IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. **RUBEN PHILLIP FRANCO,** Defendant and Appellant.	S233973 (Court of Appeal No. B260447) (Los Angeles County Superior Court No. VA125859)

SUPREME COURT
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Hon. Roger Ito, Judge

APPELLANT'S REPLY BRIEF ON THE MERITS

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APPELLANT'S REPLY BRIEF ON THE MERITS

INTRODUCTION

This reply brief will focus only on specific contentions made by the Attorney General and will not attempt to reiterate arguments already addressed in the opening brief on the merits. Failure to reiterate arguments previously raised is not intended to constitute abandonment of those arguments.

REPLY ARGUMENT

FOR PURPOSES OF DISTINGUISHING BETWEEN MISDEMEANOR AND FELONY FORGERY UNDER PENAL CODE SECTION 473(b), THE VALUE OF ANY FORGED CHECK IS ITS MONETARY WORTH

In Appellant's Opening Brief on the Merits, appellant explained that section 473, subdivision (b)'s term "value" should be interpreted in accordance with its plain meaning, i.e. its ordinary, primary, dictionary definition: monetary worth, as measured by fair market value. (AOBM[1] 16, 32, citing *People v. Lowery* (2017) 8 Cal.App.5th 533, 539, 541, review granted April 19, 2017.) The plain and ordinary meaning of value is consistent with the electorate's intent and the statutory scheme of forgery law. (AOBM 13-27.) Alternatively, if "value" is ambiguous, the rule of lenity requires it be defined in the manner most favorable to the criminal defendant who seeks relief under its sentence-ameliorating provisions. (AOBM 27.) Finally, appellant demonstrated that defining value as worth does not lead to absurd or mischievous consequences, and that contrary case law (*People v. Salmorin* (2016) 1 Cal.App.5th 738), is not controlling. (AOBM 27-34.)

Respondent argues that the plain meaning of value, in the context of forgery law, is face or stated value, that value as worth is unworkable in the context of forgery law, applies only to theft

[1] "AOBM" refers to Appellant's Opening Brief on the Merits.

law, and that it would lead to absurd consequences in forgery law because forged instruments can have no legal value. (RABM[2] 13-17.) Alternatively, respondent argues that, if the word value is ambiguous, then the ballot materials show the voters' intent was to use face value. (RABM 29-31.) Finally, respondent claims that, even if value is defined as worth, appellant's guilty plea admitted all elements of felony forgery and therefore appellant cannot meet his burden to prove the check had a value under $950 for misdemeanor treatment purposes. (RABM 32.) Appellant disagrees with each of respondent's contentions.

A. Monetary Worth is the Primary and Ordinary Definition of Value, and the New Statutory Context of Forgery Law Adds an Element of Value, so Forged Instruments Now Have Real, Legal Value

Respondent's plain-meaning argument fails because it does not use the plain meaning of the word value. Face or stated amount is a secondary, obscure meaning of value. (See AOBM 13-14, citing Mirriam-Webster Dict., http://www.wordcentral.com/cgi-bin/student?value, as of Feb. 28, 2017 [stated numerical value is definition number four]; see also http://www.dictionary.com/browse/value, as of Feb. 28, 2017 [assigned value is definition number five].)

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[2] "RABM" refers to Respondent's Answer Brief on the Merits.

Respondent argues that the meaning of value is different in the context of forgery, where it means "face value." Respondent is wrong.

1. The Plain Meaning of a Word is Its Primary, Ordinary Dictionary Definition

The plain meaning of a word in a statute is its primary, ordinary, dictionary definition. (See *People v. Costella* (2017) 11 Cal.App.5th 1, 5-6, citing *People v. Gonzalez* (2008) 43 Cal.4th 1118, 1126; *Hammond v. Agran* (1999) 76 Cal.App.4th 1181, 1189 ["We begin with the words of the statute and their usual and ordinary meaning, which would typically be their dictionary definition"].) The primary dictionary definition of value is monetary worth. (See AOBM 13-14, RABM 16-17, and dictionary definitions cited therein.)

Respondent contends that the plain meaning of value should be derived from a secondary and obscure meaning: an assigned numerical quantity, i.e., the face or stated value. (See RABM 16-17 [electorate intended definition of "stated numerical quantity on the face" and fourth dictionary definition of "value" is "a numerical quantity that is assigned or is determined by calculation . . . ."].) Respondent has modified the statutory language to add "face" before "value" because he contends forgery is different and the worth of a forged instrument is usually de minimus. Respondent

fails to show any intent by the electorate to give "value" an alternative meaning simply based on the nature of forgery.

2. The Primary Definition of Value as Worth Is Consistent With the New Statutory Scheme

An exception to the plain meaning rule arises when the plain meaning of a word is so inconsistent with a law's purpose, or with the statutory scheme of which it is a part, that it would "'frustrate[] the manifest purposes of the legislation as a whole or [lead] to absurd results.'" (*California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 340.) Respondent argues that the statutory context of forgery law is unique and incompatible with principles derived from theft law. (RABM 13-17.) But respondent has not shown that using the plain, primary meaning of value as worth would be so inconsistent with the forgery scheme that it would frustrate the purpose of the scheme.

Respondent argues that, because all forged financial instruments are legally worthless, it would be absurd to define value as worth in section 473. (RABM 10, 15-17, 28.) Respondent says a forged check is "merely the tool used to obtain money . . . ." (RABM 28), the implication being that, as a mere tool, it cannot have value. Respondent provides no support for this assertion, and the tool analogy does not support his arguments. A tool's worth can

be assessed by how well it is suited for its purpose. A forgery is no different.

Respondent notes that cases interpreting the prior forgery law state that the instruments have no intrinsic value or worth themselves (e.g. *People v. Cuellar* (2008) 165 Cal.App.4th 833, 838-839), and concludes this demonstrates the electorate could not have intended "value" to mean "worth" because there would never be a forged document with a value of more than $950. Although it is true that *Cuellar* (and other courts) observed that the value of check is de minimus, *Cuellar* reached that conclusion in a different context, at a time when value was irrelevant to forgery law. *Cuellar* considered whether a check had value for purposes of theft, not whether the check could have a worth greater than the value of the paper on which it was printed. Thus, *Cuellar* did not add much to the resolution of the question presented here.

The purpose of the forgery statutes is to deter and thereby prevent fraud of an unsuspecting public. To that end, a forgery is more valuable if it is likely to be accepted as real. In fact, as respondent acknowledges, if a forgery is bad enough, it cannot even support a conviction under the old statute. (RABM 10.)

> The purpose of the statute against forgery is to protect society against the fabrication, falsification and the uttering of instruments which might be acted upon as genuine. The law should protect, in this respect, the

> members of the community who may be ignorant or gullible as well as those who are cautious and aware of the legal requirements of a genuine instrument. An instrument is not the subject matter of forgery only where it is so defective on its face that, as a matter of law, it is not capable of defrauding anyone.

(*People v. Jones* (1962) 210 Cal.App.2d 805, 808-809.)

Thus, the relative quality of a forgery is what gives it worth. Previously this worth was relevant only when the instrument was so defective that it was worthless to defraud and therefore could not support a conviction. Now that value is in issue in the context of forgery, as to whether the crime is a misdemeanor or a felony, the factfinder will be required to determine how valuable the document is as a tool to accomplish fraud – from totally worthless because no one would cash it and it cannot even establish a crime, to very likely to be cashed and to actually defraud a person of his money.

Using face value as the basis for determining an instrument's value as a tool for committing fraud is counterproductive. The smaller the face amount of the check or forged instrument, the less scrutiny it will get, and therefore the *more likely* it is to be cashed and to successfully defraud. (Cf. *People v. Lowery, supra*, 8 Cal.App.5th 533, 541, review granted April 19, 2017 [a "poorly forged check for a million dollars is unlikely to be cashed, and it makes little sense to assign the written value to such a check"].)

Although face value is a factor that may be useful in determining how valuable the instrument is as a tool to defraud, it is not always sufficient alone to do so.

Respondent says the seven financial instruments listed in section 473 have a common feature, in that they all typically have a face value. (RABM 17.) But the seven financial instruments do not always have a face value. As long as there is intent to defraud, a person is guilty of forgery merely by signing someone else's name to a designated financial instrument without authority to do so. (§ 470, subd. (a).) So, even if the seven instruments listed in section 473 typically have a face value, they are not required to have a face value. So, nothing about the context of forgery law requires adoption of the secondary, obscure dictionary definition of value as an arbitrarily assigned numerical value, i.e., face or stated value.

Respondent contends that defining value as worth would require a "mini-trial." (RABM 25.) The implication is that courts should not waste time and resources on irrelevant, distracting, and collateral matters. But value is now a material element of the crime of forgery under section 473. (See *People v. Betts* (2005) 34 Cal.4th 1039, 1054 [fact that increases punishment for crime is the functional equivalent of an element of the crime]; see also *Apprendi v. New Jersey* (2000) 530 U.S. 466, 477 [120 S.Ct. 2348, 147 L.E.2d 435] [same].)

Respondent spends a great deal of time contending that theft principles must not be carried over to forgery law, because theft requires a taking and forgery does not. (RABM 9, 10, 15, 18, 19, 20, 21, 22, 23, 24.) But attempted theft crimes having value as an element, such as grand theft (§ 487), require proof of fair market value exceeding $950, even though there has been no taking. (See § 21a ["An attempt to commit a crime consists of two elements: a specific intent to commit the crime, and a direct but ineffectual act done toward its commission"]; see also *People v. Hickman* (1939) 31 Cal.App.2d 4, 10 [grand theft requires property be taken away, but attempted grand theft does not].) Moreover, defining "value" as "worth" is not limited to theft and forgery. (See AOBM 23-24 [citing shoplifting, petty theft, and receipt of stolen property statutes].)

Similarly, the crime of theft of access card information with a value exceeding $950 requires proof of value (*People v. Romanowski* (2017) 2 Cal.5th 903, 915), even though there has been no taking of money, and no taking of money is required. Similarly, there is no reason why the crime of *attempted* theft of access card information would not also require proof of value. (See §§ 21a, 664.) So, forgery is sort of like an attempted theft, now that the electorate has added "value" as an element of the crime to be considered for sentencing purposes. The intent is what matters. There is no reason not to adopt a theft-derived definition of value in

forgery cases, especially when the word "value" has been freshly inserted into forgery law, as a new, material element of the crime.

Respondent states that using face value is consistent with the history and purpose of laws prohibiting forgery. (RABM 18.) Respondent is wrong. Value as worth is based on how likely the forgery will be successful, which is consistent with the purpose of forgery law.

Respondent argues the crime of forgery is complete before any loss occurs, and therefore, the defendant's culpability must be judged as of the time of the writing. (RABM 18-20.) But appellant was not convicted of writing a forged check. The crime of "possession or receipt" of a forged instrument (§ 473) naturally occurs after completion of the writing, and additionally requires the intent to defraud another for some "value" under, over, or equal to $950. So, respondent's attempt to freeze forgery at the writing stage, and commit it to written face value, is not persuasive.

The fact that theft crimes require a taking and forgery crimes do not require a taking (compare §§ 470-476 [forgery] with § 484 [theft]) does not prohibit this Court from adopting for forgery the definition of value used in theft law, and every other context. And, although section 484, subdivision (a) expressly provides that theft crimes must be assessed based on "reasonable and fair market value," the omission of the reasonable and fair market value

language from section 473 does not prohibit use of that principle in its interpretation.

The essence of the crime of forgery is the intent to defraud another. (*People v. Neder* (1971) 16 Cal.App.3d 846, 852; *People v. Horowitz* (1945) 70 Cal.App.2d 675, 687.) There is rarely direct evidence of a defendant's state of mind, so juries often must resort to circumstantial evidence, and circumstantial evidence is just as persuasive as direct evidence. ("Evidence of a defendant's state of mind is almost inevitably circumstantial, but circumstantial evidence is as sufficient as direct evidence to support a conviction." (*People v. Bloom* (1989) 48 Cal.3d 1194, 1208.) "The fact of his state of mind—to wit, his intention—becomes proof that declarant acted or conducted himself in accordance with his intention as an element of his state of mind." (*People v. Spector* (2011) 194 Cal.App.4th 1335, 1394.)

Respondent's proposed definition of value as face value would render meaningless and unusable a defendant's direct-evidence testimony about his intent to defraud for any amount other than face value. This would not be fair, especially if the defendant was not the maker of the instrument, but only a possessor after the fact. Here, appellant did not testify, but Officer Lopez provided sworn testimony about what appellant told him, in an admission by a party. This was admissible and relevant direct evidence of

appellant's state of mind. (See Evid. Code, § 1220 ["Evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party . . ."]; see also *City Bank of San Diego v. Ramage* (1968) 266 Cal.App.2d 570, 584 [hearsay admitted without objection is evidence that may be considered].)

According to Officer Lopez's testimony, appellant intended to exchange the check he possessed for $200. (1CT 11-12, 14-19, 39.) The $1500 stated face value of the forged check does not conflict with the direct evidence of appellant's intent, because items may be sold for less than face value on the secondary, illegal markets. (See *People v. Romanowski, supra,* 2 Cal.5th at p. 906 [courts may consider evidence related to the possibility of illicit sales when determining the market value of stolen access card information]; *People v. Lowery, supra,* 8 Cal.App.5th at p. 541, rev. granted [expert witness might testify value of forged check based on "discounted price paid on the street"].) Appellant's intended value of the check is more relevant than the writer's intended value of the check, because the crime of possession of a forged instrument is concerned with the possessor's intent, not the writer's. (§ 475, subd. (a).)

On April 19, 2017, this Court granted review in *People v. Lowery,* S240615, published at 8 Cal.App.5th 533 and cited in

Appellant's Opening Brief on the Merits. In *Lowery*, the Court of Appeal for the Second Appellate District, Division Seven, said face value may be "substantial evidence" of value as worth, i.e., that face value is important and relevant, but not necessarily conclusive. (*Id.* at p. 536.) Using face value as evidence of value is the best use of face value, because it follows the plain meaning rule of statutory construction, permitting interpretation of value in its ordinary meaning of monetary worth, and yet it does not ignore the face amount. This approach demonstrates understanding that the face amount of the check is not always commensurate with the possessor's intent under section 473. This is true, especially where, as here, the defendant's intent (CT 11 ["[defendant's employer] gave it to him to cash and get his $200]") is different from the possessed instrument's face value ($1500). The face value of a check is good evidence going to prove value as worth; it is just not conclusive proof-as-a-matter-of-law. (*People v. Lowery, supra*, 8 Cal.App.5th at p. 541, review granted April 19, 2017.)

Respondent contends that, under appellant's definition of value as worth, only in "rare instances" will a check exceed a value of $950, as in when $950 is actually received in exchange for the check. (RABM 22.) But that is not true. Many uncashed checks may be determined to have a fair market value over $950. But where, as here, there is evidence that the check is worth only $200 on the

underground market, and there is no evidence of any guarantee for the $1500 amount, and no evidence that the check was drawn on an open, active bank account containing $1500 or more, the check is worth no more than $200.

Respondent contends *Lowery*'s analysis "is flawed because it conflates the value of the forged instrument with the value of the property actually taken or likely to be taken by means of the forged instrument." (RABM 28.) But the voters have expressed exactly that intent. Formerly, the value of the forged instrument (negligible, or intrinsic value) was not the same as the value for which the instrument might be, or was, exchanged. In other words, the forged instruments had no real, legal value. But Proposition 47 changed that. The voters divided forged instruments into those valued at up to $950, and those worth in excess of $950. Taking into account actual worth is consistent with Proposition 47's purpose of reserving prison sentences for more serious offenders. Defining value as worth is consistent with the electorate's intent.

Respondent claims "the stated value of the instrument is the most relevant value for purposes of measuring the seriousness of the offense." (RABM 23.) That argument is circular and wrong because it simply asserts that the stated value is the most relevant value. Rather, the stated value is relevant evidence of value. (*People v. Lowery, supra*, 8 Cal.App.5th at p. 541, rev. granted.)

The "policy sought to be implemented" here (*Bowland v. Municipal Court* (1976) 18 Cal.3d 479, 489; RABM 23) is reducing more forgeries to misdemeanors, in order to redirect scarce resources toward worthy government programs (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) analysis of Prop. 47 by Legis. Analyst, p. 35), and "releasing petty criminals" (*People v. Montgomery* (2016) 247 Cal.App.4th 1385, 1389-1390). (See *People v. Valencia* (2017) 3 Cal.5th 347, 360 [Prop. 47's "primary focus" was reducing the punishments for a specifically designated category of low-level felonies].)

Those purposes are best served by using face value as initial evidence of ultimate fair market legal value, but acknowledging that this evidence may be overcome by a showing of the defendant's direct state of mind, or by evidence of physical or economic properties of the financial instrument, or by information about the financial institution on which the instrument was drawn.

Respondent cites *People v. Salmorin, supra,* 1 Cal.App.5th 738, 745, for the proposition that value must be defined as face or stated value because forgery is complete upon signing someone's name without authority, or falsely making a document, or uttering a document with intent to defraud. (RABM 23-24.) But a close reading reveals that was not *Salmorin*'s holding. *Salmorin* acknowledged that, under Proposition 47, the "market value" of a

forged instrument may or may not correspond to its face value; then, the court noted that in the "context of forgery," the word value "corresponds" to face value and therefore the "trial court *did not err in considering the face value* of the forged checks . . . ." (*People v. Salmorin* (2016) 1 Cal.App.5th 738, 745.) So, *Salmorin* left open the possibility that another trial court would not err in considering market value. The facts in *Salmorin* were compatible with a finding of market value equal to face value. Appellant agrees that where, as in *Salmorin*, face value is the same as fair market value, a trial court would not err in applying face value. But where, as here, the record contains direct evidence of the defendant's intent to exchange the forged instrument for less than face value, that lesser amount is the proper measure of fair market value.

Respondent suggests that, in the "context of forgery, there is no willing buyer and seller," and hence, no market from which to derive market value. (RABM 26.) There is only a generalized intent "that an unwitting person will be deceived," according to respondent. (RABM 26.) But the person is intended to be deceived financially, not just abstractly. And the voters have now decided that the concept of value *should* be relevant to forgery, and there is no legitimate reason to exclude the economic marketplace from the formulation of value. There may be no willing buyer and seller at the moment of the forgery, or the possession, but that is the intent.

Forgery now becomes similar to an attempted theft, conversion, or fraud, and theft-derived value principles are not repugnant to the new value-forgery scheme.

B. The Official Voter Information Guide for Proposition 47 Suggests the Electorate Intended Value as "Worth"

Respondent contends that if the word "value" in section 473 is ambiguous, then the ballot materials show the voters meant value as face value. (RABM 29-31.) The Legislative Analyst said that under "current" (i.e., *pre-Prop. 47*) law, "it is a wobbler crime to forge a check of any *amount*." (RABM 29, citing Voter Information Guide, Gen. Elec. (Nov. 4, 2014) analysis of Prop. 47 by Legis. Analyst, p. 35, italics added.) From this, respondent extrapolates that "amount" must refer to face value, and, further, that the pre-Proposition terminology must carry forward to the new analysis. But that does not make sense. Prior forgery law, which the analyst labeled "current," was *not* concerned with any amount at all, whereas the new forgery law is concerned with worth. Thus, it makes sense that the Legislative Analyst went on to say, in the next sentence: "Under this measure, forging a check *worth* $950 or less would always be a misdemeanor [except in case of identity theft]. (*Ibid*.) Thus, the Legislative Analyst's use of "worth" to describe the current forged instruments lends strong and persuasive support to appellant's view that section 473's word

"value" should be interpreted as "worth." Respondent's notion that the analyst used worth to mean face amount (RABM 29-30) should be rejected as it lacks sufficient support either in case law or logic.

Respondent challenges appellant to offer "a reason why Proposition 47's drafters would prescribe a fair market valuation for forging checks but a stated amount for writing bad checks." (RABM 31.) The reason for the difference is that the crimes have different elements.

Writing an insufficient-funds check (§ 476a) requires that the face amount of the check be greater than the funds in the account. (*People v. Swanson* (1981) 123 Cal.App.3d 1024, 1031 [essential elements of § 476a are: (1) making, drawing, uttering or delivering a check; (2) with insufficient funds or credit; (3) knowledge of the lack of sufficient funds; and (4) intent to defraud].) That is why section 476a used "amount" both in the previous versions and in the post-Proposition 47 version. In contrast, a forged check can be written without designating any amount, as only a false signature is required. (See § 470, subd. (a).) A "value" is then required for felony treatment. (§ 473, subd. (b.) That explains why the statute criminalizing writing an insufficient-funds check uses the word "amount" whereas the new forgery statute uses "value." In the case of writing bad checks, it makes sense to use the "amount" written on the check, instead of market value.

The electorate did *not* choose to use the word value when describing the crime of writing insufficient-funds checks. By choosing the word amount, the electorate demonstrated that the defendant's intent to defraud is always equal to the face amount written on the check. In contrast, possession or receipt of a forged check, or forging a check, is analyzed in terms of the more fluid concept of value.

C. The Rule of Lenity Applies if "Value" is Ambiguous

Respondent asserts: (1) the rule of lenity only applies if the reviewing court can do more than guess at the drafters' meaning of a word (an "egregious ambiguity and uncertainty"); and (2) the rule of lenity operates prospectively only to provide notice of a legal interpretation of penalties, in order that citizens may conform their conduct accordingly. (RABM 32.) The first assertion is correct, but the second is not.

The plain and ordinary meaning of value, as worth, is apparent in the language of section 473, and the standard, primary dictionary definitions. Still, if this Court decides the word "value" is egregiously ambiguous and uncertain, then the rule of lenity requires application of the defense-favorable definition. (*People v. Nuckles* (2013) 56 Cal.4th 601, 611.) Where two reasonable interpretations of a statutory term stand in relative equipoise, the ambiguity "should be resolved in favor of lenity, *giving the*

defendant the benefit of every reasonable doubt on questions of interpretation." (*Ibid.*, italics added.)

Respondent's assertion that the rule of lenity is a notice provision which should not apply because appellant already committed his crime at a time when the law provided it could be a felony (RABM 32), makes no sense. The case respondent cites, *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 313, did not say that. It said "criminal penalties, because they are particularly serious and opprobrious, merit *heightened due process protections* for those in jeopardy of being subject to them, including the strict construction of criminal statutes" (italics in original), and strict construction provides "fair warning concerning conduct." It did not say that defense-favorable construction should be applied prospectively only after a statutory amendment. Accordingly, this Court should apply the rule of lenity if it finds the word "value" is ambiguous, with two reasonable interpretations standing in equipoise.

D. Appellant's Guilty Plea Does Not Foreclose Relief

Respondent argues that, even if monetary worth is the correct definition of value, appellant has failed to satisfy his evidentiary burden because he entered a guilty plea admitting all elements of the felony offense. (RABM 33.) That argument negates the entire framework of Proposition 47. Precisely because

Proposition 47 contained ameliorate benefits to defendants, even those who pled guilty to felonies, there is a procedure by which defendants can petition and present evidence or simply have the existing facts reconsidered under the new statute. (§ 1170.18.)

Generally, a guilty plea "constitute[s] an admission of every element of the offense charged and constitute[s] a conclusive admission of guilt and obviate[s] the need for the prosecution to come forward with any evidence . . . ." (*People v. Hudson* (2016) 2 Cal.App.5th 575, 579.) But, in this case, when appellant moved for misdemeanor treatment under section 1170.18, he brought forward the record of conviction and the factual basis for the plea. (1RT 6 ["THE COURT: By stipulation of counsel, I find there is a factual basis for the plea"]; see *People v. Palmer* (2013) 58 Cal.4th 110, 114 [bare stipulation without reference to a specific document describing the facts may, in an appropriate case, satisfy the requirements of § 1192.5]; see also *People v. Lowery* (2017) 8 Cal.App.5th 533, 537 [relying on facts in a police report where counsel stipulated at time of plea that police report provided a factual basis].)

Thus, appellant did not need to produce any new evidence to satisfy his evidentiary burden. The record underlying the stipulated factual basis for the plea already contained the sworn testimony of Officer Lopez that appellant said his employer owed him $200 and

had given him a "bad check" that he could try to exchange for money. (1CT 11-12, 14-19, 39.) "He gave it to him to cash and get his $200." (1CT 11.) Thus, there was undisputed evidence in the record that appellant intended to defraud someone for $200. There was direct evidence of appellant's state of mind (intent), superseding the face amount of the check. Appellant's guilty plea to a pre-Proposition 47 wobbler offense does not foreclose his using that plea record to make his case under the new felony/misdemeanor scheme.

CONCLUSION

For the purpose of distinguishing between misdemeanor and felony check forgery under section 473, subdivision (b), defining value as worth is faithful to the plain and ordinary meaning of the word value in the economic context. This definition is harmonious with other provisions of the Penal Code. It satisfies the purpose and intent of the initiative measure by reducing punishments for check forgery in general and passing the cost savings onto other social programs. It is consistent with the rule of lenity, and the rules against surplusage and absurd consequences.

Appellant's uncashed forged check was not guaranteed, had no payee, and was not shown to be linked to an active bank account containing sufficient funds. There was no evidence of an existing and active secondary market or what the check would be

worth there. For these reasons, the judgment should be reversed in full and with prejudice, as no evidentiary hearing is required.

Dated: **August 13, 2017**

Respectfully submitted,

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Allison H. Ting
Counsel for Appellant
Ruben Philip Franco

WORD-COUNT CERTIFICATE

I, Allison H. Ting, counsel for appellant, certify pursuant to the California Rules of Court, that the word count for this document is **5,830** words, excluding the tables, this certificate, and any attachment permitted under rule 8.360(b). This document was prepared with Word, and this is the word count generated by the program for this document. I certify that the foregoing is true and correct.

Executed at Los Angeles, California, on: **August 13, 2017.**

____

Allison H. Ting
Attorney for Appellant

DECLARATION OF SERVICE

RE: People v. RUBEN PHILLIP FRANCO, Case No. S233937

I, Allison H. Ting, declare I am over 18 years of age, and not a party to the within cause; my business address is 1158 26th Street, # 609, Santa Monica, CA 90403; I served a copy of the attached:

APPELLANT'S REPLY BRIEF ON THE MERITS

on each of the following, by placing same in envelope(s) addressed as follows:

RUBEN PHILLIP FRANCO
19859 Vista Hermona
Walnut, CA 91789

Clerk for Delivery to:
Hon. Roger Ito Judge
Los Angeles County
Superior Court
12720 Norwalk Blvd.
Norwalk, CA 90650

California Appellate Project
520 S. Grand Ave –4th Fl.
Los Angeles, CA 90071

Each said envelope was then, on **August 13, 2017**, sealed and deposited in the United States Mail at Los Angeles, California, with the postage thereon fully prepaid. Furthermore, I, Allison H. Ting, declare I electronically served from my electronic notification address of ting164933@gmail.com, the same referenced above document on **August 13, 2017, at ______ a.m./p.m.,** to the following entities and electronic addresses: **capdocs@lacap.com (EXTRA COPY for C.A.P.)**, and **docketingLAAWT@doj.ca.gov (SERVICE COPY for Attorney General),** and I electronically served the Court of Appeal on the website www.courts.ca.gov/8872.htm#tab17043 (Court of Appeal, Second Appellate District). I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **August 13, 2017**, at Los Angeles, California.

____
Declarant