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In the Supreme Court of the State of California

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THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. VICTOR CORREA, Defendant and Appellant.	Case No. S163273

SUPREME COURT
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Frederick K. Ohlrich Clerk
Deputy

Third Appellate District, Case No. C054365
Sacramento Superior Court, Case No. 06F01135
The Honorable Patricia C. Esgro, Judge

RESPONDENT'S SUPPLEMENTAL LETTER BRIEF

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November 12, 2010

The Honorable Frederick Ohlrich, Clerk
California Supreme Court
350 McAllister, 1st Floor
Earl Warren Building
San Francisco, CA 94102

RE: *People v. Victor Correa*
California Supreme Court, case no. S163273

Dear Mr. Ohlrich:

On October 13, 2010, this Court ordered the parties to file supplemental briefing. The order directed the parties to *Neal v. California* (1960) 55 Cal.2d 11, 18, footnote 1 ("the footnote"), which states:

> Although section 654 does not expressly preclude double punishment when an act gives rise to *more than one violation of the same Penal Code section* or to multiple violations of the criminal provisions of other codes, it is settled that *the basic principle it enunciates precludes double punishment in such cases also*. (*People v. Brown*, 49 Cal.2d 577, 591; see *People v. Roberts*, 40 Cal.2d 483, 491; *People v. Clemett*, 208 Cal. 142, 144; *People v. Nor Woods*, 37 Cal.2d 584, 586. (italics added.)

Respondent submits the following supplemental letter brief limited to the Court's questions. This Court should reconsider what it said in the footnote, and conclude that Penal Code[1] section 654 does not govern multiple convictions of the same provision of law.

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

(1) Does the authority cited in this footnote support the italicized language?

No. The language in the footnote pertains to two separate instances where section 654 purportedly precludes double punishment. The first is when an act gives rise to more than one violation of the same Penal Code section. The second is when an act gives rise to multiple violations of the criminal provisions of other codes. The Court's focus in the instant case is the former, that is, when an act gives rise to more than one violation of the same Penal Code section. The authorities cited in the footnote do not support this conclusion.

The first case cited in the footnote is *People v. Brown* (1958) 49 Cal.2d 577. In *Brown* the defendant was convicted of second degree murder and performing an abortion on the same person. (*Id.* at p. 580.) The defendant was also convicted of performing an abortion on a different person. (*Ibid.*) The defendant challenged the convictions for second degree murder and performing an abortion on the same person pursuant to section 654. (*Id.* at p. 590.)

The Court noted that:

> It is manifest from the evidence that defendant committed against [the victim] only one criminal act, that is, the insertion of a blunt instrument in combination with the injection of a solution. That act, because it was "with intent thereby to procure the miscarriage of such person" and was not "necessary to preserve her life," violated section 274 of the Penal Code. The same act, because it resulted in the "unlawful killing of a human being, with malice aforethought" (Pen. Code, § 187), violated the proscription of section 189 of the Penal Code against murder of the second degree.

(*Id.* at pp. 590-591, footnote omitted.)

Ultimately, the Court reversed the conviction of former section 274, performing an abortion. (*People v. Brown*, *supra*, 49 Cal.2d at p. 593.) As relevant to the issue before this Court, *Brown* was not a circumstance of applying section 654 to multiple violations of the same Penal Code section, and therefore does not support the italicized language. Specifically, the Court was considering the application of section 654 to different provisions of the Penal Code.

Further, in its analysis the Court in *Brown* stated:

> Section 654 has been applied not only where there was but one "act" in the ordinary sense (*People v. Kynette* (1940) 15 Cal.2d 731, 761 [ ] [single act of placing a bomb in an automobile constituted attempted murder, assault with intent

> to commit murder, and malicious use of explosives [footnote]]), but also where a course of conduct violated more than one statute and the problem was whether it comprised a divisible transaction which could be punished under more than one statute within the meaning of section 654.

(*Id.* at p. 591.)

In the footnote following the citation to *Kynette* the *Brown* Court stated:

> It may be noted that malicious use of explosives was made punishable not by "this code" (i.e. the Penal Code) but by the Health and Safety Code. Penal provisions are not confined to the Penal Code, and the court in the *Kynette* case properly assumed that the reference to "this code" in section 654 was not intended to exclude penal provisions found in other statutes.

(*Id.* at p. 591, fn. 4.)

In its current form section 654 does not say "different provisions of this code," but states "different provisions of law." The *Kynette* case cited by the footnote in *Brown* therefore arguably may support the principle that section 654 may apply when an act or omission is made punishable by the Penal Code and by a penal provision of another code section. In *Brown* the Court determined that the "act" did not give rise to more than one violation of the Penal Code and therefore the defendant could not be convicted of both murder and performing an abortion. *Brown* therefore, neither on its facts, nor the authorities on which it relies, supports the italicized language at issue before the Court.

The footnote in *Neal* also cites *People v. Roberts* (1953) 40 Cal.2d 483, to support the language in the footnote. In *Roberts* the defendant was convicted of one count of conspiracy to violate Health and Safety Code section 11500. (*Id.* at p. 486.) The defendant was further convicted of one count of transporting heroin, one count of selling, furnishing and giving away heroin, and one count of possession of heroin, all pursuant to Health and Safety Code section 11500. (*Ibid.*)

At the time *Roberts* was convicted, Health and Safety Code section 11500 stated:

> Except as otherwise provided in this division, no person shall possess, transport, sell, furnish, administer or give away, or offer to transport, sell, furnish, administer, or give away, or attempt to transport a narcotic except upon the written prescription of a physician....

(*People v. Roberts, supra,* 40 Cal.2d at p. 486.)

The facts relevant to the convictions were that on April 3rd the defendant drove another individual to a location where the sale was made and stayed in the car while the individual got out, handed the heroin to an undercover officer, and took the undercover officer's money. (*People v. Roberts*, *supra*, 40 Cal.2d at p. 487.) The individual then returned to defendant's car with the money and spoke to the defendant. (*Ibid.*) The defendant drove away while the individual and undercover officer went to another location. (*Ibid.*) In its analysis the Court stated:

> The information charges and there is evidence that on April 3d defendant Roberts transported, furnished, and possessed heroin. Each of these acts is denounced by Section 11500 of the Health and Safety Code. The three acts are charged and adjudged as separate crimes. However, "cooperative acts constituting but one offense when committed by the same person at the same time, when combined, charge but one crime and but one punishment can be inflicted." (*People v. Clemett* (1929) 208 Cal.142 144 [ ]; see, also, *People v. Knowles* (1950) 35 Cal.2d 175, 187 [ ].) The present case resembles the Clemett case in that the only possession and transportation of heroin shown were those necessarily incident to its sale. And as in the Clemett case (p. 150 of 208 Cal.) the error can be corrected by this court.

(*People v. Roberts*, *supra*, 40 Cal.2d at p. 491.)

At the time *Roberts* was decided, possessing, transporting, selling, furnishing, administering or giving away a narcotic, or offering to transport, sell, furnish, administer or give away a narcotic, or the attempt to transport a narcotic were punishable under the same statute. The reason the Court in *Roberts* held that the defendant could not be convicted of possession and transportation of heroin was because under the statute, as it was written at the time, only one offense had been committed. The ultimate conclusion in *Roberts* was that pursuant to the statute with which the defendant was charged he had only committed the offenses of conspiracy to violate Health and Safety Code section 11500 and selling heroin in violation of that same provision. *Roberts*, therefore, does not support the italicized language. Further, the crux of the issue in *Roberts* was whether or not the defendant actually committed a single offense or multiple offenses pursuant to the same Health and Safety Code section. *Roberts* relied on *People v. Clemett, supra,* 208 Cal. 142, which was also cited in the footnote that the Court directed the parties to in this case.

People v. Clemett, *supra*, 208 Cal.142, similarly does not support the language in the footnote in *Neal*. The statute in *Clemett*, like the statute in *Roberts*, listed a number of acts any one of which would constitute a violation of the same code section.

In *Clemett*, the defendant was convicted of two counts of violating a statute relating to the manufacture or production of liquor. The statute stated:

> Any person whether acting in his own behalf or as the agent, servant, officer or employee of any person, firm, association or corporation who shall be the owner of or have any interest in or who shall operate or cause to be operated or knowingly have in his possession or control, any still, still worm, still cap, still condenser or stilling device of any kind, designed, used, or intended for use in the manufacture or production of intoxicating liquor for beverage purposes, shall be guilty of a felony....

(*People v. Clemett*, *supra*, 208 Cal. at p. 144.)

The Court noted:

> All of the acts set out in the statute before us for construction are coupled with the disjunctive "or," one of which or all of which joined constitute but one offense.

(*People v. Clemett*, *supra*, 208 Cal. at p. 145.)

The defendant in *Clemett* therefore only committed a single offense, and his conduct only gave rise to one violation the code section at issue. That situation is entirely different when conduct gives rise to multiple violations of the same Penal Code section. In that instance the Legislature has determined that by definition the conduct gives rise to more than one violation of the same Penal Code section. For example, in this case the Legislature has determined that possession of each individual firearm is a separate offense. As a consequence, by possessing seven different firearms appellant committed a criminal "act" each time he possessed a firearm. *Clemett* therefore does not support the language in the footnote because the Court determined the defendant only violated the code section at issue a single time.

Finally, in *People v. Nor Woods* (1951) 37 Cal.2d 584, the defendant was convicted of two counts of grant theft. The defendant, a car dealer, offered to sell a 1949 Ford in exchange for another car and $1,183.14. (*Id.* at p. 585.) The defendant represented that title to the 1949 Ford was clear except for a lien of $1,183.14, which he promised to discharge with the cash payment. In reality the lien on the 1949 Ford was much greater than $1,183.14, and the defendant did not discharge the lien with the victim's payment or the proceeds of the sale of the victim's car. (*Ibid.*)

In its analysis the Court stated:

> Defendant contends that at most he was guilty of the commission of one offense. We agree with this contention. It is unnecessary to determine under what circumstances the

> taking of different property from the same person at different times may constitute one or more thefts. (See *People v. Howes*, 99 Cal.App.2d 808, 818-821 [ ], and cases cited.) In the present case both the car and the money were taken at the same time as part of a single transaction whereby defendant defrauded [victim] of the purchase price of the 1949 Ford. There was, accordingly, only one theft, and the fact that the sentences were ordered to run concurrently does not cure the error. (See *People v. Kehoe*, 33 Cal.2d 711, 715, 716 [ ]; cf., *People v. Slobodion*, 31 Cal.2d 555, 562 [ ].)

(*People v. Nor Woods*, *supra*, 37 Cal.2d at pp. 586-587.)

Again, the crux of the issue in *Nor Woods* was whether the defendant committed only a single offense. Therefore, in the specific circumstances of that case, the defendant's "act" did not give rise to more than one violation of the same Penal Code section. The Court concluded the defendant had only committed one offense. The situation is different when the statute defines the "act" and the defendant's conduct violates that statute more than one time, and results in multiple valid convictions of the same provision.

Here, the Legislature has determined that possession of a single firearm by a felon is prohibited and each possession is a separate offense. A felon that chooses to possess multiple firearms has committed that "act" multiple times. The cases cited in the footnote do not support the italicized language.

2) In light of the language and purpose of Penal Code section 654, does it make sense to apply it to multiple convictions of the same provision of law?

No. The language and purpose of section 654 does not support a conclusion to apply it to multiple convictions of the same provision of law. Section 654, subdivision (a), provides:

> An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.[2]

[2] "Section 654's preclusion of multiple prosecution is separate and distinct from its preclusion of multiple punishment. The rule against multiple prosecutions is a procedural safeguard against harassment and is not necessarily related to the punishment to be

Initially, as the footnote from *Neal* makes clear the language of section 654 does not preclude separate punishment when an act gives rise to more than one violation of the same Penal Code section. As a consequence, in light of the language of section 654 it does not make sense to apply it to multiple convictions of the same provision of law.

Further, the purpose of Penal Code section 654 does not support a conclusion to apply it to multiple convictions of the same provision of law. As this Court stated in *Neal*, and has been repeated many times, "The purpose of the protection against multiple punishment is to insure that the defendant's punishment will be commensurate with his criminal liability." (*Neal v. State of California*, *supra*, 55 Cal.2d at p. 20.) It was in recognition of that purpose that the Court in *Neal* affirmed the two consecutive attempted murder convictions noting that section 654 is not applicable when there are multiple victims. (*Id.* at pp. 20-21.)

As the Court is well aware, "[c]ase law has expanded the meaning of section 654 to apply to more than one criminal act when there was a course of conduct that violates more than one statute but nevertheless constitutes an indivisible transaction." (*People v. Hairston* (2009) 174 Cal.App.4th 231, 240; see also *Neal v. State of California*, *supra*, 55 Cal.2d at p. 19.) Thus, "[w]hether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor." (*Neal v. State of California*, *supra*, 55 Cal.2d at p. 19; see also *People v. Britt* (2004) 32 Cal.4th 944, 951-952; *People v. Harrison* (1989) 48 Cal.3d 321, 335.)

As noted by the Court the "intent and objective" test of *Neal* has been the subject of criticism.

> By its language, section 654 applies only to "[a]n act or omission…." Nothing in this language suggests the "intent or objective" test. As we have noted before, that test is a "judicial gloss" that was "engrafted onto section 654."

(*People v. Latimer* (1993) 5 Cal.4th 1203, 1211, quoting *People v. Siko* (1988) 45 Cal.3d 820, 822.)

Further, since the "judicial gloss" of *Neal* was "engrafted onto section 654" there have been instances the Court has recognized it defeats the purpose of section 654. For example, in *People v. Latimer*, *supra*, 5 Cal.4th at p. 1211, this Court stated:

> In some situations, the gloss defeats its own purpose. We have often said that the purpose of section 654 "is to insure that a defendant's punishment will be commensurate with his culpability." (*People v. Perez*, *supra*, 23 Cal.3d at p.

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imposed; double prosecution may be precluded even when double punishment is permissible." (*Neal v. State of California*, *supra*, 55 Cal.2d at p. 21.)

> 551.[3]) The *Neal* test does not, however, so ensure. A person who commits separate, factually distinct, crimes, even with only one ultimate intent and objective, is more culpable than the person who commits only one crime in pursuit of the same intent and objective. A grand criminal enterprise is more deserving of censure than a less ambitious one, even if there is only one ultimate objective.

(*People v. Latimer*, *supra*, 5 Cal.4th at p. 1211.)

Further, since *Neal*, the "test has generated a number of refinements in the area where the test is applicable." (*People v. Beamon* (1973) 8 Cal.3d 625, 638, fn. 10; see also *People v. Latimer*, *supra*, 5 Cal.4th at pp. 1211-1212 [cases decided since *Neal* have "limited the rule's application in various ways," including, in some cases, by "narrowly interpret[ing] the length of time the defendant had a specific objective, and thereby found similar but *consecutive* objectives permitting multiple punishment."].) Consequently, there are "cases [that] have sometimes found separate objectives when the objectives were either (1) consecutive even if similar or (2) different even if simultaneous. In those cases, multiple punishment was permitted." (*People v. Britt*, *supra*, 32 Cal.4th at p. 952, italics in original.)

The instant proceeding clarifies the inequity of applying section 654 to multiple convictions of the same provision of law. Here, appellant was convicted of seven counts of being a felon in possession of a firearm (§ 12021, subd. (a)(1); I CT 203-209, 214.) The superior court sentenced appellant to consecutive terms for each of those convictions. (I CT 273-274; III RT 763.) Section 12021, subdivision (a), states in relevant part:

> Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state…who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

In 1994, the Legislature amended section 12001, subdivision (k). That amendment stated:

> (k) For purposes of Sections 12021, 12021.1, 12025, 12070, 12072, 12073, 12078, and 12101 of this code, and Sections 8100, 8101, and 8103 of the Welfare and Institutions Code, notwithstanding the fact that the term "any firearm" may be used in those sections, each firearm or the frame or receiver

[3] *People v. Perez* (1979) 23 Cal.3d 545, 550.

> of the same shall constitute a distinct and separate offense under those sections.[[4]]

The purpose of section 12021 is to protect the public from individuals like appellant, by precluding the possession of guns by those who are most likely to use them. (*People v. Pepper* (1996) 41 Cal.App.4th 1029, 1037-1038.) This Court has recognized that the "clear intent of the Legislature in adopting the weapons control act was to limit as far as possible the use of instruments commonly associated with criminal activity [citation] ...," and to minimize the danger to public safety arising from the free access to firearms that can be used for crimes. (*People v. Bell* (1989) 49 Cal.3d 502, 544.)

Here, there can be little doubt that appellant having been previously convicted of two felonies posed a substantial risk to public safety and was therefore prohibited by section 12021, subdivision (a) from possessing a firearm. There can be no doubt that appellant, having been twice convicted of serious felonies, posed an increasing risk of danger to the public with each weapon he added to his arsenal. Appellant was ambitious in his desire to possess multiple firearms and section 654 should preclude punishment for his multiple convictions of section 12021, subdivision (a).

The Legislature defines what constitutes criminal conduct in California. Further, by enacting section 654 the Legislature recognized that in its attempt to address the broad variety of potential criminal conduct there could be instances where the same prohibited conduct violated more than one code section, and in those cases the individual should only be subject to one punishment, the longest. Section 654 therefore addressed a concern that an "act or omission" that gives rise to liability under different provisions of law would subject an individual to additional punishment for the same prohibited conduct. That same concern does not exist when a person is properly convicted of multiple violations of the same provision of law. When a person repeatedly violates the same provision of law he/she has, by definition, committed separate acts. Consequently, section 654 should not apply to multiple valid convictions of the same provision of law.

(3) Should this Court reconsider what it said in *Neal v. State of California, supra*, 55 Cal.2d at page 18, footnote 1, and instead conclude that Penal Code section 654 does not govern multiple convictions of the same provision of law? (See *People v. Harrison* (1989) 48 Cal.3d 321, 340 (conc. Opn. Of Mosk, J.).)

Yes. The language in the footnote does not represent the rule of *Neal*, and is inconsistent with the language and purpose of section 654. In *People v. Latimer*, *supra*, 5 Cal.4th at p. 1212, this Court considered whether or not is should overrule *Neal v. California*, *supra*, 55 Cal.2d 11, ultimately concluding it should not. (See also *People v*

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[4] At the time of appellant's offense subdivision (k) of this section had been amended to add Penal Code section 12801 to the list of statutes.

Britt, *supra*, 32 Cal.4th at p. 952 ["A decade ago we criticized this test but also reaffirmed it as the established law of this state."].)

While the Court did determine that it would not overrule *Neal*, it also stated:

> We also stress that nothing we say in this opinion is intended to cast doubt on any later judicial limitations of the *Neal* rule. For example, we do not intend to question the validity of decisions finding consecutive, and therefore separate, intents, and those finding different, if simultaneous, intents. (See pt. II, A., *ante*, last three paragraphs.) Multiple punishment in those cases remains appropriate.

(*People v. Latimer*, *supra*, 5 Cal.4th at p. 1216.)

The issue currently before the court does not present the question of overruling the *Neal* rule. In *Neal*, the defendant was convicted of two counts of attempted murder and one count of arson. (*Neal v. State of California*, *supra*, 55 Cal.2d at p. 15.) The convictions rested upon the defendant's act of throwing gasoline in the bedroom of a husband and wife and igniting it. (*Id.* at p. 18.) The Court announced what is now recognized as the *Neal* rule.

> Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offense but not for more than one.

(*Neal v. State of California*, *supra*, 55 Cal.2d at p. 19.)

The purpose of section 654 is "to insure that a defendant's punishment will be commensurate with his culpability." (*Neal v. State of California, supra,* 55 Cal.2d at p. 20.) Section 654 is applicable when there is an "act" that is punishable in different ways by different provisions of law. But in instances where the Legislature has defined the "act" that gives rise to a conviction pursuant to a provision of law, it is not possible for that same "act" to expose the individual to liability again for the same provision. The same is not true when an "act," as defined by the Legislature, can expose a defendant to criminal liability pursuant to different provisions of law.

Appellant's conduct became more egregious each time he possessed a firearm. The Legislature concluded that each "act" of possession of a firearm made appellant more dangerous to public safety and therefore more culpable. Further, this is not a case where one volitional "act" gave rise to multiple offenses. Here, the Legislature determined that each firearm a felon possesses is a separate violation of the Penal Code. Pursuant to section 12021, subdivision (a) therefore the "act" that gave rise to each

offense was the possession of each individual firearm. Appellant should not be rewarded where instead of stopping at the possession of a single firearm he can with impunity repeat the conduct that has been prohibited by the Legislature. It goes without saying that a convicted felon in possession of multiple firearms is more dangerous and has committed offenses greater than a convicted felon in possession of a single firearm. In order to achieve the goal of section 654, and ensure that appellant's punishment will be commensurate with his culpability, section 654 should not govern multiple convictions of the same provision of law.

Further, a reconsideration of the language in the footnote will have no impact on a court's discretion to impose concurrent or consecutive sentences. In the majority of cases in which an individual is convicted of multiple violations of the same Penal Code section the court will exercise its discretion to impose consecutive or concurrent sentences. The criteria to consider includes whether or not the crimes and their objectives were predominantly independent of each other, whether the crimes involved separate acts of violence or threats of violence, or whether the crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior. (Cal. Rules of Court, rule 4.425.)

In *People v. Harrison*, *supra*, 48 Cal.3d 321, the defendant was convicted of three separate counts of section 289 (penetration with a foreign object), and the trial court imposed consecutive sentences on all three. In its analysis the Court noted that it had traditionally observed that if all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, a defendant may be found to have harbored a single intent and therefore punished only once. (*People v. Harrison*, *supra*, 48 Cal.3d at p. 335, citing *Neal v. State of California*, *supra*, 55 Cal.2d at p. 19.)

But the majority further noted that in *People v. Perez* (1979) 23 Cal.3d 545, the Court held that section 654 did not preclude punishment for each sex crime (rape, sodomy, and two oral copulation counts) committed during a continuous 45-to-60 minute attack. (*People v. Harrison*, *supra*, 48 Cal.3d at p. 336.) In *Perez*, the Court rejected the defendant's argument that his single intent and objective was to achieve "sexual gratification," observing that such a "broad and amorphous" view of the intent and objective test would reward the defendant who has greater criminal ambition with lesser punishment. (*Id.* at p. 335-336, citing *People v. Perez, supra,* 23 Cal.3d at pp. 550, 552-553.)

The Court in *Harrison* ultimately stated:

> No purpose is to be served under section 654 by distinguishing between defendants based solely upon the type *or* sequence of their offenses. Such an analysis would dispense punishment on the basis of the sexual taste or imagination of the perpetrator, and would not address the concerns raised in *Perez*, *supra*, 23 Cal.3d 545. To adopt

> such an approach would mean that "once a [defendant] has committed one particular sexual crime against a victim he may thereafter with impunity repeat his offense," so long as he does not direct attention to another place on the victim's body, or significantly delay in between each offense. (*People v. Reeder*, *supra*, 152 Cal.App.3d at p. 917.[[5]]) However, it is defendant's intent to commit a number of separate base criminal acts upon his victim, and not the precise code section under which he is thereafter convicted, which renders 654 inapplicable.

(*People v. Harrison*, *supra*, 48 Cal.3d at pp. 337-338, italics in original.)

Justice Mosk concurred in the judgment, but not in the opinion, stating:

> I also have serious doubt that the majority's discussion of section 654 is sound. [footnote omitted.] They present an extended and intricate analysis to support their conclusion that the provision is inapplicable to the case at bar. In my view, such an analysis is unnecessary. Here, the defendant committed not one but *three* acts of penetration, each interrupted by a distinct violent assault. Thus, section 654, which governs when there is a single "act," does not apply. But even if the three acts could be deemed to constitute a single "act" for present purposes, the result would be the same. Section 654 is operative when there is an "act" that is made punishable "in different ways by different provisions" of the Penal Code. The "act" here, however, is made punishable only in one way by one provision.

(*People v. Harrison*, *supra*, 48 Cal.3d at pp. 339-340.)

Here, appellant's "act" of possessing each firearm violated section 12021, subdivision (a) seven different times. What constitutes an "act" is determined by the specific wording of the Penal Code at issue. The Legislature defines the "act" that is prohibited and criminals whose conduct constitutes multiple performances of that act

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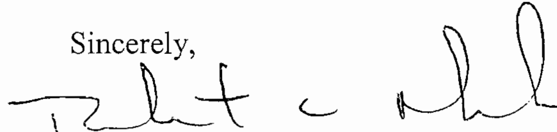
[5] *People v. Reeder* (1984) 152 Cal.App.3d 900.

have violated the Penal Code multiple times. Section 654 should not govern when conduct results in multiple convictions of the same provision of law, and respondent submits that appellant's judgment and sentence should be affirmed.

Sincerely,



ROBERT C. NASH
Deputy Attorney General
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For EDMUND G. BROWN JR.
Attorney General

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Correa** Case No.: **S163273**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On November 12, 2010, I served the attached **RESPONDENT'S SUPPLEMENTAL LETTER BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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(Representing appellant Correa – 2 copies)

Honorable Jan Scully
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 12, 2010, at Sacramento, California.

____
Declarant

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