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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

FELICIANO SANCHEZ,

Defendant and Appellant.

H041734

(Santa Clara County

Super. Ct. No. C1476578)

I. INTRODUCTION

Defendant Feliciano Sanchez appeals after a jury convicted him of attempted carjacking (Pen. Code, §§ 664/215)¹ and misdemeanor battery (§§ 242, 243, subd. (a)). Defendant was sentenced to an 18-month prison term for the carjacking, with a concurrent 90-day jail sentence for the battery.

On appeal, defendant contends: (1) there was insufficient evidence that he committed attempted carjacking; (2) the trial court erred by declining to give a pinpoint instruction concerning the amount of force necessary for carjacking; (3) the trial court erred by declining to respond to a jury question with an instruction concerning the use of force or fear after a defendant abandons property; (4) the cumulative effect of the two

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

instructional errors violated defendant's right to due process. For reasons that we will explain, we will affirm the judgment.

II. BACKGROUND

A. *Prosecution Case*

On December 27, 2013, Maria Guadalupe Fernandez² and her daughter, Diana Fernandez, were working at a cosmetics company located on Story Road in San Jose. Maria's husband, Joseph Valdemar Fernandez, was helping Maria with some paperwork.

At about 4:30 p.m. that day, Maria left her office to look for something in her car, which was parked in the driveway of her office. She held her car keys in the palm of her left hand, "almost like in a fist," and opened the trunk of her car.

As Maria was looking through the trunk of her car, defendant walked by, carrying a sleeping bag. Defendant stopped, then suddenly grabbed Maria's car keys out of her hand. Maria had not seen defendant approaching and had no time to try to prevent defendant from taking the keys. Nothing happened to her "physically" when defendant grabbed the keys. However, Maria was afraid that defendant was going to take the car, and she was also afraid for her safety. She was so scared that she could not move.

Maria screamed for Joseph. Meanwhile, defendant got into Maria's car, turned on the engine, and tried to put the car into gear. Joseph and Diana both came outside. Joseph yelled at defendant and tried to pull defendant out of the car, but defendant resisted. Maria was scared and told Joseph to "let him go." According to Maria, defendant was hitting Joseph with one hand while trying to find the car's gear shift with his other hand. Maria continued to scream for help, hoping to attract the attention of someone in the neighborhood.

² Since the Fernandez family members have the same surname, we will refer to them by their first names for purposes of clarity and not out of disrespect.

Joseph was able to pull defendant from the car, with Diana's help. Joseph ended up on the ground, wrestling with defendant. Diana got on top of defendant and hit him, but defendant pushed her off. Maria continued to yell and scream in fear. Defendant punched Joseph in the eye, then ran off, and Diana called 9-1-1.

Police matched defendant's fingerprints to fingerprints found on Maria's car. Defendant was arrested and interviewed after he was provided with the *Miranda* warnings.³ Defendant admitted to grabbing Maria's keys, getting into her car, starting the car, and trying to put it into gear. He also admitted punching Joseph several times during the altercation. Defendant said he was homeless, and he wrote an apology letter.

Defendant later admitted that he had tried to steal a car during a discussion with Lindsey Davis, a Santa Clara County employee. Defendant said he had taken keys from a woman and gotten into her car, but that someone else pulled him out.

B. Defense Case

Defendant testified that in December of 2013, he was homeless and had no car or bus pass. Earlier in 2013, defendant had been convicted of three counts of misdemeanor domestic violence.

On December 27, 2013, defendant was walking toward the church where he was staying. He saw Maria with keys in her hand and grabbed the keys, intending to take her car. He got into the car and turned on the ignition, then got out of the car and closed the trunk. When he saw Joseph and Diana approaching, he "put a foot out to step out of the car." However, when Joseph reached the car, defendant leaned backwards. Joseph then pulled defendant out of the car. Defendant ended up on the ground, on top of Joseph. Diana got onto defendant's back, but defendant bent down, causing Diana to fall off. Joseph punched defendant in the face, and defendant punched him back, then ran away.

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

C. Charges, Verdicts, and Sentence

Defendant was charged with attempted carjacking of Maria (§§ 664/215; count 1), and misdemeanor battery of Joseph and Diana (§§ 242, 243, subd. (a); counts 2 and 3). The jury convicted defendant of attempted carjacking and misdemeanor battery of Joseph, but it found defendant not guilty of misdemeanor battery of Diana. The trial court sentenced defendant to an 18-month prison term for carjacking, with a concurrent 90-day jail term for the misdemeanor battery.

III. DISCUSSION

A. Sufficiency of the Evidence

Defendant contends there was insufficient evidence that he committed attempted carjacking. He argues that “he did not use force or fear in any way to take the keys [to the car] from Maria” and that his use of force to resist Joseph occurred after “he had abandoned his attempt to take the car.”

1. Standard of Review

Under the federal Constitution’s due process clause, there is sufficient evidence to support a conviction if, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319.) In addressing a claim of insufficient evidence, “the court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

“In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.]

Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]” (*People v. Young* (2005) 34 Cal.4th 1149, 1181 (*Young*).)

2. Arguments Below

During argument to the jury, the prosecutor primarily argued that defendant had used fear in committing the attempted carjacking. The prosecutor reminded the jury that Maria had testified “about being in fear, about being in shock, about screaming out for help.” The prosecutor argued that defendant knew Maria was in fear, because he got out of the car and closed the trunk while Maria was screaming.

Defendant’s trial counsel argued that defendant did not use force or fear, arguing that defendant took the keys from Maria but did not “do anything else to her.” Defendant’s trial counsel reminded the jury that Maria testified “she was fearful because she thought [defendant] was going to steal the car” but that Maria was “not in fear of her life.”

In closing argument, the prosecutor responded to the defense argument, asserting that defendant had forced the keys out of Maria’s hand and that Maria’s fear was shown by the fact that she was “frozen” and screaming for help while defendant tried to take her car.

3. Elements of Carjacking

Section 215, subdivision (a) defines “carjacking” as “the felonious taking of a motor vehicle in the possession of another, from his or her person or immediate presence, or from the person or immediate presence of a passenger of the motor vehicle, against his or her will and with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession, accomplished by means of force or fear.”

“[T]he elements and statutory language of carjacking are analogous to those of robbery” (*People v. O’Neil* (1997) 56 Cal.App.4th 1126, 1131), and thus both defendant and the Attorney General rely primarily on robbery cases to support their arguments.

4. Force

It is settled that the amount of force required “to elevate a taking from the person to the status of a robbery” is something more than “just that quantum of force which is necessary to accomplish the mere seizing of the property.” (*People v. Morales* (1975) 49 Cal.App.3d 134, 139 (*Morales*)). Sufficient evidence of force will be found if the force “ ‘is actually sufficient to overcome the victim’s resistance’ ” [Citations.]” (*People v. Burns* (2009) 172 Cal.App.4th 1251, 1259 (*Burns*)).

Defendant first argues that since Maria did not resist the taking of her car keys, his act of grabbing the keys from her hand cannot establish that he employed the requisite amount of force. The Attorney General acknowledges that it is unlikely the jury found force based on defendant’s grabbing of the keys but nevertheless argues the act of grabbing the keys was sufficient to constitute force.

Defendant contends the record does not contain substantial evidence to support a finding that, in taking the keys from Maria, defendant used force “ ‘to overcome the victim’s resistance’ ” [Citations.]” (*Burns, supra*, 172 Cal.App.4th at p. 1259.) Maria testified that when defendant grabbed the keys out of her hand, she was surprised, because she had not seen defendant approaching, and she had no time to try to prevent defendant from taking the keys. The evidence here contrasts with *Burns*, in which a robbery conviction was upheld based on evidence that the defendant grabbed victim’s purse and “overcame her resistance” when she “tried to hold onto it” (*id.* at p. 1259) and with *People v. Jones* (1992) 2 Cal.App.4th 867, in which the defendant grabbed the victim’s purse “with such force that it injured the victim” (*id.* at p. 870). However, we need not determine on this record whether defendant used force to take the keys from

Maria, because there is substantial evidence to support a finding that defendant used force against Joseph during his attempt to take the car.⁴

Defendant argues that although he used force against Joseph, he had abandoned his attempt to steal the car at that point. (See *People v. Pham* (1993) 15 Cal.App.4th 61, 68 (*Pham*) [“If defendant truly abandoned the victims’ property before using force,” he could not be found guilty of robbery]; compare *People v. Flynn* (2000) 77 Cal.App.4th 766, 772 [“The use of force or fear to escape . . . constitutes robbery.”].) The Attorney General, in contrast, argues that defendant used force against Joseph “while he was still engaged in attempting to take the car.”

We agree with the Attorney General that the evidence “most clearly supporting” a finding that defendant used force in attempting to take the car was the evidence that defendant applied force to Joseph. Maria testified that after defendant took her keys and got into the car, Joseph came outside and tried to pull defendant out of the car. She testified that defendant was hitting Joseph with one hand while trying to find the car’s gear shift with his other hand. (See *Young, supra*, 34 Cal.4th at p. 1181 [the “testimony of a single witness is sufficient to support a conviction”].) The jury was not required to believe defendant’s testimony that when he saw Joseph and Diana coming, he started to step out of the car. And although Joseph testified that he thought defendant “gave up” his efforts to take the car after Joseph grabbed him, Joseph also testified that defendant “wouldn’t go for that” after Joseph grabbed him and told him to get out of the car. Based on the evidence presented, a reasonable jury could find that defendant used force in an

⁴ Although the prosecutor did not argue that defendant committed the attempted carjacking by using force against Joseph, we may uphold defendant’s conviction on any theory supported by substantial evidence. (See *People v. Perez* (1992) 2 Cal.4th 1117, 1126 [“It is elementary . . . that the prosecutor’s argument is not evidence and the theories suggested are not the exclusive theories that may be considered by the jury.”].)

attempt to prevent Maria and her family “from retaking the property and to facilitate his escape.” (*People v. Estes* (1983) 147 Cal.App.3d 23, 28.)

5. Fear

Defendant argues that there was no substantial evidence to support a finding that defendant used fear in his attempt to take the car. Evidence of fear “may be inferred from the circumstances in which the property is taken,” even if the victim has given “ ‘ ‘superficially contrary testimony.’ ” (*People v. Morehead* (2011) 191 Cal.App.4th 765, 775 (*Morehead*)). “The requisite fear need not be the result of an express threat or the use of a weapon,” and “the victim’s fear need not be extreme.” (*Ibid.*) “All that is necessary is that the record show ‘ ‘ ‘conduct, words, or circumstances reasonably calculated to produce fear’ ” [Citation.]” (*Ibid.*)

Defendant argues that Maria testified she was only afraid that defendant would take her car and that there was no substantial evidence that Maria was also afraid for her safety. (See CALCRIM No. 1650; § 212.) As the Attorney General points out, however, Maria did testify that she was afraid for her safety, “of course.” Moreover, even if Maria testified that she was only afraid that her car would be stolen, the jury was entitled to infer that Maria was afraid for her personal safety based on the circumstances of the incident. (See *Morehead, supra*, 191 Cal.App.4th at p. 775.) At the time defendant grabbed her keys and got into her car, Maria was alone. She was apparently an older woman who was so intimidated by defendant’s brazen behavior that she froze and screamed for help. “Defendant did not need to directly engage or threaten [Maria] in order to accomplish the carjacking through fear.” (*People v. Magallanes* (2009) 173 Cal.App.4th 529, 534.) A reasonable jury could find that Maria was put in fear by defendant’s acts of grabbing Maria’s keys from her hand and attempting to drive her car away, because those acts were intimidating and conveyed an implied threat that he would harm Maria if she resisted.

In sum, we conclude substantial evidence supports defendant's attempted carjacking conviction.

B. Pinpoint Instruction on Amount of Force

Defendant contends the trial court erred by declining to give a pinpoint instruction concerning the amount of force necessary for carjacking, and that the error affected his constitutional rights to due process and a jury trial.

1. Proceedings Below

Pursuant to CALCRIM No. 1650, the jury was instructed on carjacking as follows: “The defendant is charged in Count 1 with attempted carjacking in violation of Penal Code Section 664-215. To prove that the defendant is guilty of this crime, the People must prove that, one, the defendant took a motor vehicle that was not his own; two, the vehicle was taken from the immediate presence of a person who possessed the vehicle or was its passenger; three, the vehicle was taken against that person's will; four, the defendant used force or fear to take the vehicle or to prevent that person from resisting; five, when the defendant used force or fear to take the vehicle, he intended to deprive the other person of possession of the vehicle either temporarily or permanently. [¶] The defendant's intent to take the vehicle must have been formed before or during the time he used force or fear. If the defendant did not form this required intent until after he was using force or fear, then he did not commit carjacking. . . . [¶] . . . [¶] Fear, as used here, means fear of injury to the person himself or herself or injury to the person's family or property or immediate injury to someone else present during the incident or to that person's property.”

The trial court declined to give the following pinpoint instruction, which was requested by defendant: “The amount of force for a carjacking is something more than is required than just that quantum of force which is necessary to accomplish the mere seizing of the property.” The trial court indicated it believed that defendant's requested

pinpoint instruction was “confusing” and that CALCRIM No. 1650 adequately defined force.

2. Analysis

A defendant “has a right to an instruction that pinpoints the theory of the defense.” (*People v. Mincey* (1992) 2 Cal.4th 408, 437, italics omitted.) The trial court may, however, “properly refuse an instruction offered by the defendant if it incorrectly states the law, is argumentative, duplicative, or potentially confusing [citation], or if it is not supported by substantial evidence [citation].” (*People v. Moon* (2005) 37 Cal.4th 1, 30 (*Moon*)). We apply the de novo standard of review when determining whether the trial court erred in refusing to give a requested pinpoint instruction. (*People v. Johnson* (2009) 180 Cal.App.4th 702, 707.)

As noted above, prior cases have held that the amount of force required “to elevate a taking from the person to the status of a robbery” is something more than “just that quantum of force which is necessary to accomplish the mere seizing of the property.” (*Morales, supra*, 49 Cal.App.3d at p. 139.) This principle was reflected in defendant’s proposed pinpoint instruction, and thus the proposed instruction did not incorrectly state the law. (See *Moon, supra*, 37 Cal.4th at p. 30.) Further, the term “force” was not defined in the standard CALCRIM instruction, and thus the proposed instruction was not duplicative. (See *ibid.*) However, the proposed instruction, as written, was confusing. Although the proposed instruction included some language taken directly from *Morales*, the proposed instruction was difficult to understand because it contains extraneous words, rendering it grammatically incorrect. In particular, the phrase “is something more than is required than” would have been confusing to the jury.⁵ The trial court did not err by declining to give a confusing pinpoint instruction. (See *Moon, supra*, at p. 30.)

⁵ With some of the extraneous words removed, the instruction would make sense: “The amount of force for a carjacking is . . . more than . . . just that quantum of force which is necessary to accomplish the mere seizing of the property.”

Even if we assume that the instruction was capable of being rephrased so that it was grammatically correct and less confusing, and that the trial court erred by declining to provide the jury with a modified pinpoint instruction, the error was harmless. The asserted error did not “relieve[] the prosecution of the burden of proving beyond a reasonable doubt each essential element of the charged offense” nor “improperly describes or omits an element of an offense.” (See *People v. Larsen* (2012) 205 Cal.App.4th 810, 829 (*Larsen*)). Thus, the asserted error did not violate defendant’s rights under the federal constitution and does not require review under the “beyond a reasonable doubt” standard of *Chapman v. California* (1967) 386 U.S. 18, 24. (See *Larsen, supra*, at pp. 829-830.) Instead, we review the asserted error under the harmless error standard articulated in *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*). (See *Larsen, supra*, at p. 830.)

Defendant contends the asserted error was prejudicial because without the requested pinpoint instruction, his trial counsel was “unable to argue in closing that the effort required to take the keys from Maria’s hand was not enough to establish force for the purpose of carjacking,” whereas the prosecutor “took advantage of the court’s error by arguing just the opposite: that taking the keys from Maria’s hand was sufficient force for carjacking.” The record does not support defendant’s contention, however. Defendant’s trial counsel argued that defendant did not use force because defendant took the keys from Maria but did not “do anything else to her.” And the prosecutor’s primary argument to the jury was that defendant had used fear in his attempted carjacking. The prosecutor did not advance any argument concerning force until her closing argument, when she briefly asserted that defendant had forced the keys out of Maria’s hand. And, during deliberations, the jury asked a question concerning the timing of “fear,” indicating

that the jury focused on the theory emphasized by the prosecutor: that defendant committed the robbery by using fear, not force.⁶

In light of the parties' arguments and the evidence presented, which established that Maria was put in fear for her safety when defendant grabbed her car keys from her hand and attempted to drive her car away, any error in failing to give the requested pinpoint instruction on "force" was harmless. On this record, there is no reasonable probability that, had the trial court given the jury the requested pinpoint instruction, the jury would have failed to find that an attempted carjacking occurred. (See *People v. Hughes* (2002) 27 Cal.4th 287, 363; *Watson, supra*, 46 Cal.2d at p. 836.)

C. Response to Jury Question

Defendant contends the trial court erred by declining to respond to a jury question with his proposed instruction on the timing of fear during a carjacking, and that the error violated his constitutional right to due process. Acknowledging that his trial counsel initially agreed to the response given by the trial court, defendant contends he received ineffective assistance of counsel if this claim is waived by his failure to request a different response in a timely manner.

1. Proceedings Below

As noted above, during deliberations, the jury asked, "Does the 'fear' have to have occurred exactly when the keys were taken? [¶] OR [¶] Is it still considered 'fear' after he took the keys and the rest of the incident occurred[?]"

The parties agreed to the following response, which was given by the trial court: "Force or fear must be used against the victim to gain possession of the vehicle. The

⁶ During deliberations, the jury asked, "Does the 'fear' have to have occurred exactly when the keys were taken? [¶] OR [¶] Is it still considered 'fear' after he took the keys and the rest of the incident occurred[?]"

timing, however, in no way depends on whether the confrontation and use of force or fear occurs before, while, or after the defendant initially takes possession of the vehicle.”⁷

The following day, defendant’s trial counsel asked the trial court to give the jury “an additional answer.” She proposed the following: “If the defendant truly abandon’s [sic] the victim’s property before using force or fear, then he is not guilty of attempting carjacking.”

The prosecutor noted that the jury had not asked about abandonment and that abandonment was addressed in CALCRIM No. 460, the attempt instruction.⁸ The prosecutor also argued that the court could not “provide additional law to a jury that has not asked the question.”

⁷ This response was apparently based on the Bench Notes to CALCRIM No. 1650, which include the following passage: “Force or fear must be used against the victim to gain possession of the vehicle. The timing, however, ‘in no way depends on whether the confrontation and use of force or fear occurs before, while, or after the defendant initially takes possession of the vehicle.’ [Citation.]”

⁸ Pursuant to CALCRIM No. 460, the jury was instructed: “The defendant is charged in Count 1 with attempted carjacking. To prove that the defendant is guilty of this crime, the People must prove that, one, the defendant took a direct but ineffective step toward committing carjacking and, two, the defendant intended to commit carjacking. A direct step requires more than merely planning or preparing to commit carjacking or obtain[ing] or arranging for something needed to commit carjacking. A direct step is one that goes beyond planning or preparation and shows that a person is putting his or her plan into action. A direct step indicates a definite and unambiguous intent to commit carjacking. [¶] It is a direct movement towards the commission of a crime after preparations are made. It is an immediate step that puts the plan in motion so that the plan would have been completed if some circumstance outside the plan had not interrupted the [attempt]. [¶] A person who attempts to commit carjacking is guilty of attempted carjacking even if, after taking a direct step toward committing the crime, he or she abandoned further efforts to complete the crime or if his or her attempt failed or was interrupted by someone or something beyond his or her control. On the other hand, if a person freely and voluntarily abandons his or her plans before taking a direct step toward committing carjacking, then that person is not guilty of attempted carjacking. [¶] To decide whether the defendant intended to commit carjacking, please refer to the separate instructions I will give you on that crime. The defendant may be guilty of an attempt even if you conclude that a carjacking was actually completed.”

The trial court reminded the parties that they had agreed to the original response. The trial court also pointed out that “the jury’s question has to do with fear, not force,” and found that the timing of Maria’s fear did not “really have much to do with [defendant’s] efforts to abandon the situation.” The trial court also agreed with the prosecutor that the attempt instruction covered the issue in defendant’s proposed response.

2. Analysis

Under section 1138, the trial court is required to provide the jury with information when, during deliberations, the jury “desire[s] to be informed on any point of law arising in the case.” The trial court “has discretion under section 1138 to determine what additional explanations are sufficient to satisfy the jury’s request for information.” (*People v. Beardslee* (1991) 53 Cal.3d 68, 97.) “We review for an abuse of discretion any error under section 1138. [Citation.]” (*People v. Eid* (2010) 187 Cal.App.4th 859, 882.)

Initially, we note that because defendant’s trial counsel agreed to the language in the court’s initial response, under the doctrine of invited error he has waived any claim that the initial response was incorrect. (See *People v. Mays* (2007) 148 Cal.App.4th 13, 37.) We also note that defendant cites no authority for the proposition that the trial court may provide the jury with additional instructions when there is no question from the jury pending. However, defendant also argues that his trial counsel was ineffective for making an untimely request for the proposed response, and therefore we will address the merits of these issues. (See *People v. Ochoa* (1998) 19 Cal.4th 353, 431.)

Defendant relies on two robbery cases, *Pham, supra*, 15 Cal.App.4th 61 and *People v. Hodges* (2013) 213 Cal.App.4th 531 (*Hodges*), in arguing that his proposed response contained a correct statement of law and should have been given.

In *Pham*, the defendant took a bag of items from the victims’ car, but when the victims caught him, the defendant dropped the bag and began hitting the victims. (*Pham*,

supra, 15 Cal.App.4th at p. 64.) The appellate court upheld the defendant's robbery conviction, finding there was "sufficient evidence for the jury to conclude that defendant forcibly asported or carried away the victims' property when he physically resisted their attempts to regain it." (*Id.* at p. 67.) The court also held that the trial court had no sua sponte duty to instruct the jury on attempted robbery, since the defendant had actually taken possession of the victims' property. (*Id.* at pp. 67-68.) The court noted that if the defendant had "truly abandoned the victims' property before using force, then, of course he could be guilty of theft, but not of . . . robbery." (*Id.* at p. 68.)

In *Hodges*, the defendant took items from a store without paying for them. A security guard instructed the defendant to return to the store, but the defendant instead shoved or threw the items at a second security guard, then resisted the first security guard's attempts to detain him. (*Hodges, supra*, 213 Cal.App.4th at pp. 535-536.) The defendant requested an instruction based on *Pham*, which would have told the jury, " 'If Defendant truly abandoned the victim's property before using force, then, of course, he could be guilty of theft, but not of [] robbery. [Citation.]' " (*Hodges, supra*, at p. 537.) The trial court refused to give the instruction. During deliberations, the jury asked whether the defendant could be found guilty of robbery if it found that " 'the force/fear was subsequent to the act, in the parking lot, after the defendant had surrendered the goods (throwing them at [the security guard]).' " (*Id.* at p. 538.) Over the defendant's objection, the trial court told the jury that " 'the theft is deemed to be continuing until the defendant has reached a point in which he is no longer being confronted by the security guards.' " (*Ibid.*) The appellate court held that this response "failed to address the crux of the jury's inquiry" about "the timing of [the] defendant's surrender of property" and was "misleading because it allowed the jury to conclude defendant was guilty of robbery without regard to whether defendant intended to permanently deprive the owner of the property at the time the force or resistance occurred." (*Id.* at p. 543.)

Unlike in *Hodges*, the jury here did not ask a question indicating it believed defendant had surrendered the car or abandoned his attempt to steal the car. In this case, the jury asked only about the timing of fear: whether Maria's fear had to "have occurred exactly when the keys were taken" or whether the robbery could still be accomplished by fear if her fear occurred "after he took the keys." The trial court's initial response addressed this issue, informing the jury that defendant had to have used force or fear "to gain possession of the vehicle" but that "the confrontation and use of force or fear" could occur "before, while, or after the defendant initially takes possession of the vehicle." Defendant does not argue that this response was incorrect.

Contrary to defendant's claim, nothing in the jury's question indicates it wanted an instruction on the legal consequence of a finding that defendant abandoned his efforts to obtain possession of the car. Therefore, the trial court did not abuse its discretion by failing to give the jury defendant's proposed additional instruction.

D. Cumulative Effect of Asserted Instructional Errors

Defendant contends the cumulative effect of the two instructional errors violated defendant's right to due process. (See *People v. Hill* (1998) 17 Cal.4th 800, 844 ["a series of trial errors, though independently harmless, may in some circumstances rise by accretion to the level of reversible and prejudicial error"].)

Here, we have found that even assuming the trial court erred by failing to give defendant's proposed pinpoint instruction, any error was harmless. We have found that the trial court did not abuse its discretion by failing to give defendant's proposed additional instruction during deliberations. Thus, there is no cumulative prejudice.

IV. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.