Filed 12/23/16 P. v. Martinez CA2/3

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>FRANK REYNALDO MARTINEZ,<br><br>Defendant and Appellant. | B263067<br><br>(Los Angeles County Super. Ct. No. LA077972) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Gregory Dohi, Judge. Affirmed.

Alan S.Yockelson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Mary Sanchez and Andrew S. Pruitt, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Frank Reynaldo Martinez of petty theft (Pen. Code, § 490.2; count 1),[1] misdemeanor forgery (§ 475, subd. (b); count 2), driving or taking a vehicle without consent, a felony (Veh. Code, § 10851, subd. (a); count 3), and forgery of checks with a value in excess of $950, a felony (§ 475, subd. (a); count 4). Martinez argues on appeal that (1) his conviction for driving or taking a vehicle without consent should have been classified as a misdemeanor under section 490.2, rather than as a felony, (2) his conviction for violating section 475, subdivision (a), was improperly based on the aggregation of the stated values of the forged checks in his possession, and (3) there was no evidence he "falsely made the checks" in support of his section 475 convictions. We affirm.

***FACTUAL AND PROCEDURAL BACKGROUND***

Our summary of the relevant factual events is based on Martinez's commission of crimes involving three victims.

1. *Possession of Forged Checks*

On April 4, 2014, Manucheher Afari inadvertently left his briefcase outside his building. When he returned to retrieve the briefcase, it was gone. Inside the briefcase was a personal checkbook and checkbooks for Afari's companies, Viewpoint LLC and Warner Plaza LLC. The following month, an officer initiated a traffic stop on a car driven by Martinez. The car was impounded and was later searched by a detective. The detective found three sets of checks behind the driver's seat: (1) nine checks from Afari's personal account, which were fraudulently signed but did not specify an amount or a payee; (2) four

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[1] All further statutory references are to the Penal Code unless otherwise stated.

completed checks from Warner Plaza LLC's account in amounts ranging from $295–$865, and one incomplete check from the same account; and (3) four completed checks from Viewpoint LLC's account in amounts ranging from $380–$525.[2]

2. *Theft of a Bumper*

On May 21, 2014, at approximately 3:00 a.m., Spencer Smith exited his house and noticed the front bumper had been removed from his car, a gray Scion XB. He saw the same model of car parked down the street, and observed his bumper and license plate in the back of that car. He then saw Martinez get in that car and drive away.

3. *Unlawful Taking and Driving of a Vehicle*

On October 21, 2014, Sergio Fuentes reported that his 1995 Honda Civic was missing. On November 3, 2014, Martinez was arrested driving the car.

4. *Criminal Proceedings*

On December 1, 2014, an information was filed against Martinez, charging him with petty theft (§ 490.2) based on the taking of Smith's bumper, and unlawful driving or taking of a vehicle, a felony (Veh. Code, § 10851, subd. (a)), based on the taking of Fuentes's car. The information also charged Martinez with misdemeanor forgery (§ 475, subd. (b)), and forgery exceeding $950, a felony (§ 475, subd. (a)), based on his possession of forged checks. The misdemeanor forgery charge was based on Martinez's fraudulent possession of "blank"

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[2] The checks from the Viewpoint LLC account were all fraudulently signed and made payable to Martinez. The checks from the Warner Plaza account were all fraudulently signed; one was made payable to Martinez, one was blank, and three were made payable to "Kristin Johnson."

checks—checks that did not specify an amount or payee—and the felony forgery charge was based on Martinez's fraudulent possession of eight "forged" checks—checks that were signed and specified an amount and payee. The information further alleged Martinez had suffered one prior prison term within the meaning of section 667.5, subdivision (b). Martinez pled not guilty.

Prior to trial, Martinez moved under section 995 to set aside the Vehicle Code section 10851 charge on the ground that Proposition 47, the Safe Neighborhoods and Schools Act, had reduced the unlawful taking or driving of a vehicle to misdemeanor petty theft via section 490.2. The trial court denied the motion on the ground that section 490.2 does not apply to Vehicle Code section 10851.

During trial, Martinez moved under section 1118.1 for a judgment of acquittal as to the felony forgery charge on the ground that none of the forged checks exceeded the value of $950. Martinez argued that, under section 473, forgery is punishable as a misdemeanor unless the value of the forged instrument exceeds $950. The trial court denied the motion, concluding that under *People v. Carter* (1977) 75 Cal.App.3d 865, the fraudulent possession of multiple checks constitutes a single offense and, therefore, it was proper to aggregate the values of the checks at issue to determine whether the felony threshold had been met.

The jury found Martinez guilty on all counts. In a bifurcated proceeding, Martinez admitted the prior prison term allegation. The trial court sentenced Martinez to a prison term of four years, consisting of the upper term of three years for the violation of Vehicle Code section 10851, plus one year for the prison prior pursuant to section 667.5, subdivision (b). The

sentences on the other charges were imposed concurrently. Martinez timely appealed.

## *CONTENTIONS*

Martinez contends that (1) section 490.2, which reduced the penalty for "obtaining any property by theft where the value of the . . . property taken does not exceed . . . $950," applies to his conviction under Vehicle Code section 10851, (2) his conviction for violating section 475, subdivision (a) was improperly based on the aggregation of the stated values of the forged checks in his possession, and (3) there was no evidence he "falsely made the checks," as required to support his section 475 convictions. Respondent contends that the February 11, 2015 minute order should be modified to correct a clerical error.

## *DISCUSSION*

1. *Violation of Vehicle Code Section 10851*

Martinez contends that his Vehicle Code section 10851 conviction qualifies as a misdemeanor under section 490.2, enacted by Proposition 47, because the value of the vehicle involved did not exceed $950. In essence, Martinez is arguing there is insufficient evidence supporting his felony conviction under Vehicle Code section 10851 because an implied element of that conviction is that the vehicle taken or driven is worth more than $950. We conclude that section 490.2 does not apply to Vehicle Code section 10851, and therefore Martinez was properly convicted of a felony violation of Vehicle Code section 10851.[3]

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[3] Because we conclude that section 490.2 does not apply to Vehicle Code section 10851, we do not address respondent's argument that Martinez's conviction was for joyriding, not vehicle theft.

a. *Proposition 47 and section 490.2*

Proposition 47 amended and enacted various provisions of the Penal and Health and Safety Codes to reduce certain drug and theft offenses to misdemeanors, unless committed by ineligible defendants. (*Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, 1222; *People v. Diaz* (2015) 238 Cal.App.4th 1323, 1327-1328; *People v. Shabazz* (2015) 237 Cal.App.4th 303, 308.) When an eligible defendant is convicted, after Proposition 47's effective date, of one of the offenses defined by Proposition 47 as a misdemeanor, he or she may only be convicted of a misdemeanor. (*People v. Shabazz,* at p. 309.) Proposition 47 also enacted section 1170.18, which creates a procedure whereby a defendant who has suffered a felony conviction of one of the reclassified crimes can petition to have it redesignated a misdemeanor. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879.)

One of the mechanisms by which Proposition 47 reduced theft crimes to misdemeanors was enactment of section 490.2. It provides in pertinent part: "Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290." (§ 490.2, subd. (a).)

b. *Theft and Vehicle Code section 10851*

Section 484 (which predates Proposition 47 and was not amended by it) defines theft. In relevant part it provides: "Every person who shall feloniously steal, *take,* carry, lead, or drive away the *personal property of another***,** or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, *is guilty of theft*." (§ 484, subd. (a), italics added.) An element of the crime of theft is the intent to permanently deprive the owner of the property. (*People v. Bacon* (2010) 50 Cal.4th 1082, 1117; *In re Jesus O.* (2007) 40 Cal.4th 859, 867; *People v. Avery* (2002) 27 Cal.4th 49, 52.)[4]

Vehicle Code section 10851, subdivision (a), provides: "Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon

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[4] The intent to deprive an owner of the main value of his or her property is the equivalent of the intent to permanently deprive. (*People v. Avery, supra,* 27 Cal.4th at p. 57.)

conviction thereof, shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code or by a fine of not more than five thousand dollars ($5,000), or by both the fine and imprisonment." Other subdivisions of the statute address, inter alia, the theft or unauthorized driving of specific types of vehicles and punishment for recidivists. (Veh. Code, § 10851, subds. (b), (e).)

Vehicle Code section 10851 " 'proscribes a wide range of conduct.' " (*People v. Garza* (2005) 35 Cal.4th 866, 876 (*Garza*).) There "are two ways of violating section 10851: the defendant can either 'drive' or 'take' the vehicle." (*People v. Smith* (2013) 57 Cal.4th 232, 242.) Thus, a "person can violate section 10851(a) 'either by taking a vehicle with the intent to steal it or by driving it with the intent only to temporarily deprive its owner of possession (i.e., joyriding).' " (*Garza, supra,* at p. 876.) In *Garza*, our Supreme Court held, prior to Proposition 47's passage and in a different context, that "[u]nlawfully *taking* a vehicle with the intent to permanently deprive the owner of possession is a form of theft, and the taking may be accomplished by driving the vehicle away. For this reason, a defendant convicted under section 10851(a) of unlawfully *taking* a vehicle with the intent to permanently deprive the owner of possession has suffered a theft conviction and may not also be convicted under section 496(a) of receiving the same vehicle as stolen property. On the other hand, unlawful *driving* of a vehicle is not a form of theft when the driving occurs or continues after the theft is complete (for convenience, we will refer to this as post-theft driving). Therefore, a conviction under section 10851(a) for post-theft driving is not a theft conviction and does not preclude a

conviction under section 496(a) for receiving the same vehicle as stolen property." (*Id.* at p. 871.)

c. *Section 490.2 does not apply to Vehicle Code section 10851*

The question before us is whether section 490.2 ever applies to Vehicle Code section 10851, and, if so, whether it applies only to the "theft" version or also to the "joyriding/post-theft driving" version. The issue of whether Proposition 47 applies to violations of Vehicle Code section 10851 is pending before the California Supreme Court. (See *People v. Page* (2015) 241 Cal.App.4th 714, review granted Jan. 27, 2016, S230793; *People v. Solis* (2016) 245 Cal.App.4th 1099, review granted June 8, 2016, S234150.) We conclude section 490.2 does not apply to Vehicle Code section 10851.

When interpreting a voter initiative, our primary purpose is to ascertain and effectuate the voters' intent. (*People v. Park* (2013) 56 Cal.4th 782, 796; *People v. Briceno* (2004) 34 Cal.4th 451, 459; *People v. Shabazz, supra,* 237 Cal.App.4th at p. 313.) We apply the same principles that govern statutory construction. Thus, we look first to the language of the statute, giving the words their ordinary meaning. (*People v. Park*, at p. 796; *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571.) The plain meaning of the statutory language controls, unless it would lead to absurd results the electorate could not have intended. (*People v. Birkett* (1999) 21 Cal.4th 226, 231; *People v. Brown* (2014) 230 Cal.App.4th 1502, 1508-1509.) The statutory language must be construed in the context of the statute as a whole and the overall statutory scheme. (*People v. Briceno*, at p. 459; *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 901.) When the statutory language is ambiguous, we refer to other

indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet. (*People v. Superior Court* (*Pearson*), at p. 571; *People v. Shabazz,* at p. 313.) We review questions of statutory interpretation de novo. (*People v. Prunty* (2015) 62 Cal.4th 59, 71; *People v. Sherow, supra,* 239 Cal.App.4th at p. 878.)

At first glance, it appears section 490.2, subdivision (a)'s language—"obtaining any property by theft"—applies when a defendant takes a vehicle worth $950 or less with the intent to permanently deprive the owner of possession. A vehicle is clearly personal property. Under section 484, taking the personal property of another with the intent to permanently deprive the owner of it is theft. (See *People v. Chun* (2009) 45 Cal.4th 1172, 1183-1184; *In re Jesus O., supra,* 40 Cal.4th at p. 867.) Indeed, our Supreme Court has stated that a defendant convicted under Vehicle Code section 10851 of unlawfully taking a vehicle with the intent to permanently deprive the owner of possession "has suffered a theft conviction." (*Garza, supra,* 35 Cal.4th at p. 871.)

But several factors militate against the conclusion section 490.2 applies to Vehicle Code section 10851. Proposition 47 did not directly amend Vehicle Code section 10851, but left its provisions intact. Nor does section 490.2 mention Vehicle Code section 10851; in pertinent part, it expressly references only the grand theft statute, section 487. This omission is significant because, unlike statutes that simply prohibit theft, Vehicle Code section 10851 is much broader, applying to defendants who have committed not theft but joyriding ("post-theft driving"). Thus, section 490.2 *cannot* apply to all violations of Vehicle Code section 10851. Proposition 47's resentencing provision, section 1170.18, likewise fails to include Vehicle Code section 10851 as

one of the enumerated offenses eligible for resentencing. Given the foregoing, application of Proposition 47 to Vehicle Code section 10851 is unclear at best.

Moreover, it is settled that a specific statute prevails over a general statute on the same subject. (*People v. Ahmed* (2011) 53 Cal.4th 156, 163; *People v. Betts* (2005) 34 Cal.4th 1039, 1058 [if general and specific statutes dealing with the same subject are inconsistent, the specific prevails over the general]; *Velasquez v. Superior Court* (2014) 227 Cal.App.4th 1471, 1475; Code Civ. Proc., § 1859.) Here, Vehicle Code section 10851 is the more specific statute. Subdivision (a) provides that violation of the statute is generally a "wobbler," that is, the offense may be punished alternatively as a felony or a misdemeanor.[5] (See *People v. Park*, *supra*, 56 Cal.4th at p. 789 & fn. 4; *People v. Solis, supra,* 245 Cal.App.4th at p. 1117, review granted.) Vehicle Code section 10851, subdivision (b) makes the offense a felony and

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[5] Pursuant to section 17, a "felony is a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under the provisions of subdivision (h) of Section 1170. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions." (§ 17, subd. (a); *People v. Park, supra,* 56 Cal.4th at p. 789.) "There is, however, a special class of crimes involving conduct that varies widely in its level of seriousness. Such crimes, commonly referred to as 'wobbler[s]' [citation], are chargeable or, in the discretion of the court, punishable as either a felony *or* a misdemeanor; that is, they are punishable either by a term in state prison or by imprisonment in county jail and/or by a fine." (*People v. Park*, at p. 789; *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1094; § 17, subd. (b).)

prescribes specific terms when a defendant takes or unlawfully drives specialized vehicles under certain circumstances, i.e., ambulances, distinctively marked law enforcement or fire department vehicles on emergency calls, and vehicles that have been modified for the use of a disabled veteran or any other disabled person and display a distinguishing placard or plate. Subdivision (e) provides that recidivists are punishable as set forth in section 666.5. Section 666.5 specifies that a person who, having been previously convicted of a felony violation of Vehicle Code section 10851 or other statutes, and is "subsequently convicted of *any of these offenses*" shall be punished as a felon. (§ 666.5, subd. (a), italics added.) The plain language of section 666.5 thus requires that both the prior and the current crime must be felonies in order for section 666.5 to apply.

Section 490.2 conflicts with these provisions. Applying section 490.2 to Vehicle Code section 10851 would upset this careful scheme. If section 490.2 applied, theft of a vehicle would no longer be a "wobbler" if the vehicle's value did not exceed $950. A defendant who stole one of the vehicles enumerated in subdivision (b) of Vehicle Code section 10851, if valued at $950 or less, could be sentenced only as a misdemeanant, rather than to the two, three, or four year term specified.[6] And, a recidivist who stole a vehicle worth less than $950 could not be punished for his or her recidivism, since under section 666.5 both the current and prior crimes must be felonies.

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[6] We acknowledge it is unlikely, as a practical matter, that a police car, fire vehicle, or ambulance being used on an emergency call would ever fall beneath the $950 threshold. The same is not necessarily true in regard to a vehicle modified for a disabled person.

Certainly, the electorate could have amended Vehicle Code section 10851 in this fashion had it chosen to do so. But the statutory language suggests otherwise. When the Legislature—or here, the voters—"intend[] for a statute to prevail over all contrary law, it typically signals this intent by using phrases like 'notwithstanding any other law' or 'notwithstanding other provisions of law.' [Citations.]" (*In re Greg F.* (2012) 55 Cal.4th 393, 406-407.) Here, the electorate included such "notwithstanding" language in regard to section 487 and statutes defining grand theft, but not to Vehicle Code section 10851. Section 490.2 provides that "Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft." Vehicle Code section 10851 does not define grand theft; it defines the offense of unlawfully driving or taking a vehicle. Had the electorate intended section 490.2 to apply to Vehicle Code section 10851, it could easily have drafted section 490.2 to read "notwithstanding Vehicle Code section 10851, Section 487, or any provision of law defining grand theft." That the provision approved by the voters did not include this or similar language suggests the statute was not intended to apply. " '[W]e may not properly interpret the measure in a way that the electorate did not contemplate: the voters should get what they enacted, not more and not less.' [Citation.]" (*People v. Park*, *supra*, 56 Cal.4th at p. 796.)

Furthermore, the language of a statute should not be given a literal meaning if doing so would result in absurd consequences that the Legislature, or in this case the electorate, could not have intended. (*People v. Leiva* (2013) 56 Cal.4th 498, 506; *People v.*

*Rodriguez* (2012) 55 Cal.4th 1125, 1131; *In re J. W.* (2002) 29 Cal.4th 200, 209-210; *People v. Toussain* (2015) 240 Cal.App.4th 974, 979; *In re Greg F., supra,* 55 Cal.4th at p. 410 [when interpreting a statute, "courts are obligated to 'adopt a common sense construction over one leading to mischief or absurdity' "].) Construing section 490.2 to apply to Vehicle Code section 10851 would lead to just such an absurd consequence. As noted, Vehicle Code section 10851 can be violated in two ways: taking a vehicle with the intent to *permanently* deprive the owner of possession; or driving the vehicle with the intent to *temporarily* deprive the owner of possession. (*Garza, supra,* 35 Cal.4th at p. 876 [a defendant can violate Veh. Code, § 10851, subd. (a) " 'either by taking a vehicle with the intent to steal it or by driving it with the intent only to temporarily deprive its owner of possession (i.e., joyriding)' "].) The former, but not the latter, amounts to theft. As *Garza* explained, post-theft driving or joyriding is "*not a form of theft.*" (*Garza,* at p. 871, italics added.) Thus, section 490.2 cannot apply to the "post-theft driving" method of violating Vehicle Code section 10851; a joyrider who is not the actual thief did not obtain the property by theft. Therefore, if section 490.2 applies to Vehicle Code section 10851, the result is that where the vehicle is worth $950 or less, the "theft" version of the crime becomes a misdemeanor, whereas the "joyriding" version remains a wobbler. So construed, the law would require that the defendant with the more culpable mental state (the intent to permanently deprive the owner of possession) be convicted of only a misdemeanor, while the defendant with the less culpable mental state (to temporarily deprive the owner of possession) could be convicted of a felony. In our view, this is an absurd result that the electorate did not intend. Nothing in the ballot

pamphlet suggests the voters were especially concerned about the activities of post-theft drivers, as opposed to auto thieves; nothing suggests they thought a thief who steals a low-value vehicle should be treated as a mere petty criminal, while a defendant who did not steal, but drives, the exact same vehicle should be treated as a felon.

For the foregoing reasons, we conclude section 490.2 does not apply to Vehicle Code section 10851, and the trial court did not err by declining Martinez's request to designate his offense a misdemeanor.

2. *The Aggregation of Check Values Under Section 475*

Martinez argues he was improperly convicted of felony forgery under section 475, subdivision (a) because his possession of eight forged checks[7] constituted eight "separate and distinct acts" of misdemeanor forgery. He further argues the court erred by aggregating the value of each check to meet the threshold of a felony offense under section 473. We conclude Martinez's conviction for felony forgery was properly based on a single act of possession of eight forged checks, and the stated values of those checks were properly aggregated in determining whether the $950 threshold set forth by section 473 had been exceeded.

Under section 473, which was amended by Proposition 47, forgery remains a wobbler offense where the value of the instrument is greater than $950. (§ 473, subd. (b).) Where the

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[7] This charge was based on Martinez's possession of eight completed checks: four drawn from the Viewpoint LLC account in the amounts of $450, $525, $480 and $380, and four drawn from the Warner Plaza LLC account in the amounts of $495, $723, $485 and $865.

value of the instrument is less than $950 and no exceptions apply, forgery is a misdemeanor. (§ 473, subd. (a).)

Martinez cites to *People v. Neder* (1971) 16 Cal.App.3d 846 (*Neder*) in support of his argument that his possession of forged checks constituted separate offenses.[8] In *Neder*, the defendant was convicted of three counts of forgery in violation of section 470 based on evidence that he made three separate purchases using a stolen credit card. (*Neder*, at pp. 849-850.) On appeal, the defendant argued that he committed only one crime because the three acts of forgery were part of a single plan to take goods from the store by forging credit card slips. (*Id.* at p. 850.) The court disagreed, reasoning that "we have three separate forgeries, each directed to the obtaining of different property and none playing a part in the accomplishment of the end of the others." (*Id.* at p. 854.)

*Neder* is distinguishable because it involved a prosecution for forgery under former section 470. Here, by contrast, Martinez was charged under section 475, subdivision (a)—"a possession statute" (*People v. Valenzuela* (2012) 205 Cal.App.4th 800, 806)—

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[8] The parties agree that the rule articulated in *People v. Bailey* (1961) 55 Cal.2d 514 does not apply here. (See *id.* at p. 519 ["Whether a series of wrongful acts constitutes a single offense or multiple offenses depends upon the facts of each case, and a defendant may be properly convicted [on] separate counts charging grand theft from the same person if the evidence shows that the offenses are separate and distinct and were not committed pursuant to one intention, one general impulse, and one plan."].) We also conclude that the *Bailey* rule, which addresses thefts committed under a "single plan," does not apply to Martinez's act of possession under section 475, subdivision (a). (*Bailey*, at p. 518.)

which provides that "[e]very person who *possesses or receives*, with the intent to pass or facilitate the passage or utterance of any forged, altered, or counterfeit items, or completed items contained in subdivision (d) of Section 470 with intent to defraud, knowing the same to be forged, altered, or counterfeit, is guilty of forgery." (§ 475, subd. (a), italics added.)

In *People v. Carter*, *supra*, 75 Cal.App.3d 865, the court held that possession of multiple checks with intent to defraud constituted a single offense under section 475. (*Carter*, at p. 872.) Likewise, in *People v. Morelos* (2008) 168 Cal.App.4th 758, the court held that the defendants were each guilty of only a single count of forgery under section 475 based on their possession of multiple checks drawn from multiple accounts with the intent to defraud. (*Morelos*, at pp. 763-764.) Here, as in *Carter* and *Morelos*, Martinez's possession of eight completed checks was properly considered a single offense under section 475 as opposed to multiple acts of forgery.

Martinez next argues that it was improper to aggregate the values of the forged checks he possessed in determining whether the $950 threshold of a felony offense set forth by section 473 had been exceeded. Section 473 provides that "any person who is guilty of forgery relating to a check . . . where the value of the check . . . does not exceed nine hundred fifty dollars ($950), shall be punishable by imprisonment in a county jail for not more than one year . . . ." (§ 473, subd. (b).) Martinez cites to *People v. Hoffman* (2015) 241 Cal.App.4th 1304 (*Hoffman*) for the court's holding that "section 473 does not authorize the trial court to aggregate check values." (*Id.* at p. 1310.)

The *Hoffman* court addressed the defendant's conviction of seven counts of forgery in violation of section 470. (*Hoffman*,

*supra*, 241 Cal.App.4th at p. 1307.) The court held that the check values *for each separate count* could not be aggregated in determining whether the $950 threshold set forth by section 473 had been exceeded. (*Hoffman*, at p. 1310.) Here, by contrast, Martinez was properly convicted of one count of violating section 475 based on his possession of eight checks. *Hoffman*'s conclusion that a court may not aggregate the values of checks at issue in different counts and for violations of a different statute does not apply here.

Furthermore, although section 473 refers to "check" in the singular, under section 7, words used in "the singular number include[] the plural." Accordingly, we read the phrase "value of the check" in section 473 to include multiple checks. (See *People v. Mutter* (2016) 1 Cal.App.5th 429, 436 [holding that possession of seven counterfeit $100 bills in violation of section 475, subdivision (a) was a misdemeanor because prosecution agreed the aggregated value of bills was less than $950].) Here, it is undisputed that the stated values of the eight checks at issue, when aggregated, exceed $950.[9] Therefore, Martinez was properly convicted of a felony under section 473.

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[9] We note that the issue of whether, for the purpose of the distinction between felony and misdemeanor forgery, the value of an uncashed forged check is determined based on the face value (or stated value) of the check or only the intrinsic value of the paper it is printed on is pending before the Supreme Court. (See *People v. Franco* (2016) 245 Cal.App.4th 679, review granted June 15, 2016, S233973.)

3. *Evidence in Support of Section 475 Violations*

Martinez contends he was improperly convicted of violating section 475, subdivisions (a) and (b) because there was "no evidence [he] falsely made the checks." In support of this argument he cites to *People v. Reisdorff* (1971) 17 Cal.App.3d 675 (*Reisdorff*) for the proposition that a violation of section 475 must be supported by evidence that the defendant "was responsible for" forging the checks.

*Reisdorff* does not apply here. In that case, the court held there was no evidence supporting the defendant's conviction of forgery in violation of section 470. (*Reisdorff*, *supra,* 17 Cal.App.3d at p. 679 ["there was no evidence that defendant himself falsely made the check which he uttered"].) "The crime of forgery [under section 470] . . . consists either in the false making or alteration of a document without authority or the uttering of such a document, knowing the same to be forged, with the intent to defraud. (Pen. Code, § 470.)" (*People v. Swope* (1969) 269 Cal.App.2d 140, 143.) Here, by contrast, Martinez was convicted of possession of checks, both incomplete and completed, with the intent to defraud in violation of section 475. Accordingly, *Reisdorff's* discussion of the elements of section 470 is inapplicable.

4. *Correction of February 11, 2015 Minute Order*

Respondent contends that the February 11, 2015 minute order should be modified to reflect that the conviction for petty theft was in violation of section 484, not section 490.2, because section 490.2 is not a substantive theft offense.

" 'Generally, a clerical error is one inadvertently made, while a judicial error is one made advertently in the exercise of judgment or discretion. [Citations.]' " (*People v. McGee* (1991)

232 Cal.App.3d 620, 624.) " 'An amendment that substantially modifies the original judgment or materially alters the rights of the parties, may not be made by the court under its authority to correct clerical error.' " (*Smith v. Superior Court* (1981) 115 Cal.App.3d 285, 290.)

Here, Martinez was charged with and convicted of petty theft in violation of section 490.2. Although respondent concedes "it appears [Martinez] should have been convicted of theft under section 484," there is no evidence the error here was inadvertently made. Accordingly, it is not within our authority to correct the error. (See *Smith v. Superior Court*, *supra*, 115 Cal.App.3d at p. 289 [judicial error " 'which occurs in the rendition of orders or judgments which are the fault of judicial discretion, as opposed to clerical error or inadvertence, may not be corrected except by statutory procedure.' "].)

## *DISPOSITION*

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EDMON, P. J.

We concur:

ALDRICH, J.

STRATTON, 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.