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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. GILBERTO SANCHEZ PACHECO, Defendant and Appellant.	G047682 (Super. Ct. No. 08CF0108) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Patrick Donahue, Judge. Affirmed as modified.

Thien Huong Tran, 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, Peter Quon, Jr., and Susan Miller, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Defendant Gilberto Sanchez Pacheco and Maria Valadez robbed the victim of his wallet and kidnapped him, driving the victim in his own vehicle to a nearby commercial area where they let him out and drove away. The court imposed concurrent sentences for kidnapping during the course of a carjacking and kidnapping to commit a robbery. Defendant contends the trial court erred and should have ordered the sentence on one of the two counts stayed pursuant to Penal Code section 654. We agree and order the judgment amended.

I

FACTS

The following facts suffice for purposes of the issue raised by defendant. Ernesto Hernandez stopped at a 7-Eleven on his way to work to get a cup of coffee on December 29, 2007. Maria Valadez approached him while he was parked in the store's parking lot. She got into his vehicle with him after telling him they could be friends, which Hernandez interpreted to mean he could "go out" with her. Hernandez then drove her to a nearby apartment where they both went inside.

Defendant was in the apartment. He had a knife and asked what Hernandez was doing with his (defendant's) girlfriend. Valadez did not seem surprised. Hernandez was afraid he would be stabbed. Valadez asked where Hernandez's money was. Hernandez was thrown onto the bed and his wallet was taken from him. Inside the wallet were a debit card, his driver's license, and money he intended to deposit in the bank that day.

A black cap was put over Hernandez's eyes, although he was still able to see "a little bit," and he was moved about the apartment in an effort to confuse him. He heard defendant ask Valadez, "What do we do afterward?" Defendant and Valadez took Hernandez back to his car. Hernandez was put into the backseat and defendant, still holding the knife, got in next to him. Valadez drove to a place "very close in the same

area," where Valadez parked the car and Hernandez was told he could leave. After he got out of the car, defendant and Valadez drove away in Hernandez's car.

Defendant walked to a fire station. The police responded and questioned him about the incident. He told them he had been talking to a woman at the 7-Eleven when a man got into his car and forced him to drive to the apartment. He lied because he had initiated contact with Valadez and was embarrassed about the situation.

The jury found defendant guilty of one count each of kidnapping in the course of a carjacking (Pen. Code,[1] §209.5, subd. (a); count one) and kidnapping to commit a robbery (§ 209, subd. (b)(1); count two), and found defendant personally used a deadly weapon (§ 12022, subd. (b)(1)) in committing each of the offenses. The court imposed a life sentence plus a consecutive one-year term on the conviction for kidnapping in the course of a carjacking, and an identical concurrent term on the conviction for kidnapping to commit a robbery.

II

DISCUSSION

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 does not prohibit multiple convictions. It bars multiple punishments. (*People v. Mesa* (2012) 54 Cal.4th 191, 195.) When section 654 applies, "the trial court must stay execution of sentence on the convictions for which multiple punishment is prohibited. [Citations.]" (*People v. Reed* (2006) 38 Cal.4th 1224, 1227.)

[1] All undesignated statutory references are to the Penal Code.

A concurrent sentence, like the one imposed here, constitutes punishment for purposes of section 654. (*People v. Jones* (2012) 54 Cal.4th 350, 353.)

"Section 654 will prohibit double punishment not only where there was 'but one act in the ordinary sense, but also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction' [citation], and indivisibility of separate acts to a single course of conduct depends on the intent and objective of the actor. [Citation.]" (*People v. Jones* (1981) 124 Cal.App.3d 749, 754.) However, multiple criminal objectives may be used to impose "multiple punishment only in circumstances that involve, or arguably involve, multiple acts." (*People v. Mesa*, *supra*, 54 Cal.4th at p. 199.)

Even assuming defendant had multiple criminal objectives—i.e., to rob Hernandez (§ 211) and to take his vehicle by force (§ 215)—the kidnapping consisted of a single act: taking defendant from the scene of robbery, driving him a short distance, and releasing him. There was only one act of kidnapping. The plain language of section 654 therefore applies and precludes punishing defendant on more than one of the counts of kidnapping. (*People v. Jones*, *supra*, 54 Cal.4th at p. 357 [single act of possessing or carrying a single firearm on a single occasion may be punished only once, and not separately as felon in possession of a firearm, carrying a loaded firearm in public, and carrying a concealed weapon in public].)

III

DISPOSITION

The judgment of conviction is affirmed as modified. The superior court is directed to amend the abstract of judgment to reflect defendant's sentence on count two and the deadly weapon enhancement attached thereto is stayed pursuant to section 654,

and to transmit a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

RYLAARSDAM, J.