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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.

CHARLES LEE BROWN,

Defendant and Appellant.

E056519

(Super.Ct.No. FVI902533)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lynn M. Poncin, Judge. Affirmed with directions.

Richard Schwartzberg, 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, Melissa Mandel and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Charles Lee Brown pled guilty to possession and transportation of cocaine (Health & Saf. Code, §§ 11350, 11352, counts 5 & 6,

respectively); possession and transportation of cocaine base (Health & Saf. Code, §§ 11350, 11352, counts 7 & 8, respectively), and possession of marijuana while in custody (Pen. Code, § 4573.8,<sup>1</sup> count 10).

Defendant was granted supervised probation on February 4, 2010, but on February 23, 2012, as a consequence of a new criminal filing, probation was revoked. On June 8, 2012, defendant was sentenced to the upper term of five years on count 6 for transportation of cocaine, and a consecutive one-year four-month term on count 8 for transportation of cocaine base, for an aggregate prison term of six years four months. Concurrent two-year terms were imposed as to the remaining counts 5, 7, and 10.

Defendant contends that the concurrent sentences for counts 5 and 7 should have been stayed pursuant to section 654. The People agree that the imposition of concurrent sentences was improper. Accordingly, we affirm the conviction with directions to correct the minute order of June 8, 2012.

#### DISCUSSION

The facts relevant to the sole issue raised by defendant are these: a clear white baggie containing cocaine and a black plastic bag containing rock cocaine were discovered by sheriff's deputies in searching a car occupied by defendant.

Penal Code section 654 provides that an act or omission that is made punishable in different ways by different provisions of this code may be punished under either of such provisions, but in no case can it be punished under more than one. It applies to penal

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<sup>1</sup> Statutory references are to the Penal Code unless otherwise stated.

provisions of the Health and Safety Code. Under Penal Code section 654, courts are generally precluded from imposing multiple punishment where a defendant engages in a course of conduct that violates more than one statute and comprises an indivisible transaction punishable under more than one statute. (*People v. Avalos* (1996) 47 Cal.App.4th 1569, 1583.)

Here, the transporting and possession offenses stem from the same acts occurring at the same time: the presence of cocaine and cocaine base in a car occupied by the defendant. He had a single objective to move the substances in that car. Accordingly, his conduct arose from an indivisible course of conduct, and his sentence on counts 5 and 7 for possession of those substances must be stayed.

DISPOSITION

The judgment is affirmed and the superior court clerk is directed to amend the minute order of June 8, 2012, to reflect that sentences imposed as to counts 5 and 7 are stayed pursuant to section 654.

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KING  
J.

We concur:

RAMIREZ  
P. J.

RICHLI  
J.