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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES WESLEY SHROPSHIRE,

Defendant and Appellant.

F063878

(Super. Ct. No. BF135927A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Gary T. Friedman, Judge.

Eleanor M. Kraft, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Peter H. Smith and John G. McLean, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Gomes, J. and Poochigian, J.

Appellant James Wesley Shropshire appeals from the judgment entered on a jury verdict convicting him of conspiracy to commit robbery (Pen. Code, §§ 212.5, subd. (a)/182, subd. (a)(1))¹ and vehicle theft (Veh. Code, § 10851, subd. (a)), and a court finding that a prior strike conviction allegation was true. (§ 667, subds. (c)-(j); § 1170.12, subds. (a)-(e).) The court imposed a prison term of 13 years, four months consisting of the six-year upper term doubled to 12 years on the conspiracy count and a consecutive 16-month term on the vehicle theft count. On appeal, appellant contends the court violated section 654 by failing to stay sentence on the vehicle theft because the theft, as one of the overt acts charged in the conspiracy to rob offense, was incidental to his single objective to secure money and leave the area. We will affirm.

FACTS

The Car Theft

On March 7, 2011, about 10:00 a.m., Ginger Karns reported to the police that her Honda Accord was missing from in front of her house in Bakersfield. Late the next evening, the police called to tell her the car had been found at a 7-Eleven gas station. The police found a ski mask in the car. When the car was returned, the stereo had been removed, the ignition was damaged and there was trash and debris in the car. Karns did not know appellant and had not given him permission to have her car. She did not leave a ski mask in the car.

The Robbery Conspiracy

The target of the robbery conspiracy was Arthur Seibert. Seibert owns a roofing company that he operates out of his residence in East Bakersfield. His parents also live at the house. Seibert has two combination-lock safes in his house in which he keeps cash for his business. Occasionally, there is \$5000 or \$6000 in cash in the safes. Seibert's 15-year-old daughter, B.S., had run away from home and had been away for two or three

¹ All further statutory references are to the Penal Code unless noted otherwise.

months as of March 8, 2011. B.S. does not know the combinations to the safes. B.S. had met appellant at school and appellant had once attended church with the Seibert family.

On March 7, 2011, Seibert received several unusual phone calls from a blocked number. Several times, the caller said nothing. One time, a “very demanding” “young Hispanic man” said he had a job for Seibert and needed to meet him right away at an address on the other side of Bakersfield. Seibert was suspicious and said he would be on that side of town the next morning and would meet the caller then. The next day he discovered the address did not exist.

On March 8 between 8:00 and 10:00 p.m., 17-year-old Tyler Gifford and 20-year-old Cody Hicks were hanging out at a Taco Bell parking lot in Bakersfield with friends. They noticed a gold Honda driving fast and “acting foolish” in the lot. Appellant was driving and B.S. was in the passenger seat. Appellant asked Hicks if he wanted to buy or sell weed. Hicks declined; Hicks said he had marijuana because he had a medical marijuana card. Appellant, B.S., Gifford, and Hicks moved to a more secluded area to smoke marijuana. Appellant told Gifford and Hicks that the Honda was stolen. He pulled down the beanie he was wearing and showed them it was a ski mask and said he was going to use it in the robbery they were planning. Appellant said he was looking for a gun to go to B.S.’s house to get money from her father and grandparents. Appellant asked if Gifford or Hicks could get him a gun. According to Gifford, appellant planned to either lure B.S.’s father out of the house, or put a gun to his head, or knock him out with the butt of the gun. B.S. added that there may be \$20,000 in the safe, which they would use to leave town. Appellant and B.S. had identified another car a couple of blocks away that they planned to steal in connection with the robbery. Gifford initially wanted to leave town with the couple before he knew of the planned robbery. He told them he could get a gun and gave appellant his phone number. Gifford testified he had no intention of following through and provided his number in an attempt to get appellant to leave. After about 45 minutes, appellant and B.S. left in the Honda.

A little while later, Hicks told a California Highway Patrol Officer, who had pulled into the parking lot on an errand, about the stolen Honda and the couple's efforts to get a gun to rob family members. Hicks, Gifford and their friends then moved down the street to a park. Later that night, they saw police cars at the 7-Eleven gas station by the Honda, appellant and B.S.

Appellant made a number of recorded phone calls from jail. He told friends he was caught in "the stolen car." In addition, "Somebody snitched on us," "[t]hey know that we were tryin[g] to get a gun to ... go to her house and rob her dad and her grandparents." "And ... we were gonna skip town after that." At one point appellant advised his friend to "[j]ust [steal a] car like I did," so the friend could visit him in jail. Appellant believed B.S. was pregnant and was concerned about her welfare because she had been arrested.

Defense

Appellant testified he was 19 years of age in March 2011. He met B.S. at school and they had been together about three weeks. An acquaintance, whom he could not name, gave him the gold Honda because he needed a car to meet a friend. He knew the car was stolen. When he got the car, the stereo was missing and the ski mask was in the back seat. He wore the mask as a beanie because he had lost his.

According to appellant, it was B.S.'s "fantasy" to rob her father so she could run away. He had no intention of helping her. The plan had been in motion for a couple of days before March 8. He planned to use the stolen Honda to drive to his brother's house in San Diego. B.S. planned to use the gun to scare her father into divulging the combinations to the safes. Appellant made the incriminating statements in the phone calls from jail because he was trying to impress his friends and fit in.

Procedural History

Appellant was charged with conspiracy to commit robbery and vehicle theft. The three overt acts alleged in connection with the conspiracy count were: the coconspirators obtained a stolen vehicle to facilitate the robbery, the coconspirators obtained a ski mask to facilitate the robbery, and the coconspirators attempted to obtain a firearm to facilitate the robbery. The jury found appellant guilty of both counts.

Appellant moved to have the sentencing on the vehicle theft count stayed pursuant to section 654. The People opposed the motion. The court found the evidence that the vehicle was used to transport appellant and B.S. to the Taco Bell parking lot and that the stereo was removed indicated multiple objectives or uses of the stolen Honda. Accordingly, the court denied appellant's motion to stay sentencing on the vehicle theft.

DISCUSSION

Section 654

Appellant contends section 654 prohibited the court from failing to stay the sentence imposed for vehicle theft. He asserts there was no evidence to show he was responsible for removing the stereo and his presence at the Taco Bell was an attempt to locate a gun to use in the robbery. In addition, the acquisition of a vehicle was essential to carrying out the robbery. As such, the vehicle theft was not a separate act unrelated to and unnecessary for the carrying out of the conspiracy and the court erred in ruling to the contrary. The People respond that the court properly imposed separate punishment for each count because substantial evidence supports the trial court's factual determination that appellant entertained multiple criminal objectives that were independent of and not merely incidental to each other.

Section 654 provides that an act that is punishable in different ways by different provisions of law may not be punished under more than one provision. The Supreme Court has extended the protections of section 654 to cases in which several offenses are committed during a course of conduct deemed to be indivisible in time. (*People v.*

Harrison (1989) 48 Cal.3d 321, 335.) The purpose of section 654 is to insure that the defendant's punishment is commensurate with his culpability. (*People v. Perez* (1979) 23 Cal.3d 545, 552.) Whether section 654 applies is a question of fact for the trial court that will not be reversed on appeal if there is any substantial evidence to support it. (*People v. Vang* (2010) 184 Cal.App.4th 912, 915-916.)

The divisibility of a course of conduct depends on the intent and objective of the actor. (*People v. Harrison, supra*, 48 Cal.3d at p. 335.) If the offenses were the means of accomplishing one objective, the defendant may be found to have harbored a single intent and may be punished only once. (*Neal v. State of California* (1960) 55 Cal.2d 11, 19.) Alternatively, if the defendant harbored multiple criminal objectives, which were independent of each other, he may be punished for each statutory violation, even though the violations were parts of an indivisible course of conduct. (*People v. Harrison, supra*, 48 Cal.3d at p. 335.)

Appellant submits his case is controlled by *People v. Liu* (1996) 46 Cal.App.4th 1119. There, the defendant was convicted of conspiracy to commit murder, kidnapping for ransom of a gambling rival and his wife, and possession of a silencer. (*Id.* at pp. 1125, 1127.) The appellate court held it was error under section 654 to impose a concurrent sentence on appellant's conviction for possession of the silencer. (*People v. Liu, supra*, 46 Cal.App.4th at p. 1136.) There was no evidence to support a conclusion that the offense of possession of a silencer had any intent or objective other than the successful completion of the conspiracies. The defendant himself had not obtained the silencer, his coconspirator had done so specifically to carry out the planned murders. Thus the defendant could not be separately punished for possession of the silencer because it was an indivisible part of the same course of conduct as the conspiracies. (*Id.* at p. 1136.)

To the contrary in this case, there was evidence to support the trial court's conclusion that appellant entertained multiple criminal objectives that were independent

of and not merely incidental to each other. First, the vehicle theft occurred a day and a half before appellant broadcast his plan to commit the robbery to Hicks and Gifford. Second, appellant had spent at least some of that evening joyriding and, by his own testimony, had used the car as transportation to meet a friend. Third, the car's stereo was removed. Appellant argues there was no evidence he removed the stereo and his presence in the parking lot was an attempt to locate and obtain a weapon for use in the robbery. Appellant's arguments, in essence, urge this court to disregard the factual inferences the trial court made and instead make inferences more favorable to him. That is not our role on appeal. Because substantial evidence supports the trial court's conclusion that appellant's objective in stealing the Honda was not solely to further the conspiracy to commit robbery, we find no error under section 654.

DISPOSITION

The judgment is affirmed.