vehicle in the driveway of her home. The victim called her mother-in-law for advice and asked her to come over to her house. Once the mother-in-law arrived at the home, she called the police and

¹ The jury found defendant not guilty of unlawfully taking or driving a vehicle, having been previously convicted of felony vehicle theft. (Veh. Code, § 10851, subd. (a), Pen. Code, § 666.5, subd. (a), count 1.)

reported the vehicle as stolen. A police officer subsequently came to the victim's home and spoke to the victim about the missing vehicle.

On May 24, 2011, Deputy Waltermire was on patrol around 7:40 p.m. when he observed a red Acura Integra. Deputy Waltermire ran the vehicle's license plate number through the radio dispatch and discovered it was stolen. Deputy Waltermire proceeded to follow the vehicle, and called for backup units to assist him in initiating a traffic stop.

When Deputy Waltermire activated his patrol vehicle's lights and sirens, the vehicle sped away. A dangerous high-speed pursuit ensued. Deputy Victorio assisted Deputy Waltermire with the pursuit. The pursuit continued through several streets, and other vehicles in the area had to yield to the stolen vehicle. The driver of the Acura, later identified as defendant, failed to stop at several stop signs before eventually parking the vehicle on the side of a road.

As soon as the vehicle pulled over, defendant exited from the driver's side door and ran. Two other occupants exited the vehicle and also ran. Following a foot pursuit, defendant and a passenger were detained.

Defendant was transported to the Hemet sheriff's station. After waiving his constitutional rights, defendant denied being the driver. Later, defendant admitted being the driver and stated that he had permission to drive the vehicle for one day, but had decided to keep it longer.

The victim admitted that she knew defendant, but she did not give him permission to drive or take her Acura. Two defense witnesses testified that they saw the victim give defendant the keys to her vehicle.

Deputy Waltermire was recalled by the defense. He testified that defendant told him that he ran from the police because he knew he had warrants for his arrest. {RT 176, 178} Defendant also told the deputy that he knew he did not have permission to have the vehicle.

II

DISCUSSION

A. *Sentence on Count 3*

Defendant contends, and the People correctly concede, that his sentence on count 3 (resisting a peace officer) should have been stayed pursuant to Penal Code section 654, rather than concurrently imposed because he harbored the same intent and objective as count 2 (willfully evading a peace officer).

Penal Code section 654, subdivision (a), provides in pertinent part as follows: “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.”

Courts have explained that Penal Code section 654 precludes multiple punishments not only for a single act, but for an indivisible course of conduct. (*People v. Hester* (2000) 22 Cal.4th 290, 294; see also *People v. Centers* (1999) 73 Cal.App.4th 84, 98 [Fourth Dist., Div. Two]; *People v. Akins* (1997) 56 Cal.App.4th 331, 338-339 [Fourth Dist., Div. Two]; *People v. Liu* (1996) 46 Cal.App.4th 1119, 1135.) “The purpose of this statute is to prevent multiple punishment for a single act or omission, even though that act

or omission violates more than one statute and thus constitutes more than one crime.” (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.) On the other hand, multiple punishment is proper if the defendant entertained multiple criminal objectives that were independent of and not merely incidental to each other: ““Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of [Penal Code] section 654 depends on the intent and objective of the actor.”” (*Neal v. State of California* (1960) 55 Cal.2d 11, 22, overruled in part as stated in *People v. Correa* (June 21, 2012, S163273) ____ Cal.4th ____ [2012 Cal. Lexis 5796]; accord, *People v. Latimer* (1993) 5 Cal.4th 1203, 1216.)

Here, based on the facts of this case, we agree with the parties that defendant’s purpose and intent in committing both offenses was to escape or flee from the police to avoid arrest. The record shows that defendant initially fled from the deputies in the vehicle to avoid capture. Then, when he stopped the vehicle, defendant again fled from the deputies on foot, again to evade the police. There was no evidence that defendant had physically resisted or engaged in any other conduct than attempting to evade the police prior to his detention. The trial court therefore erred in imposing a concurrent one-year sentence on count 3.

Accordingly, the judgment should be modified to reflect that the sentence on count 3 (resisting a peace officer) is stayed.

B. *Correction of Abstract of Judgment*

Defendant next contends, and the People correctly agree, that the abstract of judgment should be corrected to reflect an award of presentence custody credits. We also agree.

At the sentencing hearing, the trial court briefly continued the matter to determine the proper custody credits to be awarded. Thus, because no custody credits were awarded at that time, the abstract of judgment, which was prepared on November 2, 2011, did not reflect any custody credits.

On November 17, 2011, a hearing was held to determine defendant's presentence custody credits. The trial court awarded defendant 178 days of actual credits and 88 days of conduct credits, for a total of 266 days. However, the abstract of judgment was not amended following that hearing to reflect the award of presentence custody credits. Accordingly, the abstract of judgment should be corrected to reflect the award of custody credits as pronounced by the trial court.

III

DISPOSITION

The judgment is modified to stay the sentence on defendant's conviction for resisting a peace officer (count 3) pursuant to Penal Code section 654. The superior court clerk is directed to prepare a new sentencing minute order to reflect the sentence modification. The superior court clerk is further directed to amend the abstract of judgment to reflect (1) that count 3 is stayed pursuant to Penal Code section 654, and (2) presentence custody credits of 178 days actual credits and 88 days conduct

credits, for a total of 266 days. The superior court clerk is further directed to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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RAMIREZ
P. J.

We concur:

RICHLI
J.

CODRINGTON
J.