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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**THE PEOPLE,**

**Plaintiff and Respondent,**

**v.**

**COLIN WILLIAM GILLIGAN  
BLETHEN,**

**Defendant and Appellant.**

**A128725**

**(Mendocino County Super. Ct.  
No. SCU-K-CRCR-10-10367)**

Following a jury trial, defendant Colin William Gilligan Blethen (appellant) was convicted of two counts of grand theft (Pen. Code, § 487, subd. (a))<sup>1</sup> (counts 1 & 2), and he admitted a prior prison term allegation (§ 667.5, subd. (b)). He was sentenced to a two-year midterm on count 1, a concurrent two-year term on count 2, and a one-year term on the prior prison term enhancement. His sole contention on appeal is that the concurrent sentence on count 2 violated the prohibition against multiple punishment in section 654. We reject the contention and affirm.

### BACKGROUND

On the night of January 22, 2010, Terri McCartney and Bruce Clark were returning to their home on Orr Springs Road in separate vehicles after a trip to Los Angeles. They parked their vehicles in their driveway and, because they were tired, did

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<sup>1</sup> All further undesignated section references are to the Penal Code.

not unpack the vehicles. Clark, a jeweler, and McCartney had been in Los Angeles selling jewelry at a festival.

At about 5:00 a.m., Clark was awakened to the sounds of a car horn and a car driving off. He and McCartney ran outside and saw that their vehicles were open and the contents of the vehicles were in disarray. Missing from McCartney's car was a laptop computer, some books, and some clothes. Missing from Clark's truck was a metal jewelry case containing jewelry and gemstones, a camp stove, and a hand woven blanket.

Later that day, property taken from McCartney's and Clark's vehicles was recovered from appellant's car which was parked at a nearby resort. Clark's metal case and some boxes from inside his truck were found behind a fence at the resort.

### DISCUSSION

Appellant contends the concurrent sentence imposed on count 2 violated section 654's prohibition against multiple punishment, and that count should have been stayed.<sup>2</sup> Specifically, appellant contends the count 1 grand theft of McCartney and the count 2 grand theft of Clark were an indivisible course of conduct incident to the same objective and intent. He notes that both vehicles were at the same location, the property was taken from the vehicles at the same time and with the same intent to permanently deprive.

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." The purpose of this statutory protection against multiple punishment is to ensure that the defendant's punishment will be commensurate with his or her criminal liability. (*Neal v. State of California* (1960) 55 Cal.2d 11, 20.)

"Section 654 precludes multiple punishment for a single act or for a course of conduct comprising indivisible acts. 'Whether a course of criminal conduct is divisible

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<sup>2</sup> The parties agree that appellant's section 654 claim is cognizable on appeal despite his failure to raise it below. (See *People v. Hester* (2000) 22 Cal.4th 290, 295.)

... depends on the intent and objective of the actor.’ [Citations.] ‘[I]f all the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once.’ [Citation.]” (*People v. Evers* (1992) 10 Cal.App.4th 588, 602.)

“[I]f the defendant entertained multiple criminal objectives that were independent and not incidental to each other, he or she ‘may be punished for each statutory violation committed in pursuit of each objective’ even though the violations were otherwise part of an indivisible course of conduct. [Citation.] ‘ “The principal inquiry in each case is whether the defendant’s criminal intent and objective were single or multiple.” [Citation.] “A defendant’s criminal objective is ‘determined from all the circumstances . . . .’ ” ’ [Citation.]” (*People v. Sok* (2010) 181 Cal.App.4th 88, 99.)

Appellant argues *People v. Bauer* (1969) 1 Cal.3d 368, 378 supports the proposition “that the theft of several articles at the same time constitutes but one offense although such articles belong to several different owners. [Citations.]” However, as support for this principle, *Bauer* cited two cases, *People v. Smith* (1945) 26 Cal.2d 854 and *People v. Lyons* (1958) 50 Cal.2d 245, overruled on other grounds in *People v. Green* (1980) 27 Cal.3d 1, 32-33, which regard a single receipt of stolen property belonging to multiple owners and stolen at different times. The circumstances of this case are distinguishable.

In *People v. Bowman* (1989) 210 Cal.App.3d 443 (*Bowman*), the defendant broke into a car dealership, stole supplies from the dealership office and broke into various motor homes and vehicles, removing electronic equipment and other items from their interiors. He received eight consecutive sentences for the second degree burglary convictions. (*Id.* at pp. 445-446.) The appellate court concluded that the consecutive sentences were not prohibited by section 654 because the defendant “entertained multiple criminal objectives.” (*Bowman, supra*, 210 Cal.App.3d at p. 449.) The court stated: “Here [the] defendant did not commit a single break-in as contended, but rather committed multiple break-ins, each with a separate felonious intent. While the felonious intent in each instance was the same, this does not make the various violations incidental

to each other or to one primary criminal objective. Thus, even though the violations were part of an otherwise indivisible course of conduct in that they occurred during one night, it was within the trial court's discretion to impose consecutive sentences." (*Id.* at p. 448.)

A similar result was reached in *People v. O'Keefe* (1990) 222 Cal.App.3d 517 (*O'Keefe*), relied on by the People. In that case the defendant was separately punished for five residential burglaries of dormitory rooms within one dormitory. The court concluded that section 654 did not bar multiple punishment for each burglary because each dormitory room was a separate dwelling pursuant to section 459, and entry into each was separate and divisible conduct. (*O'Keefe*, at p. 522.)

The opportunity to reflect on one's conduct is a useful test of the separateness of multiple burglaries for purposes of section 654. (See *People v. Kwok* (1998) 63 Cal.App.4th 1236, 1255.) Here, appellant committed separate entries into two vehicles and removed property from each vehicle. Although the vehicles were parked in the same driveway, and the thefts were committed on the same night, appellant's entry into each was separate and divisible conduct. Appellant had an intent to enter and steal property from McCartney's car and a separate intent to enter and steal property from Clark's truck. Thus, the offenses were not incidental to one another. Appellant could have stopped after stealing from the first vehicle, but proceeded to steal from the second. Thus, the court did not err in imposing concurrent sentences on the two grand theft counts.

#### DISPOSITION

The judgment is affirmed.

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SIMONS, Acting P.J.

We concur.

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NEEDHAM, J.

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BRUINIERS, J.