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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. DEBRA LOUISE STRANGE, Defendant and Appellant.	B208952 (Los Angeles County Super. Ct. No. GA067110)

APPEAL from a judgment of the Superior Court of Los Angeles County. John P. Doyle, Judge. Affirmed in part, reversed in part, and remanded with directions.

Irma Castillo, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Scott A. Taryle and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Debra Louise Strange of two counts of kidnapping to commit robbery (Pen. Code, § 209, subd. (b)(1)),[1] three counts of attempted home invasion robbery (§§ 664/211), one count of first degree burglary (§ 459), and two counts of assault with a semiautomatic firearm (§ 245, subd. (b)). The jury found true the allegations that she had personally used a firearm in the commission of the offenses (§§ 12022.5, subd. (a) & 12022.53, subd. (b)). The court sentenced Strange to two life terms plus a determinate term of 22 years in state prison.

Strange contends the kidnapping for robbery convictions must be reversed, claiming that the movement of the victims was merely incidental to the commission of the attempted robbery and that there was insufficient evidence that the movement increased the risk of harm to the victims. Strange also contends that (1) one of the attempted robbery convictions must be reversed because the alleged victim, a visitor to the home, had neither actual nor constructive possession of the property; (2) the court erred in responding to the jury's question whether conviction of the attempted robbery charge required that the visitor have possession of the property; (3) counsel rendered ineffective assistance by failing to object to the court's inadequate response; (4) one of the two assault convictions for the same act must be reversed as duplicative; and (5) section 654 precludes punishment for both the attempted robbery conviction and the kidnapping for robbery conviction involving the same victim. We reverse one of the kidnapping to commit robbery convictions, the attempted robbery conviction involving the visitor, one of the duplicative convictions for assault with a semiautomatic firearm, and stay punishment on one attempted robbery conviction, and as so modified, we affirm.

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

DISCUSSION

Prosecution Evidence

On Saturday, September 23, 2006, Carlito Aguilar, and his wife, Carmen Aguilar,[2] drove to the San Manuel Casino in San Bernardino where they played Keno machines together. The next morning, at approximately 4:00 a.m., Carlito won $3,600 in a jackpot. The Keno machine played music and flashed lights, alerting the casino employees and others that the person playing the machine had hit a jackpot. Carlito received his winnings in cash, placed the cash in his wallet, and stopped gambling. Carlito and Carmen left the casino at approximately 10:30 a.m. and arrived home before noon.

Carmen and Carlito's adult son, Carlito Jr., lived in his parents' home. Carlito Jr. had been a deputy sheriff for over a year and was then assigned to the night shift at the county jail. He had finished his shift at 6:00 a.m. Sunday morning, gone to bed, and was awakened when his girlfriend, Irene Velasquez, rang the doorbell at 11:30 a.m. When Carlito and Carmen arrived home, Irene was watching television in the den and Carlito Jr. was in the bathroom washing up. When Carlito arrived home, as was his habit, he emptied his pockets and placed his keys, money, and wallet on top of the stereo in the den. He went into the bedroom and changed his clothes.

The doorbell rang and Irene offered to answer the door. She looked through the peep hole in the door and saw no one. She nevertheless opened the door, and Strange forced her way inside with her gun drawn. Strange grabbed Irene by her shirt, placed the gun to the back of her head and demanded to know where the "old man" and "old woman" were. Strange said she wanted the money Carlito had in his wallet. Irene said, "Okay, okay." Speaking in Tagalog, Irene tried to warn Carlito Jr. but Strange told her to "shut up" and speak English.

Carmen heard Irene say, "Okay, okay," and looked to see who had arrived. She saw Strange holding Irene and holding a gun to Irene's head. Carmen ran to the kitchen

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[2] We refer to the victims by their first names to avoid confusion. We intend no disrespect.

and told her husband "'Run, run. There's a robber with a gun.'" Carlito ran out the back door and he hid behind a camper parked in front of the neighbor's house across the street. A few minutes later the neighbor drove up and Carlito asked her to call 911.

Carmen intended to follow her husband out of the house but Strange saw her, asked Carmen where she thought she was going, and pointed the gun at her. Strange asked, "'Where's the money? Where's the money?'" Carmen said she did not have the money. Strange asked her where her husband was and Carmen told Strange that he was outside. Strange grabbed Carmen by the arm and then dragged or pushed Carmen and Irene through the house to the back door. As they passed the stereo Carmen pushed Carlito's wallet and it fell to the floor behind the stereo.

Strange herded Carmen and Irene out the back door and through the backyard to an area near the garage. Irene called out to Carlito several times. Strange released Irene and shifted her attention to Carmen. She held Carmen's arm and kept her gun trained on her as she led Carmen through the gate and down the driveway toward the street. Carmen saw Carlito standing across the street and told Strange, "'My husband is there.'" Strange directed Carmen to call Carlito and he joined them on the sidewalk. Strange asked repeatedly, "'Where's the money? Where's the money?'" Carlito said he did not have the money and showed Strange that he did not have his wallet in his pocket.

As Irene stood by the driveway Carlito Jr. came up behind her, tapped her on the arm, handed her a telephone and asked her to continue talking to the 911 operator.[3] Carlito Jr. retrieved his .38 caliber snub-nosed revolver from the bathroom, went back outside, moved his parents out of the way and stood between them and Strange. Holding his gun behind his back Carlito Jr. said to Strange, "'Man, put the gun down. What is going on[?] What do you need or want[?]'" He tried to grab the gun from Strange's hand but he failed as she jerked her hand out of the way. Carlito Jr. pulled his gun out, announced that he was a police officer and ordered Strange to put her gun down. Their

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[3] In all, 911 operators received four calls reporting the incident.

two guns were pointed at each other and Strange pulled the trigger. Her gun clicked twice in rapid succession but did not fire. Strange ran off, Carlito Jr. gave chase and tackled Strange three houses away. Carmen and Carlito followed and assisted by retrieving Strange's gun from where it fell on the grass and by holding her arms and legs down until law enforcement officers arrived.

The police arrested Strange and removed her gun from the scene. Her firearm was a Ruger nine millimeter semiautomatic pistol. There were no bullets in the chamber but there were live rounds in the magazine. Officers later test fired the weapon and determined that it was operable. An officer opined that the gun had not fired because the slide had not been pulled back in order to place a bullet in the chamber.

On arrest, Strange admitted that she had watched an elderly couple win a jackpot at a casino and had followed them home because she had a gambling problem and needed money. Strange told the officer, "'Oh, my God. What made me do something so stupid. . . . I thought about turning around and going home but I didn't.'"

Defense Evidence

Strange had purchased the gun in Dallas, Texas, where she had lived until she moved to California four years ago. At the time of the incident Strange was 42 years old, engaged to be married, and employed full time at a large office machine company, earning a base salary of $56,000 a year plus commissions. At her fiancé's suggestion, Strange kept her gun in the car on nights that she went out alone.

Strange had a gambling addiction which had become progressively worse over the years. On Saturday, September 23, 2006, while at the San Manuel Casino she gambled until she ran out of money and could no longer access funds using her ATM card. While at the casino Strange noticed that Carlito had won a jackpot on a Keno machine. She watched as Carlito placed his winnings into his wallet. She kept her eye on Carlito and Carmen and then followed them home. She parked her car around the corner, put her gun in her pocket and walked to the Aguilars' house.

Strange described her actions when Carlito Jr. announced that he was a police officer and pointed his gun at her. Strange testified that she raised her hands and pulled the trigger twice while pointing the gun in the air. She said that she told Carlito Jr. that she was not trying to hurt anyone and that she just wanted the money. Strange testified that she knew her gun would not fire. She had been taught how to fire the weapon and knew she had to pull the side back to chamber a round before the gun would fire. Strange explained that she had held her hands up and "clicked" the trigger to show Carlito Jr. that the weapon would not fire.

Procedural History

An amended information charged Strange with the attempted murder of Carlito Jr. (§§ 664/187, subd. (a) – count 1), kidnapping to commit robbery (§ 209, subd. (b)(1) – Irene, count 2, Carmen, count 3), attempted home invasion robbery (§§ 664/211 – Carlito, count 4, Irene, count 6, Carmen, count 7), burglary (§ 459 – count 5), and assault with a semiautomatic firearm (§ 245, subd, (b) – Carlito Jr., count 8). The information alleged that Strange personally used a firearm in the commission of the offenses. (§§ 12022.53, subd. (b) & 12022.5, subd. (a).)

The jury found Strange not guilty of attempted murder but guilty of the lesser, but not included, offense of assault with a semiautomatic firearm. The jury convicted Strange of the remaining charges and found true the allegations that she had personally used a firearm in the commission of the offenses.

The court sentenced Strange to two life terms plus 22 years. She appeals from the judgment of conviction.

DISCUSSION

SUFFICIENCY OF THE EVIDENCE OF AGGRAVATED KIDNAPPING

Strange contends insufficient evidence supports her convictions for kidnapping Irene and Carmen to commit robbery. She argues the movement, especially in Irene's case, was minimal, the movement from inside the residence to the public street decreased, rather than increased the risk of harm, and in any case, the movement was incidental to

the attempted robbery. We disagree with respect to kidnapping Carmen but agree that insufficient evidence supports the conviction involving Irene.

The test on appeal for determining if substantial evidence supports a conviction is whether "'a reasonable trier of fact could have found the prosecution sustained its burden of proving the defendant guilty beyond a reasonable doubt.'" (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) In making this determination, we "'must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.'" (*Ibid*.)" (*People v. Rayford* (1994) 9 Cal.4th 1, 23.)

Elements of Aggravated Kidnapping

Kidnapping for robbery, or aggravated kidnapping, requires movement of the victim that is not incidental to the commission of the robbery, and which increases the risk of harm over and above that necessarily present in the crime of robbery itself. (§ 209, subd. (b); *People v. Daniels* (1969) 71 Cal.2d 1119, 1139; *In re Earley* (1975) 14 Cal.3d 122, 127-128.)

"As for the first prong, or whether the movement is merely incidental to the crime of robbery, the jury considers the 'scope and nature' of the movement. (*People v. Daniels*, *supra*, 71 Cal.2d at p. 1131, fn. 5.) This includes the actual distance a victim is moved. However, . . . there is no minimum number of feet a defendant must move a victim in order to satisfy the first prong. (*People v. Daniels*, *supra*, 71 Cal.2d at p. 1128 [to define the required movement 'in terms of a specific number of inches or feet or miles would be open to a charge of arbitrariness'].)

"In addition, [the Supreme Court has] since *Daniels*, *supra*, analyzed the question of whether the movement was incidental to the commission of the underlying crime by considering the context of the environment in which the movement occurred. (*People v. Daniels*, *supra*, 71 Cal.2d at pp. 1131, fn. 5, 1140; *In re Crumpton* (1973) 9 Cal.3d 463, 466.) Thus, in *Daniels*, the defendants, 'in the course of robbing and raping three women in their own homes, forced them to move about their rooms for distances of 18 feet, 5 or

6 feet, and 30 feet respectively.' (*People v. Daniels*, *supra*, 71 Cal.2d at p. 1126.) [The Supreme Court] held that these brief movements were merely incidental to the commission of robbery. (*Id*. at p. 1140.) [The Court] observed, "Indeed, when in the course of a robbery a defendant does no more than move his victim around inside the premises in which he finds him—whether it be a residence, as here, or a place of business or other enclosure—his conduct generally will not be deemed to constitute the offense proscribed by section 209. . . .' [Citation.]

" . . .

"The second prong of the *Daniels* test refers to whether the movement subjects the victim to [an] increase in risk of harm above and beyond that inherent in robbery. (*In re Earley*, *supra*, 14 Cal.3d at p. 131; *People v. Lara* (1974) 12 Cal.3d 903, 908, & fn. 4.) This includes consideration of such factors as the decreased likelihood of detection, the danger inherent in a victim's foreseeable attempts to escape, and the attacker's enhanced opportunity to commit additional crimes. (See, e.g., *People v. Lara*, *supra*, 12 Cal.3d at p. 908 & fn. 4 [examples of such risk of harm 'include not only desperate attempts by the victim to extricate himself but also unforeseen intervention by third parties']; *In re Earley*, *supra*, 14 Cal.3d at p. 132 ['asportation gave rise to dangers, not inherent in robbery, that an auto accident might occur or that the victim might attempt to escape from the moving car or be pushed therefrom by [defendant]'); . . .].) The fact that these dangers do not in fact materialize does not, of course, mean that the risk of harm was not increased. (*In re Earley*, *supra*, 14 Cal.3d at p. 132; *People v. Lara*, *supra*, 12 Cal.3d at p. 908.)" (*People v. Rayford*, *supra*, 9 Cal.4th at pp. 12-14.)

Kidnapping to Commit Robbery—Carmen Movement

The evidence showed that Strange forcibly moved Irene and Carmen from inside the front of the house, through the rooms of the house, out the backdoor, across the backyard and past the garage to the driveway where Strange relinquished control of Irene. Strange, however, continued to drag Carmen by her arm and, at gunpoint, down the

driveway and onto the sidewalk in front of the house. Although the record does not disclose the precise distance that Carmen was moved, reasonable jurors could have found the movement substantial. The movement was neither momentary nor brief and Carmen was not merely moved around inside the premises where Strange found her. The movement involved changes in the context of Carmen's environment from various rooms inside the residence, to the backyard and driveway and ultimately onto a public street. In viewing the totality of these circumstances jurors could reasonably conclude that the distance Carmen was moved was substantial, more than "brief "or "trivial," and thus beyond that merely incidental to the attempted robbery. (*People v. Dominguez* (2006) 39 Cal.4th 1141, 1153 [brief or trivial movements in "standstill" robberies are insufficient for aggravated kidnapping].)

Accordingly, appellate cases which have held that movement of a victim solely inside a residence was merely incidental to the robbery are distinguishable. (E.g., *People v. Killean* (1971) 4 Cal.3d 423, 424 [movement across the threshold and through various rooms of an apartment in search of valuables was insufficient to sustain a conviction for aggravated kidnapping].) Also distinguishable are decisions holding that movement confined to the premises of a service station was merely incidental to the robbery of employees of the retail business establishment. (*In re Crumpton* (1973) 9 Cal.3d 463, 466-467 [victim forcibly moved 20 to 30 feet behind a truck parked on the service station premises was merely incidental to the robbery]; *People v. Williams* (1970) 2 Cal.3d 894, 899-900 [there was insufficient evidence to establish aggravated kidnapping because movement around a service station and its adjacent outdoor area was analogous to movement within a place of business or other enclosure].)

Moreover, the circumstances lend themselves to the reasonable conclusion that moving Carmen from inside the house to the backyard, across the backyard and garage, through the gate and down the driveway to the sidewalk were not integral parts of the attempted robbery. Although these movements were motivated by Strange's desire to find the wallet containing the money she wanted to steal, the movements were not

incidental to the commission of the attempted robbery because Strange did not need to take Carmen outside the house in order to commit the robbery. To hold, as Strange suggests, that the movement was merely incidental to the attempted robbery because it was necessary to find Carlito whom she believed had the money, would lead to the conclusion that so long as a robber's purpose was to get some property such movement, no matter the distance, would not constitute aggravated kidnapping. Our Supreme Court, however, has held to the contrary. (See *In re Earley*, *supra*, 14 Cal.3d at p. 130 & fn. 11 [where movement is substantial, it is not merely incidental to the commission of the robbery, even though it may have been solely to facilitate commission of the robbery].)

Risk of Harm

Strange contends the movement in this case had the effect of decreasing, rather than increasing, the risk of harm to the victims. Unquestionably, forcibly moving Carmen outdoors and into a public area increased the possibility of detection in this case. (Cf. *People v. Dominguez*, *supra*, 39 Cal.4th at p. 1153 [the movement changed the victim's environment from a relatively open area alongside the road to a place significantly more secluded, substantially decreasing the possibility of detection, escape or rescue].) Here the crimes occurred in broad daylight, during the noon hour, and on a weekend day when neighbors were more likely to be home to witness the incident. Indeed, police apparently received four separate calls to 911 reporting that a woman was holding Carmen at gunpoint. These facts, as Strange points out, militate against a finding that the movement increased the risk of harm.

There were other facts in the "totality of the circumstances" (*People v. Dominguez*, *supra*, 39 Cal.4th at p. 1152), however, from which jurors could reasonably conclude that the movement increased the risk of harm to Carmen. Strange forcibly moved Carmen through the house, out the back door, and into the backyard and beyond, at gunpoint. Her use of a gun was sufficient to establish the risk of harm element for aggravated kidnapping. "The 'risk of harm' test is satisfied when the victim is forced to travel a substantial distance under the threat of imminent injury by a deadly weapon.

[Citation.]" (*In re Earley*, *supra*, 14 Cal.3d at p. 131.) When a deadly weapon is involved, "[i]t takes but little imagination to envision the kind of violent events whose likelihood of occurrence is great . . . . Ready examples include not only desperate attempts by the victim to extricate [herself] but also unforeseen intervention by third parties." (*People v. Lara* (1974) 12 Cal.3d 903, 908, fn. 4.) Taking Carmen outside increased the risk that she might try to escape to a neighbors' house, with the inherent danger that she would be shot and killed. That the potential for serious bodily injury did not actually occur during the movement is immaterial. (*Id*. at p. 908.)

Kidnapping to Commit Robbery – Irene

The movement involving Irene was qualitatively different from and substantially less than that involving Carmen. Strange forced Irene at gunpoint through the house, out the backdoor and into the backyard. Strange, however, abandoned Irene inside the gate crossing the driveway. Although the record does not specify the exact distance that Strange moved Irene, it appears from the photographs that the distance was not great and, in particular, that the movement between the backdoor and the gate was only a few feet. Because Strange only moved Irene through a small house and only a short distance within its outdoor premises, the situation is analogous to the cases where victims are moved inside the environs of a gas station. Such movement was found inadequate for aggravated kidnapping in both *In re Crumpton*, *supra*, 9 Cal.3d 463, 466-467 and *People v. Williams*, *supra*, 2 Cal.3d 894, 899-900. Likewise, it is inadequate in this case.

ATTEMPTED ROBBERY OF IRENE

Strange contends the conviction in count 6 for the attempted home invasion robbery of Irene must be reversed because as a visitor in the home she did not have actual or constructive possession of Carmen and Carlito's money. Her argument has merit.

In *People v. Nguyen* (2000) 24 Cal.4th 756 armed robbers entered a business while employees were celebrating a birthday in the lunchroom. Also present was a husband of one of the employees. The robbers ordered everyone to lie face down on the floor and

then bound the victims' arms and legs. The robbers took approximately $400,000 worth of computer modules and memory chips from the business and fled. (*Id*. at p. 758.) The *Nguyen* court began its analysis by noting that section 211 defining the crime of robbery "limits victims of robbery to those persons in either actual or constructive possession of the property taken." (*Id*. at p. 764.) Thus, the court concluded that the trial court erred in instructing the jury that the husband who was a visitor to the business where the robbery occurred could be a victim of the robbery based on the taking of the business's property, even though the visitor did not "'own, possess, [have] control of or even have the right to possess or control the property sought by the perpetrator.'" (*Id*. at p. 765.)

In the present case, Irene was a visitor at the Aguilars' residence when the attempted robbery occurred. As in *Nguyen*, there was no evidence that Irene possessed or controlled, or even had the right to possess or control, Carmen and Carlito's gambling winnings.[4] Also lacking was any evidence to suggest that she had constructive possession of Carmen and Carlito's money based on some "special relationship" with the owners of the property which would have given her some authority over, or the responsibility to protect, Carmen and Carlito's money on their behalf. (Cf. *People v. Scott* (2009) 45 Cal.4th 743, 750 ["any employee has, by virtue of his or her employment relationship with the employer, some implied authority, when on duty, to act on the employer's behalf to protect the employer's property when it is threatened during a robbery"].)

People v. DeFrance (2008) 167 Cal.App.4th 486, 497 and *People v. Gordon* (1982) 136 Cal.App.3d 519, 529, on which the Attorney General relies, are inapposite.

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4 Indeed, the jurors identified the problem when reviewing the instructions and evidence. They sent a note to the court inquiring: "May we have clarification: Related to count 6 for attempted home invasion in the presence of Irene Velasco, must Irene Velasco have to have had some form of possession of that which the robber seeks in order to constitute attempted home invasion robbery?" Because we reverse the attempted robbery conviction involving Irene, we need not address Strange's argument that the court erred in responding to the jury's question, and need not address her related argument that trial counsel rendered ineffective assistance by failing to object to the court's inadequate response.

Both *DeFrance* and *Gordon* involved the taking of property from sons' bedrooms in the parents' homes. The courts found that the parents constructively possessed their sons' personal items for purposes of robbery because the parents had the responsibility to protect goods belonging to their sons who resided with them in their homes. (*People v. DeFrance*, *supra*, 167 Cal.App.4th at p. 501; *People v. Gordon*, *supra*, 136 Cal.App.3d at pp. 528-529.) Here, no evidence showed that Irene had any responsibility to protect Carmen and Carlito's money.

Alternatively, the Attorney General apparently suggests that the evidence also supports a jury finding that Strange attempted to rob Irene because Strange demanded money from Irene. The record, however, shows that Strange never demanded money or any property from Irene. Strange only demanded the gambling winnings in Carlito's wallet. Irene testified that Strange asked only about the wallet and inquired, "'Where's the old man? Where's the old woman?'"

DUPLICATE CONVICTIONS FOR ASSAULT WITH A FIREARM

The evidence showed that after Carlito Jr. displayed his firearm and announced that he was a police officer Strange pointed her gun at him and the gun clicked twice in rapid succession. Based on this evidence Strange was charged with attempted murder in count 1 and with assault with a semiautomatic firearm in count 8. The jury found Strange not guilty of attempted murder as alleged in count 1 but guilty of the lesser, but not included, offense of assault with a semiautomatic firearm. (§ 245, subd. (b).) The jury also found Strange guilty of assault with a semiautomatic firearm (§ 245, subd. (b)) in count 8. Strange argues that she cannot be convicted of two separate counts of assault with a semiautomatic firearm because the acts of pointing the gun and pulling the trigger were part of a continuous course of conduct warranting but a single conviction. Her argument has merit.

A defendant may be convicted of two separate offenses arising out of the same transaction when each offense is stated in a separate count, the elements of the two offenses are different, and one offense is not included within the other. (*People v. Craig*

(1941) 17 Cal.2d 453, 457; see also *People v. Pearson* (1986) 42 Cal.3d 351, 355 [multiple convictions may not be based on necessarily included offenses]; *People v. Cole* (1982) 31 Cal.3d 568, 582 [conviction for grand theft reversed because it was a lesser, necessarily included offense of the crime of robbery of which the defendant was also convicted].)

Here one of the assaults was a charged offense and the other was submitted to the jury as a lesser offense of the attempted murder charge. The elements of the two offenses for assault with a semiautomatic firearm were identical as they were the same offense. Both convictions were based on the same transaction—the nearly simultaneous acts of pointing and firing a weapon at a single victim. The evidence shows that this was an indivisible course of conduct against the same victim, with a single intent and objective. Thus, analogous to the ban on multiple convictions for a greater and lesser included offense, only one conviction for assault with a semiautomatic firearm was permissible. (Cf. *People v. Reed* (2006) 38 Cal.4th 1224, 1229 ["In deciding whether multiple conviction is proper, a court should consider only the statutory elements"]; *People v. Pearson*, *supra*, 42 Cal.3d at p. 355 [multiple convictions may not be based on necessarily included offenses]; *People v. Rouser* (1997) 59 Cal.App.4th 1065, 1073 [the crime of possession of controlled substances cannot be fragmented into multiple offenses when more than one type of drug is possessed].)

The Attorney General concedes that Strange correctly characterizes her actions as a continuous course of conduct against a single victim. He nevertheless argues that although multiple punishments for the identical act may be improper (§ 654),[5] multiple convictions are not. The decisions on which he relies, *People v. Trotter* (1992) 7 Cal.App.4th 363 and *People v. Nubla* (1999) 74 Cal.App.4th 719, are not on point. Both

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[5] Section 654, subdivision (a) provides, "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. . . ."

decisions involved the propriety of multiple punishments, not multiple convictions. The decisions are also distinguishable in that in each the evidence showed that the defendants had multiple intents and objectives in pursuing their course of conduct. In *Trotter*, the defendant, while driving, turned around, pointed, and fired his weapon at a pursuing police officer. The defendant resumed driving and a minute later turned around and fired another round. A few moments later, the defendant fired a third round. The court found that punishment for each assault was proper, concluding "this was not a case where only one volitional act gave rise to multiple offenses. Each shot required a separate trigger pull. All three assaults were volitional and calculated, and were separated by periods of time during which reflection was possible. None was spontaneous or uncontrollable." (*People v. Trotter*, *supra*, 7 Cal.App.4th at p. 368.) Similarly in *Nubla*, the appellate court found that the trial court did not err in finding that the defendant's acts of pushing his wife onto the bed and placing the gun against her head were separate from his later acts of turning her over and placing the gun into her mouth. The appellate court accordingly found that separate sentences for his convictions for assault with a deadly weapon and corporal injury to a spouse were proper. (*People v. Nubla*, *supra*, 74 Cal.App.4th at pp. 730-731.) These decisions are inapposite in this case which instead concerns the propriety of two identical convictions for the same acts committed with a single intent and objective during an indivisible course of conduct.[6]

MULTIPLE PUNISHMENT FOR THE ATTEMPTED ROBBERY OF CARMEN

The court imposed sentence for kidnapping Carmen to commit robbery in count 3 and also imposed sentence on the attempted robbery of Carmen in count 7. Strange argues that under section 654 the punishment imposed on the conviction for kidnapping Carmen to commit robbery should have been stayed because kidnapping Carmen to

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6 The court selected the assault with a semiautomatic firearm conviction in count 8 as the base term when calculating Strange's determinate term and stayed punishment on the assault conviction in count 1. We will thus reverse the duplicative assault conviction in count 1.

commit robbery and the attempted robbery of Carmen were committed pursuant to the single intent and objective of taking Carmen and Carlito's gambling winnings.

The Attorney General concedes that section 654 allows punishment for only the attempted robbery or the kidnapping to commit robbery of the same victim but not both. We agree. (See *People v. Lewis* (2008) 43 Cal.4th 415, 519 [sentences for the robbery convictions had to be stayed pursuant to section 654 because the kidnappings for robbery and the robberies of each victim were committed "pursuant to a single intent or objective," "that is, to rob the victims of their cars and/or cash from their bank accounts"]; *People v. Latimer* (1993) 5 Cal.4th 1203, 1216 [section 654 applied because the evidence did not suggest any intent or objective behind the kidnapping other than to facilitate the underlying crimes].)

Strange's argument that punishment on the kidnapping to commit robbery conviction should be stayed, however, is without merit. Section 654, subdivision (a) directs that when an act or omission is punishable in different ways by different provisions of law, the proper punishment is that which "provides for the longest potential term of imprisonment." In this case, the act which provides for the longest term of imprisonment is the kidnapping to commit robbery conviction which provides for a life term with the possibility of parole. Accordingly, the punishment imposed of eight months (plus three years and four months for the gun use enhancement) on the attempted robbery conviction in count 7 should have been stayed.

DISPOSITION

The judgment is modified to reverse the kidnapping to commit robbery conviction in count 2, to reverse the attempted robbery conviction in count 6, to reverse the duplicative conviction in count 1 for assault with a semiautomatic firearm, to vacate the sentences imposed for those three counts, and to stay punishment imposed on the attempted robbery conviction in count 7. As so modified, the judgment is affirmed. The court is directed to prepare a new abstract of judgment reflecting these changes and to forward it to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

MILLER, J.*

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* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.