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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.

MONIQUE DESERIE VENEGAS,

Defendant and Appellant.

E054927

(Super.Ct.No. FBA1100147)

OPINION

APPEAL from the Superior Court of San Bernardino County. R. Glenn Yabuno, Judge. Affirmed as modified.

Sylvia Whatley Beckham, 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, A. Natasha Cortina and Christine Levingston Bergman, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Monique Deserie Venegas of carjacking (Pen. Code, § 215, subd. (a), count 1),¹ two counts of robbery (§ 211, counts 2 & 3), and two counts of false imprisonment by violence (§ 236, counts 6 & 7).² The jury also found true the allegations that a principal was armed with a firearm during the commission of each of those offenses and that defendant, not personally armed, knew that a principal was armed. (§ 12022, subd. (d).)³ The trial court sentenced her to a total term of 13 years in state prison.

On appeal, defendant contends: (1) the sentences on several of the counts should have been stayed under section 654; and (2) the trial court erred in imposing the firearm enhancements under section 12022, subdivision (d), instead of section 12022, subdivision (a)(1). We agree that the court should have imposed the enhancements under section 12022, subdivision (a)(1), and modify the judgment accordingly. In all other respects, we affirm.

FACTUAL BACKGROUND

Defendant was in a relationship with Efrain Jara. She was in Arizona and wanted to come and stay with him, so she asked him to pick her up. Efrain agreed to drive to Bullhead City, Arizona, to pick up defendant and bring her back to California. He rented

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

² The charges in counts 4 and 5 were dismissed on motion by the People.

³ All references to section 12022 will be to the former version of section 12022, in effect prior to January 1, 2012.

a car to drive out to Arizona, and his brother, Reginaldo Jara, went with him.⁴ When they arrived at the house address provided by defendant, defendant asked them to park the car on the next street over and wait for her. She then approached the car with two male friends, Jacob David and Dustin Moore (the codefendants). They were all carrying luggage. Efrain did not know the codefendants, and defendant just said they were with her and were coming too. After putting the luggage in the trunk, defendant and the codefendants (the defendants) got into the backseat of the car. Efrain sat in the front passenger seat, and Reginaldo drove.

Defendant later said she was hungry, so they stopped at a restaurant. Defendant, Efrain, and Moore went inside. Reginaldo and David stayed in the car. While inside the restaurant, defendant asked Efrain if he had received his income tax refund yet. Efrain thought it was an odd question, and said no. As they were waiting outside, David asked Reginaldo to open the trunk. Reginaldo opened the trunk and went back inside the car. When the three others returned to the car, the defendants got in the backseat. Defendant sat in the middle seat, between the codefendants.

About 30 to 40 minutes after they got on the freeway, Efrain noticed that the codefendants started smoking a pipe. Reginaldo said, "Hey, no smoking." Efrain looked back and saw that David had a gun on his lap, so he told his brother, "Don't say nothing, he has a gun." About five minutes later, Efrain heard one of the codefendants say

⁴ We will refer to Efrain and Reginaldo Jara by their first names when speaking of them individually, and as the victims when speaking of them collectively. We mean no disrespect by the use of their first names.

something like, “How we gonna do this?” Then David held the gun to Reginaldo’s head, and Moore held a knife to Efrain’s neck.⁵ David told the victims to give them their cell phones and wallets.⁶ The victims were also asked for their personal identification numbers (PIN). Efrain said he did not have a PIN number, and Moore poked him with the knife. Reginaldo said a number, and defendant repeated the number to the codefendants. Reginaldo continued to drive for another two hours or so to Barstow. He could not stop the car or speed up because the codefendants would either poke him with the gun or the knife. He believed he could not stop the car until they told him to.

About one hour before they reached Barstow, Efrain was ordered to take off his shoes and his belt. He passed his belt to the backseat, and one of the codefendants put it on. The codefendants took a chain necklace and a belt from Reginaldo.

Reginaldo continued to drive and was instructed to exit the freeway in Barstow. The codefendants first directed him to drive to an alley. Then, they had him drive to an apartment complex parking lot about five minutes away. The codefendants put on gloves and covered their faces, and Efrain recalled them “wiping the evidence.” The codefendants again demanded the PIN numbers and threatened to shoot the victims. Reginaldo gave them \$100, and they asked if he had any more money. Then, they

⁵ There appears to be some confusion in the record regarding which codefendant was sitting behind the driver, Reginaldo, and which one was sitting behind Efrain. In light of the jury’s findings that David personally used a firearm and Moore personally used a knife, we will assume that David was sitting behind Reginaldo, holding the gun, and Moore was sitting behind Efrain, holding the knife.

⁶ Before giving them his wallet, Reginaldo took the money (about \$200) out and threw it (the money) on the floorboard.

searched him and took his socks and shoes to look for money. One of the codefendants told Reginaldo to get out of the car. Moore got into the driver's seat. He then told Efrain to get out of the car and go to the backseat. However, David told Efrain to stay in the front seat. Efrain acted like he did not understand what do to, as he opened the door and got out. He then pushed the door, ran, and told his brother to run. They ran to a few apartments until they found someone to help them call the police. The defendants drove off in the car. The police arrived at the apartment complex about five minutes later.

ANALYSIS

I. Section 654 Did Not Apply

Defendant contends her sentence on count 3 (robbery of Reginaldo) should have been stayed pursuant to section 654, since the carjacking in count 1 and the robbery in count 3 were part of a continuous course of conduct, which culminated in the carjacking. She also argues that her sentence on counts 6 and 7 (false imprisonment) should be stayed under section 654 because the false imprisonment “facilitated the robbery” of the victims and was part of a continuous course of conduct, with the single objective of obtaining possession of the victims’ property. We disagree.

A. Relevant Background

A jury found defendant guilty of counts 1, 2, 3, 6, and 7 as an aider and abettor. At the sentencing hearing, defense counsel argued that the sentence on count 7 should be stayed under section 654 because there was “really only one act [of false imprisonment] that affected two people, as opposed to two acts.” The prosecutor disagreed and pointed

out that, while there was only one vehicle, there were two victims who were falsely imprisoned.

The court sentenced defendant to the midterm of five years on count 1 (carjacking of Reginaldo), plus a consecutive two years on the firearm enhancement under section 12022, subdivision (d). The court stated that the seriousness of the offense and the potential violence justified consecutive sentences. It then imposed a consecutive one year four months, plus eight months on the firearm enhancement, on both counts 2 and 3 (robbery), and a consecutive eight months, plus eight months on the firearm enhancement, on both counts 6 and 7 (false imprisonment).

Subsequently, the court resentenced defendant after realizing it had improperly sentenced her on counts 2 and 3 by erroneously adding eight months to her sentence. The court resentenced her to seven years on count 1 (including the firearm enhancement), plus one year eight months on both counts 2 and 3, and 16 months on both counts 6 and 7, for a total of 13 years in state prison.

B. *Section 654*

Section 654, subdivision (a), provides in pertinent 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. . . .” “Section 654 precludes multiple punishments for a single act or indivisible course of conduct.

[Citation.]” (*People v. Hester* (2000) 22 Cal.4th 290, 294.) “The purpose of section 654 is to prevent multiple punishment for a single act or omission [or indivisible course of

conduct], even though that act or omission [or indivisible course of conduct] violates more than one statute and thus constitutes more than one crime. . . .” (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135 (*Liu*); see also *People v. Harrison* (1989) 48 Cal.3d 321, 335.) “The divisibility of a course of conduct depends upon the intent and objective of the defendant. 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. On the other hand, if the evidence discloses that a defendant entertained multiple criminal objectives which 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. [Citations.] The principal inquiry in each case is whether the defendant's criminal intent and objective were single or multiple. Each case must be determined on its own facts. [Citations.] The question whether the defendant entertained multiple criminal objectives is one of fact for the trial court, and its findings on this question will be upheld on appeal if there is any substantial evidence to support them. [Citations.]” (*Liu*, at pp. 1135-1136.)

C. The Court Properly Sentenced Defendant on Counts 3, 6, and 7

Defendant argues that the carjacking, robberies, and false imprisonments were part of a continuing course of conduct. Therefore, she contends that the sentences on counts 3, 6, and 7 violate section 654. We disagree.

1. *Section 654 Does Not Apply to Stay the Sentence on Count 3*

Defendant specifically contends that the sentence on count 3 (robbery of Reginaldo) violated section 654 because there was insufficient evidence that she had a different intent or objective in aiding and abetting the robbery, than she had in aiding and abetting the carjacking.⁷ In other words, she admits that she was part of the plan to get the victims inside the car in order to take their personal property (the robberies). However, she argues that the carjacking “may have been an afterthought or may have been contemplated all along” by the codefendants, but there was no evidence she was aware that the car would be taken when they reached Barstow. Thus, she claims that the sentence on the offense carrying less punishment, the robbery in count 3, should be stayed.

Defendant first relies upon *People v. Dominguez* (1995) 38 Cal.App.4th 410 (*Dominguez*), in arguing that the robbery and carjacking constituted a continuous course of conduct. However, *Dominguez* is factually distinguishable. In that case, the defendant entered a van, put a “cold and metallic object” against the victim’s neck, and said, ““Give me everything you have.”” (*Id.* at p. 414.) The victim gave defendant two rings and a chain, and then got out of the van and fled. (*Id.* at p. 415.) The defendant was convicted of carjacking and robbery. (*Id.* at p. 414.) The prosecutor conceded the applicability of section 654 in the trial court, but the trial court erroneously imposed a concurrent term for the robbery, instead of staying the term under section 654. (*Id.* at

⁷ The amended information only named Reginaldo as the victim of the carjacking.

pp. 419-420.) In correcting the error, the appellate court explained that the victim simultaneously “handed over his jewelry and van by handing over the jewelry and fleeing the van.” (*Id.* at p. 420.) Thus, the “same act” of placing the weapon to the back of the victim’s neck “was essential to both offenses and thus [was] not separately punishable” under section 654. (*Ibid.*)

Defendant here argues that, like *Dominguez, supra*, 38 Cal.App.4th 410, the robbery and carjacking occurred simultaneously, since the robbery was still in progress when the car was taken. She contends that the robbery was committed “along the way to Barstow and [was] still in progress up to the point that the vehicle was taken.” She asserts that when they reached Barstow, the codefendants made another demand for the PIN numbers, and they searched Reginaldo for money. Defendant explains that one of them told Reginaldo to get out of the car. Then one of the codefendants told Efrain to get in the backseat, while the other one told him to stay, and Efrain got out of the car and both victims ran. Defendant claims that this evidence shows that there was “a simultaneous taking of both money and the vehicle.” We disagree. In *Dominguez*, the robbery and carjacking were considered simultaneous because the victim “handed over his jewelry and van” by handing over the jewelry and *immediately* fleeing the van. (*Id.* at p. 420.) In the instant case, the victims handed over their personal property long before they reached Barstow. Although, as defendant points out, the codefendants demanded the PIN numbers again and searched Reginaldo for money once they reached Barstow, unlike *Dominquez*, the evidence does not show any “same act [that] was essential to both offenses [e.g., holding a gun to the victim’s neck].” (*Id.* at p. 420.) Reginaldo did not

simultaneously hand over his personal property and immediately flee the car as in *Dominquez*. The codefendants were switching seats in the car and disagreeing over who should sit where, and amidst the confusion, Reginaldo, along with his brother, got out of the car and ran. Then, the defendants took the car and drove off. This evidence does not demonstrate an indivisible course of conduct.

Defendant further relies upon *People v. Bradley* (2003) 111 Cal.App.4th 765 (*Bradley*), in arguing that the evidence showed that she was a part of the plan to aid and abet the robbery, but did not show that she had the intent to aid and abet the carjacking. *Bradley* is distinguishable. In that case, a female defendant was convicted as an accomplice to the crimes of robbery and attempted murder. (*Id.* at p. 767.) She had entered into a scheme to lure a wealthy-looking man out of a casino so her two male accomplices could rob him. (*Ibid.*) After persuading the victim to take her in his car, she signaled her cohorts. The victim let her drive the car, and she soon pulled over, opened the driver's side door, and let her cohorts enter. (*Ibid.*) The defendant got out of the car and entered another car. She followed the victim's car into a neighborhood where her cohorts stopped the victim's car and robbed the victim of his jewelry and money. (*Id.* at pp. 767-768.) They then beat him and shot him several times. (*Id.* at p. 768.) The defendant had only one intent—to aid and abet the robbery—and she was convicted of the robbery. She was also convicted of the attempted murder, on the theory that it was a “natural and probable” consequence of the robbery. (*Id.* at pp. 768-769.)

On appeal, the court found that since the defendant only had one objective—to rob the victim—section 654 denied the trial court the discretion to impose consecutive

sentences for the robbery and attempted murder convictions. (*Bradley, supra*, 111 Cal.App.4th at p. 770.) In stating that the defendant only had the intent to rob the victim, the court noted that she was “unaware that [the] second crime was occurring until after it was completed and thus didn’t have an opportunity to prevent or even protest its commission.” (*Id.* at p. 771.)

Here, unlike *Bradley*, the evidence indicates that defendant had more than one objective. As conceded, she was a part of the plan to get the victims to an isolated location (inside the car) to take their property. Shortly after leaving the restaurant, the codefendants took out their weapons and demanded the victims’ cell phones and wallets. They also demanded the victims’ belts, shoes, and socks, and stole Reginaldo’s necklace. After the codefendants took the items, Reginaldo continued to drive for another two hours. After they arrived in Barstow, one of the codefendants ordered Reginaldo out of the car. The victims fled on foot, and defendant and her codefendants took the car and drove off. The apparent objective of the defendants in taking the car was to flee the scene, in anticipation of the victims notifying the police (which they did). This objective was separate from their initial intent of taking the personal property of the victims. Moreover, unlike the defendant in *Bradley, supra*, 111 Cal.App.4th 765, defendant here was *not* “unaware that [the] second crime was occurring until after it was completed.” (*Id.* at p. 771.) She was sitting in the backseat of the car at the time the codefendants ordered the victims out of the car, and she had the opportunity to prevent or protest the commission of the carjacking. (See *Id.* at p. 771.) Instead, she drove off in the car with the codefendants.

Ultimately, because the carjacking and robbery of Reginaldo did not constitute an indivisible course of conduct, and defendant had multiple objectives, section 654 did not apply to stay the sentence on count 3.

2. *Section 654 Did Not Bar the Sentences on Counts 6 and 7*

Defendant further argues that the false imprisonment of the victims was merely incidental to the robberies, and that all of her actions were undertaken pursuant to only one objective, to take the victims' property. She thus contends that section 654 requires that the sentences on the false imprisonment convictions in counts 6 and 7 be stayed. We disagree.

The evidence showed that the imprisonment of the victims occurred *after* the defendants initially pulled out the gun and knife and took the victims' personal property. About 45 minutes after they left the restaurant, David held a gun to Reginaldo's neck, and Moore held a knife to Efrain's neck, and they proceeded to rob the victim's of their personal property. The false imprisonment then began, as they forced Reginaldo to drive to their desired location in Barstow. Reginaldo could not stop the car or speed up because the codefendants would either poke him with the gun or with the knife. He believed he could not stop the car until they told him to. The false imprisonment continued for approximately two hours, until they reached their destination in Barstow, and the victims fled from the car. Thus, the false imprisonment went far beyond what was necessary to accomplish the robbery of the victims. Moreover, the objective of the robbery was to take the victims' property. The apparent objective of the false imprisonment was to force the victims to drive the defendants to Barstow. The evidence

indicates that they had some type of plan there, since they directed Reginaldo to drive to a certain apartment complex and, once there, the codefendants put on gloves and covered their faces.

Defendant claims that the fact that there was a different objective for the false imprisonment “is not the determining factor.” She argues that section 654 prohibits separate punishment for crimes that “involve different intent elements but are part of a course of conduct with one overall objective.” She then asserts that “because the false imprisonments and robberies overlapped entirely,” section 654 bars multiple punishment. Contrary to defendant’s claim, “[t]he divisibility of a course of conduct depends upon the intent and objective of the defendant. . . . [I]f the evidence discloses that a defendant entertained multiple criminal objectives which 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. [Citations.]” (*Liu, supra*, 46 Cal.App.4th at p. 1135, italics added.)

The record here discloses that the objective of the robberies was independent of, and not merely incidental to, the objective of the false imprisonment of the victims. Thus, section 654 did not apply. We conclude that the trial court properly sentenced defendant on counts 6 and 7.

II. The Court Erred in Imposing the Enhancements Under
Section 12022, Subdivision (d)

Defendant next argues that the court erred when it imposed firearm enhancements under section 12022, subdivision (d), rather than subdivision (a)(1). She notes that section 12022, subdivision (d), applies only to narcotics offenses, and she was not convicted of a narcotics offense. Thus, she contends that the enhancements imposed under section 12022, subdivision (d), were unauthorized and must be reduced to the enhancements under section 12022, subdivision (a)(1). Respondent concedes, and we agree.

Section 12022, subdivision (d), provides in relevant part, that “any person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission of an offense . . . specified in subdivision (c), shall be punished by an additional and consecutive term of imprisonment in the state prison for one, two, or three years.” Subdivision (c) lists certain Health and Safety Code violations. All other felonies, including those for the crimes in the instant case, fall under section 12022, subdivision (a)(1), which authorizes an additional one-year term for “any person who is armed with a firearm in the commission of a felony.” Subdivision (a) specifies that the additional term applies to “any person who is a principal . . . if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.”

Here, defendant was initially charged with several offenses, including transportation of methamphetamine. (Health & Saf. Code, § 11379, subd. (a).) The

information also alleged that, during the commission of the charged offenses, defendant knew that a principal was armed, within the meaning of section 12022, subdivision (d). The prosecutor then filed an amended information, which dismissed the methamphetamine charge. The arming enhancements, however, remained the same. The jury found true the allegations that David personally used a handgun during the commission of each of the counts.

At sentencing, for the firearm enhancements under section 12022, subdivision (d), the trial court imposed a consecutive two years on count 1, and one-third of the middle term of two years (or eight months), on counts 2, 3, 6, and 7. However, because defendant was not convicted of any of the enumerated narcotics offenses, the court erred in sentencing her pursuant to section 12022, subdivision (d). The unauthorized sentence must be vacated and a proper sentence imposed. (See *People v. Hickey* (1980) 109 Cal.App.3d 426, 435.) The parties agree that the enhancements under section 12022, subdivision (a)(1), apply instead. Therefore, the judgment should be modified to reduce the principal armed enhancement on count 1, the principal term, to one year, and to reduce the enhancements on the other counts to four months. (§ 1170.1.)⁸

⁸ Section 1170.1, subdivision (a), provides, in relevant part: “Except as otherwise provided by law, and subject to Section 654, when any person is convicted of two or more felonies . . . and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense shall consist of one-

[footnote continued on next page]

DISPOSITION

The sentences on the section 12022, subdivision (d), enhancements on all counts are vacated. The judgment is modified to add, pursuant to section 12022, subdivision (a)(1), a consecutive one-year term to the sentence on count 1, and a consecutive four months to the sentences on counts 2, 3, 6, and 7. The superior court clerk is directed to amend the sentencing minute order and abstract of judgment to reflect these modifications, and to forward copies of the amended minute order and abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

McKINSTER
J.

RICHLI
J.

[footnote continued from previous page]

third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses.”