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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. ROLAND WINDSOR VINCENT, Defendant and Appellant.	B229075 (Los Angeles County Super. Ct. No. MA046289)

APPEAL from a judgment of the Superior Court of Los Angeles County. Bernie C. LaForteza, Judge. Affirmed as modified.

Johanna R. Pirko, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela Hamanaka, Assistant Attorney General, Scott A Taryle and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

Roland Vincent, a law school graduate with a long-inactive license to practice in Nevada (and no admission to the California Bar), agreed to assist acquaintances in California with their California legal problems, and took money from them for that purpose. A jury found him guilty of the unauthorized practice of law (Bus. & Prof. Code, § 6126, subd. (a)), of receiving money on false pretenses (theft) (Pen. Code, § 487, subd. (a)) from one of the acquaintances, and of petty theft with a prior (Pen. Code, § 666) from the other acquaintance.

Vincent challenges his convictions for theft and petty theft with a prior, contending primarily that by virtue of his inactive Nevada license his status as an attorney was not a false pretense. He argues also that under Penal Code section 654 he cannot be sentenced to both the unauthorized practice of law and receiving money under false pretenses because both those offenses were motivated by the same intent and objectives. He urges that the prosecution should not have been permitted to impeach his credibility with his prior misdemeanor convictions, and that his wife should not have been questioned about her use of various names. Finally, he contends that his theft conviction and sentence of three years in prison must be reduced to a misdemeanor based on a change in Penal Code section 487, subdivision (a) before his conviction became final.

We disagree with all his contentions except the need to reduce the count 1 conviction from a felony to a misdemeanor. We will otherwise affirm the convictions.

STATEMENT OF THE FACTS

Lisa Napier, a retired teacher, was involved in animal rescue. In the spring of 2007, she met appellant Roland Vincent during one of her monthly deliveries of animal food to the Equis Horse Ranch, an animal rescue facility in the Antelope Valley region of California. Vincent apparently worked on the ranch and lived there with his wife. During the course of their periodic conversations about animal rescue and other subjects during the summer of 2007, Vincent told Napier that he was a real estate attorney.

In the fall of 2007 and into the spring of 2008, Napier was having problems securing a loan modification for her home, which was then on her bank's preforeclosure list. Vincent agreed to help her with the problem and, in the spring of 2008, they met at a local café to discuss it. Napier agreed to pay Vincent $300 for his assistance, and she paid him $150 cash at the time. Vincent gave her a signed receipt, identifying the payment as "on account for legal services."

For the weeks following that meeting Napier had difficulty contacting Vincent. When she was finally able to reach him, Vincent said he had spoken with someone named "Tom" at Napier's lender's office, but he was unable to provide any further information or documentation with respect to the conversation. Napier then resolved the foreclosure problem herself by paying the lender.

In June 2008 Napier again sought Vincent's help, this time in connection with a loan repayment demand she had received from an individual lender to whom she owed about $2,500. Vincent drafted and typed a letter on her behalf, telling the lender that Napier did not then have the money but would repay him (as previously agreed) when she received a worker's compensation settlement that she expected in about August of that year. The letterhead identified the sender as "Roland Windsor Vincent, Attorney at Law," and was signed by Vincent as "Attorney at Law."[1] Vincent did not charge Napier for the letter.

In August 2008, Vincent and his wife moved from the Equis Ranch into a recreational trailer on Napier's property in Lake Los Angeles, in Los Angeles County. Vincent and his wife were forced to leave the Equis Ranch at the beginning of August, because the animal rescue ranch was being closed. Vincent told Napier that he and his wife had lost the place they had lived for three and one-half years, and that they intended to buy or rent a home. Napier was temporarily in a wheelchair following knee surgery in June 2008, and she needed assistance feeding and caring for the 15 to 30 dogs that lived

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[1] Vincent testified that he told Napier at the time that he was using a Las Vegas address on the letterhead in order to avoid holding himself out as a California attorney.

on her property. Napier agreed that Vincent and his wife could live in the trailer on her property for perhaps up to a few months, while they located a place to live, in exchange for help caring for the dogs and payment for any increase in Napier's electric bill resulting from their use of the trailer. The arrangement was to be short term both because the trailer's plumbing was not functioning, and because Napier planned to move from the property and to rent it out.[2]

In late August 2008, Napier asked Vincent to help her with another legal issue, obtaining a reconveyance of title after she had completed paying a purchase-money loan on property she had bought in Littlerock, California. Vincent said he would handle the matter as a favor, although the normal fee would be about $500. He wrote a letter to the seller, identifying himself as Napier's attorney and threatening litigation for damages.[3] Napier did not send the letter, however, feeling it was too strong in light of her good relationship with the lender. She instead contacted a professional reconveyance company, to which she paid $65 and received the reconveyance.[4]

Within a few months, Napier had become upset with the arrangement. Vincent was only sporadically helping with the dogs; he had right away obtained a cable connection without seeking Napier's consent; he had taken over a shed on the property without her permission, converting it for his use as an office; and after one month he had stopped contributing for his electricity usage. Over the next few months she also learned from the California Bar Association that Vincent was not licensed to practice law in California, and that the trailer and its furnishings were sustaining substantial damage from the half-dozen tropical birds the Vincents kept there.

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[2] Napier testified that fixing the plumbing was not part of the arrangement; the Vincents had declined her offer to let them stay six months if they repaired the plumbing. Vincent and his wife testified, to the contrary, that Napier had promised to fix the plumbing, but did not.

[3] Vincent testified that although he used a California address on the letter, at the bottom of the letter he did not identify himself as an attorney at law.

[4] Sometime in the fall of 2008, Napier also saw Vincent's "Myspace" internet page, on which Vincent identified himself as an attorney.

In November 2008, the Vincents refused Napier's request that they leave. In mid-November she served the Vincents with a formal notice to vacate, which they disregarded. She argued with them in December 2008, and in January 2009, she angrily threw a box of Christmas ornaments to the ground (Vincent said she threw it, as well as other objects, at him). In January 2009 Napier hired a lawyer; the Vincents were evicted from her property at the end of March 2009.

In the meantime, beginning in the fall of 2007, Napier referred Thomas Holtman, a friend, to Vincent for assistance in obtaining a loan modification. Holtman's house, in which he had substantial equity, was threatened with foreclosure due to his lender's bankruptcy. At a meeting in September 2007 at a café in the Antelope Valley, Vincent told Holtman that he was a real estate attorney specializing in real estate foreclosures. Holtman paid Vincent $150 in cash for help obtaining a loan modification.

In April 2008, Holtman had the impression from Vincent that "something was being done" about his property, and he provided Vincent with a replacement copy of a document he had recently sent to Vincent by FedEx, that needed to be filled out and returned with respect to his bankrupt lender. When Vincent asked for more money, Holtman gave him an additional $400. At Vincent's direction he made his check out to Vincent's wife, Carrie Vincent. On the memo line of the check he wrote "legal."

In May 2008, Holtman stopped paying the company that had taken over from his bankrupt mortgagor, because of the company's additions to the principal balance and because he was "running out of money." Vincent and Holtman again met at a café on June 12, 2008. Vincent admitted that he had "dropped the ball" by failing to send in the document, and asked for additional money. Holtman gave Vincent a check for $230 payable to "C. Vincent," with "'for legal fees'" written on the memo line. (To reach the $250 total Vincent had requested, he also paid the $20 breakfast bill.)

Between June 2008 and September 2008, Holtman believed Vincent was engaged in negotiations with Holtman's mortgage lender. During the period from about mid-August to the end of September 2008, Holtman drove Vincent and his wife to various appointments (because Vincent's car had been impounded), and he frequently had them

to his home for dinner, in what he considered a "bartering" arrangement, because they apparently did not have much money. However, the lender started formal foreclosure proceedings against Holtman's house in September 2008. Following Vincent's advice, in November 2008, Holtman filed for bankruptcy.[5] In mid-November, at Holtman's urging, Vincent wrote and sent a letter from a copy center to Holtman's lender. Holtman never received documentation of any negotiations by Vincent with his lender. Vincent never returned Napier's or Holtman's mortgage documents.

In January 2009, Holtman learned in response to his inquiries that Vincent was not licensed to practice law in California.

According to Vincent, he was admitted to the Nevada bar in 1985. While living in Northridge, California, he had practiced real estate law "of counsel" to various firms in Nevada from about 1985 to 1989, but he was not admitted to practice law in California and never practiced there. His license to practice in Nevada was later suspended for nonpayment of dues and failure to fulfill continuing education requirements.

Vincent testified in his defense that he had never told Napier or Holtman that he was licensed to practice law in California, or that his license to practice in Nevada was active. He told both Napier and Holtman that he was not currently admitted to practice even in Nevada, but that he planned to move back to Nevada to practice law in Las Vegas. His testimony was that Napier and Holtman had been his clients, but not his *law* clients; that he had never fraudulently taken money from them; and that he had provided them with substantial value for their money. The fee he was paid by Napier, he explained (cryptically), was for legal services, but not for his services *as a lawyer*; he provided "a legal service that could have been performed by a bank or escrow company or a real estate broker." "If I had been charging her as an attorney," he testified, the receipt he gave her "would have said attorney's fees, not legal services."

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[5] Holtman later had to withdraw and refile his bankruptcy petition, after he learned from another attorney's letter that the bankruptcy law had changed. When he later asked Vincent whether he was aware of the changes in the law, Vincent said he was not.

Vincent's testimony was impeached by evidence that he had suffered three prior misdemeanor convictions, for issuing checks with insufficient funds in 1991 and 1995 (Pen. Code, § 476a), and for petty theft in 1995 (Pen. Code, § 484). Vincent also admitted sending Napier a letter shortly before his trial concerning his inability to pay restitution to Napier and Holtman in exchange for a dismissal of the charges against him. The letter suggested that dropping the charges against him would be in her interest, because "a number of misrepresentations" that she had allegedly made in order to obtain a kennel license for rescue dogs might be revealed in a trial.[6]

Vincent's wife and a business associate also testified with respect to a number of points—none of which related to whether Vincent was authorized to practice law, or had received money from Napier or Holtman on the pretense that he could perform legal services for them. Over defense objection, the prosecution was permitted to question Ms. Vincent about her past use of various names, including with respect to a 1998 misdemeanor conviction she had suffered under another name for driving with a false registration.

PROCEDURAL HISTORY

An amended information, filed on August 30, 2010, charged Vincent in count 1 with grand theft of personal property, a felony (Pen. Code, § 487, subd. (a)); in count 2 he was charged with petty theft with a prior conviction, a felony (Pen. Code, § 666); in count 3 he was charged with the unauthorized practice of law, a misdemeanor (Bus. & Prof. Code, § 6126, subd. (a)). After trial and deliberation proceedings spanning seven days, on September 14, 2010 a jury found Vincent guilty on all three counts.

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[6] Vincent testified that the letter was not intended as a threat, but "as a reasonably persuasive argument to avoid pursuing this," although it had instead resulted in withdrawal of the prosecution's settlement offer.

On October 5, 2010, the trial court sentenced Vincent on count 1 to the high term of three years in state prison. After changing the count 2 conviction to a misdemeanor, the court sentenced Vincent on count 2 to one year in the county jail, consecutive to the count 1 prison term.[7] On the count 3 conviction the court ordered a one-year county jail sentence, to run concurrently with the count 1 and 2 sentences. The court allowed Vincent 64 days of predisposition credits, and imposed appropriate amounts for victim restitution, fines, and fees.

Vincent filed a timely notice of appeal on November 3, 2010.

DISCUSSION

1. Vincent's Count 1 Conviction Must Be Reduced To a Misdemeanor.

Vincent was convicted on count 1 of felony grand theft, under Penal Code section 487, subdivision (a), on September 14, 2010. That provision then defined grand theft as a theft of money, labor, or real or personal property of a value exceeding $400 (with exceptions not relevant here). (Former Pen. Code, § 487, subd. (a).) Effective as of January 1, 2011, however, the Legislature amended that section to raise the threshold amount from $400 to $950. (Pen. Code, § 487, subd. (a), as amended by Stats. 2010, ch. 693, § 1.)

Vincent contends that the statutory amendment requires reversal of his count 1 conviction, because his theft from Holtman did not exceed $950. He contends that under *In re Estrada* (1965) 63 Cal.2d 740, 746, a statutory amendment that mitigates punishment applies to convictions that are not yet final, unless the statute's text or

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[7] The court changed the count 2 conviction to a misdemeanor as a result of the Legislature's amendment of section 666, subdivision (a), effective September 9, 2010. Before the amendment that section had provided that a defendant convicted of petty theft, who had previously been incarcerated for petty theft, could be given a state prison sentence. The amendment added a requirement of three or more previous petty theft convictions. (Historical and Statutory Notes, 49 West's Ann. Pen. Code (2011 Supp.) foll. § 666, p. 7.)

legislative history reflects an intention that the amendment should be applied only prospectively.

Vincent cites *People v. Nasalga* (1996) 12 Cal.4th 784, *In re Kirk* (1965) 63 Cal. 2d 761, and *People v. Vinson* (2011) 193 Cal.App.4th 1190, 1198–1199 (among other authorities) for the proposition that the Penal Code section 666 amendment comes within this rule.[8] And he cites legislative history, presented by way of judicial notice by this court (without objection), for the proposition that the record reveals no legislative intention that the amendment of Penal Code section 487, subdivision (a), should apply only prospectively.

Vincent concedes that in the event his appeal is unsuccessful in setting aside his count 1 conviction (see part 2 of this opinion, below), "this Court may simply reduce appellant's count 1 sentence[] from a felony to a misdemeanor because remand for resentencing would not serve any purpose." The People concede in response that "[i]t appears that appellant is correct."

We commend both parties for their professionalism as well as their astute legal analysis of this issue. Based upon these factors, we will reduce Vincent's count 1 conviction to a conviction of misdemeanor theft.

2. Substantial Evidence Supports Vincent's Count 1 and Count 2 Convictions.

Vincent challenges his count 1 and 2 convictions, which rest on a theory of theft and theft by false pretenses, as unsupported by substantial evidence. He does not challenge the sufficiency of the evidence to show that he represented that he was a real estate attorney, nor that he obtained money from Napier and Holtman based on those

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[8] In *In re Kirk*, *supra*, 63 Cal.2d 761, after the defendant's conviction for issuing checks with insufficient funds was final, the Legislature raised the dollar amount required for a maximum of one year's imprisonment in the county jail from $50 to $100, and eliminated the crime's state prison term. (Pen. Code, § 476a, subd. (b).) The Supreme Court held that the defendant, convicted of issuing checks for $75 without sufficient funds, was entitled to the benefit of the amendment and could be subject to imprisonment only in the county jail. (*In re Kirk*, *supra*, 63 Cal.2d at pp. 762–763.)

representations; his contention is that those representations were not false, and that the record lacks substantial evidence that they were.

To comply with state and federal constitutional standards, we must evaluate the evidence supporting the conviction in the light most favorable to the judgment, and determine whether a rational jury could find the defendant's guilt beyond a reasonable doubt from that evidence and any reasonable inferences deduced from it. (*People v. Casteneda* (2011) 51 Cal.4th 1292, 1322; *Jackson v. Virginia* (1979) 443 U.S. 307, 318–319 [99 S.Ct. 2781, 61 L.Ed.2d 560].) We conclude from our evaluation that the record contains ample evidence that the representations upon which Vincent obtained funds from Napier and Holtman—representations that he was an attorney who could help them with their legal problems involving California real property and loans—were false in the context they were made.

The People presented evidence that Vincent was never a member of the State Bar of California, a fact that Vincent confirmed. According to Vincent, he was admitted to the State Bar of Nevada and he had practiced law there for a few years in the late 1980's, while living in Northridge, California. He testified that although his status in the Nevada Bar was inactive, he was eligible for reinstatement as an active member upon payment of dues and proof of the required continuing legal education.[9]

Vincent contends that there is no evidence that he ever expressly told Napier or Holtman that he was licensed to practice law in California, or that his license to practice in Nevada was then active. On that basis he argues that his representations to Napier and Holtman that he was a real estate attorney—the representations on which his count 1 and 2 convictions rest—therefore are "*factually true*," and cannot support his count 1 and 2 convictions for fraudulently having induced their payments to him.

Vincent's contention is wrong, both factually and conceptually. Vincent represented to Napier and Holtman that he was an attorney who could perform legal

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9 We granted Vincent's request for judicial notice of a May 26, 2011 printed copy of the State Bar of Nevada website, indicating his status as "Attorney CLE/Fee Suspended."

services for them with respect to their legal issues and property in California when he could not; he took their funds based on those representations. The charge that he took his clients' funds on the pretense that he was authorized to practice law on their behalf in California accurately describes the conduct shown by the evidence.

The evidence is far more than merely sufficient to support the jury's determination that Napier and Holtman reasonably understood Vincent to be holding himself out as an attorney who was authorized to represent them with respect to their legal problems and property in California. But he was not authorized to act as an attorney (in California, or anywhere else); and he was not authorized to provide the services for which he accepted Napier's and Holtman's payments.[10]

Both Napier and Holtman testified that they understood from what Vincent had told them that he was a California attorney with expertise in real estate matters. Napier testified that Vincent "told me he was an attorney." He "was very convincing" in that regard. Although Napier testified at one point that Vincent had not specifically said he was licensed to practice *in California*, she later testified that Vincent had affirmatively told her he was licensed in California. Holtman's testimony was similar. He testified that Vincent told him at his first meeting that he was an attorney, and that he specialized in real estate foreclosures. These communications took place in California, nowhere near the Nevada border; they were made in the context of offering legal advice and legal services to California residents and landowners, concerning matters of California real property and California law, in exchange for payment.

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[10] Vincent's inactive Nevada Bar membership could not entitle him to hold himself out as an attorney authorized to practice law. (Bus. & Prof. Code, § 6125; *Farnham v. State Bar* (1976) 17 Cal.3d 605, 612 [suspended attorney must affirmatively advise clients of suspension]; *In re Cadwell* (1975) 15 Cal.3d 762, 770–771 [suspended attorney's failure to affirmatively advise letter-recipient of suspension constitutes unlawful practice of law]; see *Estate of Condon* (1998) 65 Cal.App.4th 1138, 1146 & fn. 7 [whether attorney is competent to practice in another jurisdiction is not relevant to whether he or she is authorized to practice in California].)

Tellingly, Vincent's argument focuses on the contention (disputed by Napier) that he did not expressly say that he was a member of the *California* Bar, without addressing whether Napier and Holtman could reasonably have interpreted his statements and conduct, in context, to convey the implication that he was. He nowhere contends that they could not.

The communications identified above are alone sufficient to support the inference drawn by Napier and Holtman, that Vincent was representing himself to be an attorney who was authorized to render the promised legal advice and services—in other words, that he was an attorney who was authorized to practice law in California.

There is more.

When Napier paid Vincent $150 cash, his signed receipt identified the payment's purpose as "for legal services." And Holtman's $400 payment check identified its purpose as "legal" on the memo line, "to indicate the check was being written for legal reasons." Vincent wrote a letter to Holtman's California lender on behalf of "my client, Thomas F. Holtman," sighing it "Roland Windsor Vincent, Attorney at Law" and mailing from where he wrote it in California to Holtman's lender in California. When Holtman's lender pursued foreclosure proceedings, Vincent helped Holtman prepare bankruptcy papers, and drove Holtman to the courthouse to file them. And Vincent wrote a letter to an individual lender on Napier's behalf, signing it "Roland Vincent, Attorney at Law."[11] This documentation confirms that Napier and Holtman could reasonably have the understanding from Vincent's statements that he was offering to perform legal services, in California on matters of California law, and he was accepting payment for those services.

According to Vincent, he "never acted as [Holtman's or Napier's] attorney." But he also testified he had told both Napier and Holtman that he could help them with their foreclosure problems and loan modification efforts. He believed that Napier and

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[11] Vincent testified that although he wrote and mailed the letter from California, on the letterhead he used a Nevada address because "it would be very improper" for him to practice law in California.

Holtman were his clients, albeit not his "*law* client[s]." He affirmed that he received the check from Holtman, bearing the memo that it was for "legal," for "negotiating his foreclosure on his behalf" (although he denied he was acting as Holtman's attorney, claiming he was just stalling the foreclosure). He testified that the loan modification services he was providing would constitute legal services, but claimed (without explanation in either the trial court or this court) that they were legal services "that did not require me to be an attorney for me to perform." His attorney told the jury that the evidence would show he was not acting as an attorney when he agreed to help Napier and Holtman. "It was just simply to do any kind of legal services they wanted in preparing documents[,] to try to assist."

Vincent's count 1 and 2 convictions are based on his express and implied representations, by word and deed, that he had authority to offer the services he offered. We conclude from the evidence—including Vincent's own testimony—that reasonable people in Napier's and Holtman's positions could have concluded that Vincent had represented himself to be an attorney authorized to assist them in resolving their California legal problems. The evidence therefore was sufficient to support the jury's count 1 and 2 convictions, based on its determination that Vincent had represented to Napier and Holtman that he was authorized to practice law in California, but that when he made those representations he was not in fact authorized to practice law, in California or anywhere else.

3. The Prosecution's Use Of Prior Misdemeanor Convictions To Impeach Vincent's Credibility Does Not Require Or Justify Reversal Of His Theft Convictions.

a. The People used prior misdemeanor convictions to impeach Vincent's credibility.

Vincent elected to testify on his own behalf. Before his testimony and out of the jury's presence, the People sought leave to impeach him with evidence of three prior misdemeanor convictions—two for issuing checks with insufficient funds in 1991 and 1995 (Pen. Code, § 476a), and one for petty theft in 1995 (Pen. Code, § 484).

The trial court ruled that these prior misdemeanor convictions could be used to impeach Vincent's credibility. It based its ruling on its findings that these prior convictions involved crimes of moral turpitude; that they were not too remote in light of the fact that Vincent also had more recent misdemeanor convictions (which did not involve moral turpitude and were not offered for impeachment); that the prior petty theft conviction was not so similar to the current charges as to unduly predispose the jury to find Vincent guilty of the charged crimes; and that the use of this evidence would not induce Vincent to decline to take the stand.

On direct examination Vincent testified to his relationships with Napier and Holtman and the help he provided them. He testified about his admission to the Nevada Bar, and his practice of law in Nevada for a few years in the 1980's. He testified that he was not admitted to the Bar in California, that he had advised Napier and Holtman that he planned to move to Nevada to practice law, and that he had not told Napier or Holtman that he was licensed to practice in California.[12] And he testified, over objection, that his conduct did not constitute the practice of law.[13]

Vincent was asked during his cross examination—without further objection—whether he had been convicted in 1991 and 1995 for providing checks with nonsufficient funds in violation of Penal Code section 476(a), and in 1995 for petty theft. He readily

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[12] Vincent testified repeatedly that he had never told Napier, Holtman, or anyone else that he was admitted to practice law in California. Under direct examination, however, he did not testify that he had affirmatively told them he was not. He later filled that gap, testifying for the first time on cross-examination he that he had told Napier and Holtman that he was not licensed to practice law in California.

[13] The People had earlier argued, persuasively, that whether his conduct did or did not constitute the practice of law is a question of law on which the trial court should instruct the jury, rather than a question of fact for the admission of testimony and for jury determination. The trial court ruled, however, that "if the defendant is going to take the stand and say he did not practice law, I don't see any reason why he can't testify to that. That's his defense." It instructed the jury on the definition of the practice of law, and told it to determine both whether Vincent had represented he could practice law, and whether his conduct constituted the unauthorized practice of law. We are not called upon in this appeal to determine whether these rulings and instructions correctly state the law.

admitted the 1991 and 1995 misdemeanor convictions for providing a check with nonsufficient funds and for petty theft. When he did not recall also being convicted in 1995 for having provided a check with nonsufficient funds, his memory was refreshed by viewing one page of an unidentified document (apparently a probation report or rap sheet, not admitted into evidence), prompting his admission that he had also sustained a conviction "for having forged checks." He later told the jury that the 1995 conviction for petty theft resulted from an incident during his participation in an anti-fur protest at Sears.

In *People v. Wheeler* (1992) 4 Cal.4th 284, our Supreme Court held that a witness may be impeached with evidence of his or her prior conduct involving moral turpitude, even if that conduct amounts only to a misdemeanor. But that case also held that it is evidence of the *conduct* that is admissible; evidence of the resulting misdemeanor conviction is inadmissible to show that the witness engaged in that conduct, because the conviction constitutes hearsay (for which no exception is available) when it is offered for that purpose. (*Id.* at p. 297.)

In the trial court, Vincent did not object to the prior-conviction evidence on the ground that it constituted inadmissible hearsay, and neither party adequately addressed this issue in their briefs in this appeal. In order to determine whether the record thus reflects an inadequate assistance of counsel with respect to this issue, we therefore requested and received the parties' supplemental letter briefs pursuant to section 68081 of the Government Code, addressing four questions: (1) whether any error in the use of the prior-conviction evidence was waived due to lack of appropriate objections; (2) whether any such waiver rendered counsel's assistance inadequate; (3) how any such error prejudiced Vincent; and (4) the impact of any such error on Vincent's appropriate sentence.

After examining the parties' supplemental briefs, we conclude that the trial court did not err in permitting examination of Vincent about his prior misdemeanor convictions, without regard to whether Vincent's counsel's objections were or were not sufficient at either the trial or appellate level. And we conclude also that the admissibility

of evidence of Vincent's prior misdemeanor convictions, and the adequacy of his counsel's objections to it, are not determinative of the outcome of Vincent's appeal. That is because in any event he suffered no undue prejudice from the evidence of his prior misdemeanor convictions. Confidence in the trial's outcome is not undermined and no reversal is required. (*People v. Wheeler*, *supra*, 4 Cal.4th at p. 300, fn. 15 [trial counsel's failure to appropriately object to prior conviction evidence does not require reversal, because confidence in outcome is not undermined].)

b. The trial court did not err in permitting Vincent to be questioned about his prior convictions.

Since the voters' 1982 adoption of Proposition 8 and resulting addition of article I, section 28, subdivision (f) to the California Constitution, a witness's conduct involving moral turpitude—including conduct constituting misdemeanors—is "relevant evidence, " probative of the witness's credibility because it "may suggest a willingness to lie." (*People v. Wheeler*, *supra*, 4 Cal.4th at p. 295.)[14] Because the reason that a prior misdemeanor may be used to impeach a witness is to preclude "'a false aura of veracity,'" the threshold inquiry for admissibility of a prior misdemeanor conviction is whether the prior conduct has some logical bearing upon the witness's veracity. (*People v. Muldrow* (1988) 202 Cal.App.3d 636, 646; *People v. Chavez* (2000) 84 Cal.App.4th 25, 28.) Subject to the trial court's discretion to exclude the proffered evidence under Evidence Code section 352 and other listed exceptions, evidence of nonfelonious conduct involving moral turpitude is admissible to impeach a witness's testimony. (*People v. Wheeler*, *supra*, 4 Cal.4th at p. 295.)

It is evidence of the witness's *conduct* that is admissible to impeach his or her veracity, however, not evidence of the conviction resulting from that conduct. (*People v.*

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[14] Section 28, subdivision (f), provides in pertinent part: "Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding . . . . Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782, or 1103. . . ." (Cal. Const., art. I, § 28, subd. (f), par. 2.)

Wheeler, *supra*, 4 Cal.4th at p. 299.) Because a statement that is offered for its truth and made other than by a witness testifying at the hearing is inadmissible hearsay (Evid. Code, § 1200), "'a judgment that is offered to prove the matters determined by the judgment is hearsay evidence.'" (*People v. Wheeler*, *supra*, 4 Cal.4th at p. 298.) Accordingly, the court held in that case, "evidence of a misdemeanor *conviction*, whether documentary or testimonial, is inadmissible hearsay when offered to impeach a witness's credibility," although the witness's testimonial admission that he had *committed such conduct* is not. (*Id.* at p. 300 & fn. 14.)

In 1996, however, the Evidence Code was amended to provide that "[a]n official record of conviction certified in accordance with subdivision (a) of Section 1530 is admissible pursuant to Section 1280 to prove the commission . . . of a criminal offense, prior conviction, service of a prison term, or other act, condition, or event recorded by the record." (Evid. Code, § 452.5, subd. (b).) This provision thereby created a hearsay exception "allowing admission of qualifying court records to prove not only the fact of conviction, but also that the offense reflected in the record occurred." (*People v. Duran* (2002) 97 Cal.App.4th 1448, 1460.)[15]

Here, Vincent was not asked whether he was guilty of having passed bad checks and having committed petty theft—the conduct for which he had suffered prior convictions. On cross-examination he was asked instead whether he had been convicted of passing bad checks and petty theft, and he admitted that he had. Even under *People v. Wheeler*, *supra*, 4 Cal.4th 284, nothing would have prevented Vincent from admitting that he had suffered those convictions; however, his admissions of those convictions would have been inadmissible (as irrelevant), for they could not have supplied evidence of his guilt of the *conduct* underlying the convictions. "[A] witness's prior convictions are relevant for impeachment, if at all, only insofar as they prove criminal *conduct* from

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[15] In *People v. Wheeler*, *supra*, 4 Cal.4th 284, the Supreme Court expressly approved the Legislature's right to enact this sort of hearsay exception, holding that the "the Legislature [is not] precluded from creating a hearsay exception that would allow use of misdemeanor conviction for impeachment in criminal cases. . . ." (*Id.* at p. 300, fn. 14.)

which the factfinder could infer a character inconsistent with honesty and veracity. [Citations.]" (*Id*. at. p. 299.) And the conviction was hearsay when offered to prove the criminal conduct on which it was based. (*Id*. at pp. 298–299.)

But that was changed by the enactment of Evidence Code section 452.5. That provision not only made a hearsay exception for qualifying court records to prove the fact of conviction; it also made the fact of the conviction admissible "to prove the commission, attempted commission, or solicitation of a criminal offense, prior conviction, service of a prison term, or other act, condition, or event recorded by the record." (Evid. Code, § 452.5, subd. (b); *People v. Duran*, *supra*, 97 Cal.App.4th at p. 1460.)

The trial court thus did not err in permitting the prosecution to question Vincent about whether he was guilty of the prior convictions. His testimonial admissions that he had suffered those convictions was admissible, and was competent under Evidence Code section 452.5 to establish that he was guilty of the conduct for which he had been convicted.

c. The trial court did not abuse its discretion by permitting Vincent to be questioned about his prior misdemeanor convictions.

The trial court did not abuse its discretion under Evidence Code section 352 by permitting Vincent to be examined about his prior convictions. The trial court's discretion to admit or exclude otherwise admissible impeaching evidence is reviewed for abuse of discretion. As in other circumstances, the court abuses its discretion when it acts in an "'"arbitrary, capricious, or patently absurd manner."'" (*People v. Foster* (2010) 50 Cal.4th 1301, 1329.)

In exercising its discretion whether to permit the use of prior criminal conduct for impeachment, the trial court must consider four factors: (1) whether the conduct reflects adversely on the witness's honesty or veracity; (2) the remoteness in time of the prior conduct; (3) whether the prior conduct is the same or substantially similar conduct to the charged offense; and (4) whether permitting the impeachment will affect the defendant's decision to testify. (*People v. Muldrow*, *supra*, 202 Cal.App.3d at p. 644.) On appeal

Vincent does not dispute the first and fourth of these factors, that the three prior convictions were for crimes of moral turpitude, legally bearing on his veracity; and that the court's decision to permit their use as impeachment did not affect his decision to testify.

Vincent contends, however, that the prior convictions' status as misdemeanors rendered them "a less forceful indicator" of dishonesty than if they were felonies (*People v. Wheeler*, *supra*, 4 Cal.4th at p. 296), that their remoteness in time rendered them only minimally probative of his current honesty and veracity (*People v. Mendoza* (2000) 78 Cal.App.4th 918, 924–925), and that their similarity to the crimes charged in counts 1 and 2 in this case exacerbated the risk that jurors would impermissibly infer from them a propensity to commit the charged crimes. (*People v. Castro* (1986) 186 Cal.App.3d 1211, 1216). He contends that these factors show that the prejudice resulting from the use of the misdemeanor convictions outweighed their probative value. (Evid. Code, § 352.)

In permitting the use of Vincent's misdemeanor convictions for impeachment, the trial court expressly exercised its discretion under Evidence Code section 352, as it was required to do. Weighing whether the 1991 and 1995 convictions lacked probity due to the passage of time—16 and 20 years before Vincent's trial—the court relied on *People v. Burns* (1987) 189 Cal.App.3d 734, to find that the convictions were not too remote to be relevant to Vincent's veracity. In that case the trial court had excluded use of the defendant's prior convictions, one of which had occurred 20 years earlier. On appeal, the Court held that the trial court would have been within its discretion to permit use of a 20-year-old conviction as impeachment, reasoning that "conviction of a crime involving dishonesty is more probative of veracity than, say, a crime of violence" (Id. at p. 738, citing *People* v. *Castro*, *supra*, 38 Cal.3d at p. 315.)

Although the passage of time since the prior convictions weighs on the trial court's discretionary determination of admissibility,[16] the impeaching convictions were for crimes that specifically involved dishonesty, rather than just general moral turpitude. And although they were for crimes similar to those charged in counts 1 and 2, in the interim Vincent apparently had suffered additional misdemeanor convictions for offenses that did not reflect dishonesty or moral turpitude. While those convictions could not be (and were not) used for impeachment, their existence shows that the convictions involving moral turpitude and bearing upon Vincent's honesty were not "followed by a legally blameless life"—a factor appropriately considered by the trial court in determining whether the passage of time had rendered the impeaching offenses irrelevant. (*People v. Beagle* (1972) 6 Cal.3d 441, 453; *People v. Green* (1995) 34 Cal.App.4th 165, 183.)

Vincent did not object when he was asked on cross-examination to admit that he had "stolen in the past yet you want the jury to believe that you did not do so in this case"—an improper suggestion that the jury might infer from his prior convictions his propensity to commit the thefts charged in this case. Nevertheless, the trial court immediately and appropriately intervened *sua sponte* to strike the question and answer, and to instruct the jury that the prior-conviction evidence was limited only to use for evaluation of Vincent's credibility. It admonished the jury that "[t]he evidence that was received with regard to prior convictions is solely limited on credibility and not to show any preponderance or predisposition to commit another crime. [¶] So the testimony of whether or not the defendant stole in the past and will steal again is stricken. You're not to have that as part of your discussions in deliberations at all."

The trial court also instructed the jury at the close of the evidence that "'[d]uring the trial certain evidence was admitted for a limited purpose. You may consider that evidence only for that purpose and for no other. If you find that a witness has committed

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[16] *People v. Wheeler*, *supra*, 4 Cal.4th at p. 296 [trial court's discretion to exclude misdemeanor convictions under Evidence Code section 352 is always shaped by "those factors traditionally deemed pertinent in this area," including remoteness in time].

a crime or other misconduct, you may consider that fact in evaluating the credibility of the witness's testimony. The fact that a witness may have committed a crime or other misconduct does not necessarily destroy or impair a witness's credibility. It is up to you to decide the weight of that fact and whether that fact makes the witness less believable.'"

Vincent did not request these or any other instructions on this subject, and he has not suggested in this court that the trial court erred with respect to these instructions and admonitions. On this record we see no indication that the impeaching offenses' relevance had dwindled to the point that the trial court lacked discretion to find them reasonably probative of Vincent's veracity. Nor are we able to assume that the jury disregarded the trial court's specific and timely admonitions to consider the evidence for no purpose other than to evaluate Vincent's credibility. The trial court did not abuse its discretion by finding the prior-conviction evidence admissible under Evidence Code section 352.

d. Vincent suffered no substantial prejudice from his examination about his prior misdemeanor convictions.

Even if the trial court had erred in permitting Vincent to be examined about his prior misdemeanor convictions (as stated above, there was no such error), such an error could not have substantially prejudiced the trial's outcome. That is because virtually the only evidence that would be affected by his credibility—his testimony that he told Napier and Holtman he was not licensed to practice law in California—would not, even if it were believed, negate his admitted statements and conduct that show his guilt of the count 1 and 2 offenses.

The evidence is amply sufficient to justify Napier and Holtman concluding that he was acting as their attorney. (See *Hecht v. Superior Court* (1987) 192 Cal.App.3d 560, 565–566.) The factors on which such a conclusion is based include (among others) whether they sought Vincent's legal advice; whether they reasonably believed they were consulting Vincent in his professional capacity as an attorney; and whether Vincent's acts and statements indicated that he was representing them as an attorney. (Vapnek, Tuft, Peck & Wiener, Cal. Practice Guide: Professional Responsibility (The Rutter Group 2009) ¶¶ 3:44–3:45, pp. 3-19–3-20.) Vincent admitted as much.

Vincent admitted that he told Napier he was an attorney, after which "she asked for some help, said she needed an attorney to perform it. And I said I could help her." He admitted that he represented Holtman in negotiations with Holman's mortgage lender, and aided Holtman in preparing and filing a bankruptcy petition. He admitted that he wrote letters to recipients in California, concerning matters of California law, identifying himself as "an attorney representing Lisa Napier in her real estate matters," and identifying Holtman as "my client." He admitted that he signed at least one of those letters as "Attorney At Law." And he also admitted that he did not tell Napier or Holtman that his license to practice law in Nevada was suspended or inactive (and therefore that he could not legally practice even in Nevada).

By this testimony, Vincent confirmed that he had represented to Napier and Holtman, by word and deed, that he was an attorney qualified and authorized to act on their behalf in performing those services. Nor did he testify on direct examination he had told Napier and Holtman that he was not licensed in California; he testified merely that he did not tell them that he was. It was on cross-examination that he testified for the first time that he had at some point told Napier and Holtman he *was not* a California lawyer (and even then he did not say when he had made that disclosure).

Vincent's own testimony thus supported the charges that he had taken Napier's and Holtman's money on false pretenses. And his own testimony also tended to render insignificant any question whether he had or had not told them he was not licensed in California. In the context of his admitted conduct and statements, Napier and Holtman could reasonably have believed that strict licensure was not the issue—that Vincent was the expert; if he said he was an attorney and could do for them what he promised he would, it was for him, not them, to evaluate whether California licensure was required. Even if he said he was not licensed in California (as he said he did, but they denied), he also represented (for example) that his use of a Nevada address on his letterhead, and the

form of his signature block, rendered California licensure unnecessary and overcame any deficiency in his qualifications to act as their attorney.[17]

In light of this testimony, it mattered little whether the jury did or did not believe Vincent's testimony that he had told Napier and Holtman he was not licensed. The false pretense on which Vincent's count 1 and 2 convictions rest was not specifically that he held a valid California license, but that he was qualified and able to represent them with respect to the legal problems he promised to handle for them. Vincent admittedly "did not dispute that he represented [to Napier and Holtman] that he was a 'real estate attorney,' or that [they] paid him to assist them with their real estate problems." In the absence of proof that Napier and Holtman knew that his licensing status was a prerequisite to the services he was offering them, the representations Vincent made in order to induce their payment for performing legal services constitute obtaining their funds under false premises.

Our conclusion that it was of little consequence to the verdict whether Vincent's veracity was or was not impeached is consistent with Vincent's own candid observation in his brief in this court—an observation that we believe is both accurate and dispositive of his claim of prejudice. Vincent argues to this court that this case "was not a he said-she said case in which the admission of evidence of appellant's prior convictions was 'critical' because of the 'credibility contest at trial.'"

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[17] Vincent's appeal does not challenge the jury's count 3 determination that his conduct constituted the unauthorized practice of law. (Bus. & Prof. Code, § 6126, subd. (a); see also *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 128-129 [legal advice]; *Bluestein v. State Bar* (1974) 13 Cal.3d 162, 174 [same]; *People v. Landlords Professional Services* (1989) 215 Cal.App.3d 1599, 1609 [legal advice on real property issues and filling out court forms]; *Morgan v. State Bar* (1990) 51 Cal.3d 598, 604 [negotiation with opposing counsel]; *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 543 ["if the application of legal knowledge and technique is required, the activity constitutes the practice of law"]; *In re Glad* (9th Cir. BAP 1989) 98 B.R. 976, 978 & fn. 6 [advising and assisting debtor re filing bankruptcy petition]; *In re Agyekum* (9th Cir. BAP 1998) 225 B.R. 695, 702 [same]. See Cal. Rules Prof. Conduct 1-311(B)(1)–(6) [suspended attorney is prohibited from negotiating matters with third party on behalf of a client].)

We agree with this assessment of the evidence. We take from it the message that because the dispute at trial was not about whether he had "represented that he "was a 'real estate attorney,'" Vincent's credibility at trial was not of critical import. "Instead," as Vincent notes, "the dispute at trial centered around the legal effect of [the] largely undisputed evidence," rather than any disputed facts that would be affected if his own credibility were undermined.

Because Vincent's credibility was not a critical issue at trial, the prior-conviction evidence had little potential for prejudice to his defense. Because the evidence was essentially undisputed that "Napier and Holtman paid him to assist them with their real estate problems," we cannot conclude that the jury would have been likely to have reached verdicts more favorable to Vincent on counts 1 and 2 even if he had not been questioned about his prior misdemeanor convictions. (Code Civ. Proc., § 475 [judgment cannot be reversed without showing that in the absence of the error a different result would have been probable]; *People v. Earp* (1999) 20 Cal.4th 826, 878.)

We are also unpersuaded that prejudice is shown by the fact that the jury's deliberations spanned two and one-half days, reflecting a closely divided jury, as Vincent contends. The record shows no such thing.

The jury's deliberations were initially commenced shortly before adjournment on Thursday, September 9, 2010, and were continued on Friday, for a total of barely more than one day. But on Monday morning, September 13, deliberations could not continue, due to emergencies involving two jurors. At about 2:30 p.m. on Monday, after the two jurors had been discharged and replaced by alternates, the court instructed the newly constituted jury to start over in deliberating the case. The jury recessed at 4:30 p.m. that day, after deliberating two hours. On Tuesday, September 14, the jury deliberated from 10:06 to 11:44 a.m. (a little more than an hour and a half), when it announced that it had reached its verdicts. Thus the newly reconstituted jury—the jury charged with determining whether to convict Vincent—had deliberated just three hours and 38 minutes, not two and one-half days, before announcing its verdicts.

Nor do we believe prejudice is shown because the original jury, before it was reconstituted, had asked to hear portions of Vincent's cross-examination testimony. The jury that rendered the verdicts against him asked only one question: whether the checks Holtman wrote to Vincent constituted contracts. That question had nothing to do with Vincent's credibility (and Vincent's counsel expressly agreed that the court should leave it unanswered).

For these reasons we conclude that the trial court did not err by permitting him to be examined about his prior misdemeanor convictions, and that his counsel's failure to interpose additional objections to that examination does not reflect inadequate assistance of counsel. And we conclude that even if error and ineffective assistance of counsel had been shown, Vincent suffered no prejudice that would justify a reversal of the jury's verdicts on counts 1 and 2.

4. The Trial Court Did Not Err By Permitting Vincent's Wife to Be Questioned About Her Use of Various Names.

Over Vincent's objections, the prosecution was permitted to cross-examine his wife about her use of various names, and in that connection to use evidence that she had suffered a 1998 Vehicle Code misdemeanor conviction under a different name. Vincent contends this was an abuse of the court's discretion, because evidence of her use of other names was unduly prejudicial and entirely irrelevant to her credibility as a witness, and because the trial court had already ruled the Vehicle Code violation inadmissible for use as impeachment. Without this examination concerning Ms. Vincent's use of different names, he argues, there would have been "more than an abstract possibility" that the jury might have rendered verdicts more favorable to him on counts 1 and 2.

Before Ms. Vincent testified, the prosecution disclosed its intention to impeach her with the fact that under the name she had provided to the prosecution—Dr. Carrie Cameron Vincent—a search had revealed no rap sheet, but that she in fact had suffered

the 1998 misdemeanor Vehicle Code conviction under the name of Karen Vincent.[18] This evidence, the prosecution argued, would raise an inference that her purpose in providing the prosecution with a different name was to dishonestly conceal her prior conviction.

The trial court ruled that the Vehicle Code violation does not show moral turpitude and for that reason could not be used to impeach Ms. Vincent's credibility. It also ruled, however, that Ms. Vincent could be questioned about her use of various names, and could be confronted with evidence of her true name. Without objection by Vincent, the court approved the use of Ms. Vincent's rap sheet, with convictions redacted, for that purpose. Vincent's attorney did not object to examination of Ms. Vincent about her use of different names, nor about whether she had used them to conceal her prior Vehicle Code conviction; she objected only to the characterization of them as "false" names.

On direct examination Ms. Vincent testified to nothing at all concerning Vincent's guilt or innocence of the charges against him. She testified that she is a concert violinist, with a bachelor's degree in both music and romance languages from California State University, Northridge, a master's degree from the University of Oregon, and a Ph.D from the University of Southern California. She testified that Vincent had gone to Whittier Law School and the College of William and Mary; that she had met Napier in 2007 at the ranch where she and Vincent lived; that she had told Napier they intended to move to Las Vegas because Vincent was a member of the Nevada Bar; and that before moving into the trailer on Napier's property they occasionally had socialized with Napier. She testified that after meeting Holtman at Napier's home, she and Vincent had socialized with him frequently, and that she knew only that Vincent was helping Napier and Holtman with foreclosures and a bankruptcy filing. She testified about their arrangements to live in the trailer on Napier's property, and—in some detail—about disputes and altercations between Vincent and Napier during their tenancy. And she

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[18] The violation was of Vehicle Code section 4462.5, for displaying a false vehicle registration with the intent to avoid complying with the code's vehicle registration requirements.

testified that she had not heard Napier or Holtman complain that Vincent had taken their money without providing services, nor that Vincent was not a California attorney.

On cross-examination Ms. Vincent confirmed that at a pretrial proceeding she had given the prosecution her name as "Dr. Carrie Cameron Vincent, Ph.D," but denied knowing that the information would be used to obtain her rap sheet. Without objection, the prosecution then used her rap sheet (showing the name she had used, but not the conviction) to question her about her use of other names. On redirect examination Ms. Vincent testified about her various names: Ingrid Karen Dolquist at birth, and her mother's change of that name to Karen Ingrid Dolquist two days later; her academic degrees in the names of Karen Ingrid Dolquist and Karen Dolquist Vincent; and her change of name to Carrie Cameron Vincent when she was 42 years old, for both professional and personal reasons.

Vincent objected to examination of Ms. Vincent about her use of different names only to the extent it would involve use of her rap sheet; and he objected to the use of an authenticated rap sheet only if it would show evidence of her prior Vehicle Code conviction. Vincent's counsel confirmed that she had no objection to Ms. Vincent's examination "as to whether her intent on providing the false name was to prevent [the prosecutor's office] from knowing about any prior conviction," although she objected to the characterization of the name as "false." The trial court overruled that objection, and Vincent does not raise it on appeal.

Ms. Vincent was questioned on recross-examination about whether her use of the name under which she was convicted in 1998 had constituted use of a false name, because it was 10 years after she had legally changed her name to Carrie Cameron Vincent. The trial court overruled Vincent's objection to that question, apparently because she had used what was no longer her legal name, and because no evidence of the actual prior conviction was itself offered. Ms. Vincent explained in response that when she was asked her name before the trial she had forgotten all about her Vehicle Code violation, and she explained why she had used various names over the years.

In evaluating this claim of error, however, we rely neither on whether the trial court did or did not err with respect to the evidence used to impeach Ms. Vincent's credibility, nor whether appropriate objections were interposed. We conclude that in any event the record reveals no reasonable possibility that Vincent was prejudiced by the challenged rulings. If there was error, it was harmless. (Code Civ. Proc., § 475.)

The degree to which facts to which Ms. Vincent testified were believed or disbelieved by the jury could hardly have mattered, for they had virtually nothing to do with any disputed issue of fact facing the jury. Vincent's argument that the jury's count 1 and 2 verdicts would have been different if Ms. Vincent's credibility had not been impeached by her use of various names and her 1998 Vehicle Code violation thus rings hollow. He fails to identify any fact to which she testified that, if believed by the jury, might have made even the slightest difference in its verdicts.

Because Ms. Vincent's testimony contained no evidence that could have affected the jury's count 1 and 2 verdicts, we conclude that neither could those verdicts have been affected by the impeachment of her testimony. If there was error, it was harmless. (Code Civ. Proc., § 475; *Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Village Square Venture Partners* (1997) 52 Cal.App.4th 867, 884 [errors that do not affect the parties' substantial rights do not constitute reversible error].)

5. The Trial Court Did Not Err By Failing to Stay Vincent's Count 3 Sentence.

The trial court sentenced Vincent to one year in county jail for his count 3 conviction of unauthorized practice of law, to run concurrently with the consecutive sentences it imposed for his count 1 and 2 theft convictions. Vincent appeals from the court's failure to stay the count 3 sentence under Penal Code section 654.

Penal Code section 654 prohibits punishment under more than one provision of law for acts or omissions that are punishable by different provisions of law. That means that when a defendant is convicted of more than one offense for a single indivisible course of conduct reflecting only one criminal intent or objective, a concurrent sentence is impermissible, and the shorter of the sentences must be stayed. (*People v. Perez* (1979) 23 Cal.3d 545, 551; *People v. Moseley* (2008) 164 Cal.App.4th 1598, 1603–

1604.) The application of section 654 to undisputed facts is an issue of law. (*People v. Perez, supra,* 23 Cal.3d at p. 552, fn. 5.)

Vincent contends that the count 3 offense was motivated by the "'same intent and objective'" as the theft offenses for which he was sentenced under counts 1 and 2, and that a contrary determination would not be supported by substantial evidence. We do not agree.

A defendant may be separately punished for each of several different criminal objectives, "'even though the crimes shared common acts or were parts of an otherwise indivisible course of conduct.'" (*People v. Conners* (2008) 168 Cal.App.4th 443, 458.) Vincent was charged and convicted in counts 1 and 2 of theft from Napier and Holtman, and in count 3 with unauthorized practice of law. Because Vincent used the pretense that he was authorized to practice law to obtain funds from Napier and Holtman does not mean that either the acts or the criminal objectives underlying the crimes were the same for the count 1, 2, and 3 offenses. They were not. With respect to the count 1 and 2 offenses, Vincent's objective was to obtain funds from Napier and Holtman; he accomplished that objective when he obtained their payments while meeting with them at a local café. With respect to count 3, however, his objective was to practice law, rather than to obtain money (a goal he had by then already accomplished). Vincent accomplished his criminal objectives with respect to count 3 sometime after he had obtained Napier's and Holtman's payments, when he actually undertook the conduct (such as writing letters and conducting negotiations on their behalf) that constituted the practice of law.

We are not persuaded by Vincent's argument that the trial court "recognized that the count 3 misconduct was motivated by the same 'intent and objective'" that motivated the misconduct under counts 1 and 2. The court sentenced Vincent to consecutive terms for counts 1 and 2, expressly finding that "Penal Code section 654 is inapplicable" to those offenses. Then, after sentencing Vincent to a term for count 3 concurrent with the terms imposed for counts 1 and 2, the trial court stated that "the crime as charged in count 3 was not independent of each other"—which Vincent identifies as the court's belief that

the count 3 misconduct was motivated by the same "intent and objective" that motivated the count 1 or count 2 misconduct. We need not speculate whether this cryptic statement reflected any such belief or intention by the trial court; if it did, it was wrong, for the reasons explained above. We review the trial court's order for error, not its reasoning. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 980–981; *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1451 ["Because we review the correctness of the order and not the court's reasons, we will not consider the court's oral comments or use them to undermine the order ultimately entered"].)

DISPOSITION

Vincent's count 1 conviction is reduced to a misdemeanor. Except as so modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.