S179552 SUPREME COURT COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. JARVONNE JONES, Defendant and Appellant.	Supreme Court No. _____ Court of Appeal No. C060376 Superior Court No. 08F04254 (Sacramento County)

SUPREME COURT
FILED

JAN 19 2010

Frederick K. Ohlrich Clerk

Deputy

PETITION FOR REVIEW

After a Decision by the Court of Appeal
For the State of California
Third Appellate District

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By Appointment of the Third District
Court of Appeal under the Central
California Appellate Program Assisted
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
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THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. JARVONNE JONES, Defendant and Appellant.	) Court of Appeal No. C060376)) Superior Court No. 08F04254) (Sacramento County)

PETITION FOR REVIEW

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Rule 8.500 (a)(1), of the California Rules of Court, petitioner, Jarvonne Jones, respectfully requests this Court review the unpublished decision of the Court of Appeal, Third Appellate District, which affirmed his conviction. A copy of the Court of Appeal's opinion, filed December 10, 2009, is attached as Exhibit A.

QUESTIONS PRESENTED

1. Given Penal[1] Code section 654's proscription against multiple punishments for a single act or omission, when a convicted felon

[1] All further undesignated references are to the Penal Code

possesses a firearm in a manner that violates three separate statutes — here, possession of a firearm (1) by a felon (Pen. Code § 12021, subd. (a)(1)), (2) that is capable of being concealed (§ 12025, subd. (b)(6), and (3) that is loaded and carried in public (§ 12031, subd. (a)(2)(F)— can his status as a convicted felon alone justify the imposition of multiple punishments without evidence that he harbored multiple intents or objectives?

2. When the trial court fails to specify the amount of non-mandatory fees imposed at sentencing, may the clerk presume that the fees should be imposed in the amounts specified in the probation report?

NECESSITY FOR REVIEW

1. The Applicability of Section 654

The Court of Appeal's decision here relies on the reasoning in *People v. Harrison* (1969) 1 Cal.App.3d 115, the reasoning of which is suspect (*Harrison* appears to infer that the defendant harbored separate intents from the fact that the statutes he violated "strike at different things" and are not mutually inclusive (*id.* at 122) —an analysis which would be more appropriate in the context of lesser-included offenses (see *People v. Smith* (1998) 64 Cal.App.4th 1458, 1471)) and conflicts with more recent cases finding that section 654 barred multiple punishments in analogous situations. (See e.g. *People v. Lopez* (2004) 119 Cal.App.4th 132, 134, [unlawful possession of a gun and unlawful possession of

the ammunition inside the gun], *In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1744 [carrying a loaded firearm at school, carrying a loaded firearm in a public place, and carrying a concealed weapon], *People v. Perry* (1974) 42 Cal.App.3d 451, 456-457[possession of a sawed off shotgun and felon in possession of a firearm].) Thus a grant of review is necessary to resolve this conflict and secure uniformity of decision.

Additionally, being a felon in possession of a firearm (§ 12021, subd. (a)(1)) is a commonly charged crime, which, given the possessory nature of the offense, is likely to apply in cases where the defendant also commits other offenses, thereby triggering the applicability of section 654. The instant case thus presents an important question of law, which is likely to recur.

Accordingly a grant of review is necessary to settle an important question of law and secure uniformity of decision. (See Cal. Rules of Court, rule 8.500(b)(1).)

2. Clerk's Modification of the Court's Oral Pronouncement of Judgment

The fees at issue here are also applicable in countless other case decided daily. Given the Court of Appeal's affirmance of the error below in spite of *People v. Zackery* (2007) 147 Cal.App.4th 380, 389 (abstract of judgment may not add to or modify the oral pronouncement of judgment), a grant of review is necessary to provide guidance to the lower courts by settling the following important question of law: May the court's clerk fill-in the specific amounts of fines not expressly ordered by the court?

STATEMENT OF THE CASE

On September 25, 2008, an amended information was filed charging appellant with being a felon in possession of a firearm (§ 12021, subd. (a)(1)) (count 1); carrying a firearm capable of being concealed upon the person (§ 12025, subd. (b)(6))(count 2); and carrying a loaded firearm in public (§ 12031, subd. (a)(2)(F)(count 3). (CT 45-46.) The amended information also alleged that appellant had served a prior prison term within the meaning of section 667.5, subdivision (b). (CT 45-46.)

On October 1, 2008, a jury found appellant guilty on all three counts. (CT 59-61; RT 155.) On November 5, 2008, following a court trial on the prior prison term, the court sentenced appellant to the upper term of three years on all counts, to be served concurrently, and a consecutive term of one year for the prior prison term enhancement. (Supp. CT 1; RT 171.)

On November 6, 2008, appellant timely filed a notice of appeal.

STATEMENT OF FACTS

At around 7:00 in the evening on May 26, 2008, Sacramento Police officers pulled over a teal Chevrolet Cavalier because it had no rear license plate. (RT 21.) Appellant was driving the vehicle and a woman named Africa West was in the passenger seat. (RT 22-23.) Officers searched the car and found a gun inside the front driver's side door panel. (RT 26.) While seated in the back of the patrol vehicle at the scene, appellant waived his *Miranda* rights and told the officer that

the gun was his and he had purchased it from a guy on the street three days earlier. (RT 27-28.) Counsel stipulated that appellant had a prior felony conviction, that a person named Bobbie Anderson was the actual owner of the teal Chevrolet, and that appellant was not the registered owner of the gun. (RT 88.) The jury returned a guilty verdict on all three counts (RT 155), and at a later court trial, the judge found that appellant had suffered a prior prison term within the meaning of section 667.5, subdivision (b) (RT 161).

ARGUMENT

I. PENAL CODE SECTION REQUIRES THAT EXECUTION OF SENTENCE BE STAYED ON COUNT TWO AS WELL AS COUNT THREE

The trial court sentenced appellant to concurrent terms of three years on each of the three counts. (Supp. CT 1.) Although the probation report recommended that the terms on counts two and three be "stayed, pursuant to Penal Code Section 654" (CT 104), the trial court did not mention section 654. (CT 104, RT 171.)[2]

Appellant contends that, because he committed a single possessory act, the terms on counts two and three should be stayed pursuant to section 654. In an unpublished opinion, the Court of Appeal agreed that count three should be stayed pursuant to section 654, but held that appellant's status as a convicted felon merits

[2] As the Court of Appeal recognized, the trial court may have agreed with the probation officer's recommendation regarding the applicability of section 654, but misapplied that statute by imposing concurrent terms rather than staying execution of sentence on the second and third counts. (Slip. Opn. at p. 4.)

additional punishment and thus the concurrent sentence on count two was properly imposed. (Slip Opn. at pp.7-10.)

"Section 654 prohibits multiple punishment for and indivisible course of conduct even though it violates more than one statute. [Citation.] Whether a course of conduct is indivisible depends on the intent and objective of the act or omission." (*In re Joseph G., supra*, 32 Cal.App.4th at p. 1743.) When section 654 prohibits multiple punishments for the same act, the trial court must stay the execution of sentences on the convictions for which multiple punishment is prohibited. (*People v. Sloan* (2007) 42 Cal.4th 110, 116.) The trial court's findings –whether implicit or explicit—regarding whether there was single criminal act will be upheld if supported by substantial evidence. (*People v. Moseley* (2008) 164 Cal.App.4th 1598, 1603.)

The Court of Appeal here relied on *People v. Harrison*, in which the appellate court found no error in the imposition of multiple punishments for being a felon in possession of a firearm (former § 12021), and carrying a loaded firearm in a vehicle on a public street (former § 12031, subd. (a)). (See Slip. Opn. at pp. 7-10, citing *People v. Harrison* (1969) 1 Cal.App.3d 115, 122.) *Harrison* reasoned that because the statutes strike at different things: that of felons possessing guns, loaded or not, and that of anyone carrying a loaded gun in a public place, and held that the defendant committed two acts, loading the gun and carrying it. (*Ibid.*)

However, in the 40 years since *Harrison* was decided several courts have headed this court's warning not to "parse the objectives too finely" in analyzing potentially impermissible multiple punishments under section 654 (*People v. Britt* (2004) 32 Cal.4th 944, 953), and found that section 654 barred multiple punishments in analogous situations. (See e.g. *People v. Lopez*, *supra,* 119 Cal.App.4th at p. 134, [section 654 violated by punishment for both unlawful possession of a gun and unlawful possession of the ammunition inside the gun; multiple punishment would "parse the objectives too finely"], *People v. Perry, supra,* 42 Cal.App.3d at pp. 456-457 [§ 654 bars multiple punishment for simultaneous offenses of possession of a sawed off shotgun and felon in possession of a firearm].)

Indeed, whether or not the statutes he violated strike at different objectives, they all involved a single possessory act. (See *In re Joseph G.*, *supra,* 32 Cal.App.4th at pp. 1743-1744.) Carrying a loaded firearm in a particular place constitutes a single act and, although such conduct may constitute more than one distinct crime, a defendant may only be punished for one of those crimes. (*Ibid.*) In *Joseph G.*, a minor was declared a ward of the court following true findings that he carried a loaded firearm at school (§ 626.9), carried a loaded firearm in a public place (§ 12031, subd. (a)(1)), and carried a concealed weapon (§ 12025, subd. (a)(2)). (*Id.* at 1737-1738.) *In re Joseph G.* held that he could not be punished for all three offenses since each offense was based on the same act of possessing a single loaded firearm in his school locker. (*Id.* at 1744.)

Likewise, here all three of appellant's crimes were based on the single act of carrying a single loaded firearm in a vehicle on May 26, 2008. (RT 20-22; CT 93.) The fact that appellant was a felon, that the vehicle was on a public street and that the firearm was capable of being concealed on the person may make him liable for separate offenses, but they do not constitute separate acts or omissions within the meaning of section 654.

Accordingly the trial court erred in failing to stay execution of sentence on counts two *and* three.

II. CERTAIN FINES AND FEES, THE AMOUNTS OF WHICH WERE NOT REFLECTED IN THE COURT'S ORAL PRONOUNCEMENT OF JUDGMENT, MUST BE STRICKEN.

At sentencing, the trial court ordered appellant to pay the "main jail booking fee and mail jail classification fees" but did not specify the amount of these fines.[3] (RT 172.) The probation report recommended that a $242.29 main jail booking fee and a $27.22 mail jail classification fee be imposed under Government Code section 29550.2.[4] (CT 107.) The minute order for the sentencing hearing (CT 5) and the abstract of judgment (Supp. CT 2) reflect that these fees were imposed in the amounts specified in the probation report.

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[3] The trial court also failed to specify the amount of the "court security surcharge" he imposed. (RT 172.) However, section1465.8, subdivision (a)(1) imposes a mandatory court security fee of $20 for every conviction of a criminal offense.

[4] Government Code section 29550.2 authorizes the imposition of criminal justice administration fees, including the cost of booking and classification, and provides for the reimbursement of actual costs, subject to a defendant's ability to pay.

Petitioner contends that the booking and jail classification fees must be stricken from the abstract of judgment because they do not accurately reflect the oral pronouncement of judgment. (See *People v. Zackery, supra*, 147 Cal.App.4th at p. 389 [abstract of judgment may not add to or modify the oral pronouncement of judgment].) The Court of Appeal disagreed, holding that, in the absence of an objection "we presume the amounts in the probation report reflect the correct administrative costs incurred for booking and classifying defendant into jail. (See *People v. Bartell* (2009) 170 Cal.App.4th 1258, 1262;, 1021.)" (Slip Opn. at p. 12.)

However, in both *Bartell* and *Evans* the abstract accurately reflected the oral pronouncement of judgment and neither case supports the proposition that, when the court is silent regarding the amount of a fine, the clerk is authorized to impose the amount specified in the probation report. (See *People v. Bartell, supra,* 170 Cal.App.4th at pp. 1261-1262 [Wells Fargo properly considered a victim entitled to restitution (§1202.4)]; *People v. Evans*, *supra*, 141 Cal.App.3d at p. 1021 [objections to the contents of a probation report must be made at sentencing].)

The error here is that the abstract of judgment reflects fines in amounts that were not imposed by the court. (*People v. Zachery, supra,* 147 Cal.App.4th at p. 389 [an abstract may not add to or modify the oral pronouncement of judgment].) The trial court did not expressly adopt the probation department's recommendation regarding the imposition of fees (RT 171), and the fact that the

abstract of judgment reflects fees imposed in the amounts recommended by the probation department does not ameliorate the error. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185-186 [where there is a discrepancy between the abstract of judgment and the oral pronouncement of judgment, the oral pronouncement controls].)

Accordingly, the $242.29 main jail booking fee and the $27.22 main jail classification fee listed in the minutes and the abstract of judgment should be stricken because they do not accurately reflect the oral pronouncement of judgment . (*People v. Zachery, supra,* 147 Cal.App.4th at p. 388.)

CONCLUSION

For the foregoing reasons, appellant's sentences for *two* of the counts should have been stayed pursuant to Penal Code section 654 (see *In re Joseph G., supra,* 32 Cal.App.4th at p. 1744), and the fees that do not accurately reflect the oral pronouncement of judgment should be stricken from the clerk's minutes and from the abstract of judgment in accordance with *People v. Zackery*, *supra* 147 Cal.App.4th 380.

CERTIFICATE OF WORD COUNT

I certify that the foregoing brief complies with California Rules of Court, rule 8.204 and contains 2, 315 words (including footnotes and excluding tables) according to the word count function of the computer program used to create it.

Date: January 19, 2010

Morgan H. Daly
Attorney for Appellant

PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is P.O. Box 348, Fairfax, California, 94978. On the date shown below, I served a true and correct copy of the attached *PETITION FOR REVIEW* to the following parties by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail in Fairfax, California, addressed as follows:

ATTORNEY GENERAL'S OFFICE
P.O. Box 944255
Sacramento, CA 94244-2550

SACRAMENTO COUNTY
SUPERIOR COURT
OFFICE OF THE CLERK
720 Ninth Street
Sacramento, CA 95814

COURT OF APPEAL
THIRD DISTRICT
621 Capitol Mall, 10th Floor
Sacramento, CA 95814-4719

JARVONNE F. JONES V-66069
D.V.I. C-wing #304
PO Box 600
Tracy, CA 95378

CENTRAL CALIFORNIA
APPELLATE PROJECT
2407 J Street, Suite 301
Sacramento, CA 95816-4736

I declare under penalty of perjury the foregoing is true and correct. Executed this 19th day of January, 2010, in Fairfax, California.

Morgan H. Daly

PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is P.O. Box 348, Fairfax, California, 94978. On the date shown below, I served a true and correct copy of the attached *PETITION FOR REVIEW* to the following parties by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail in Fairfax, California, addressed as follows:

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Morgan H. Daly

EXHIBIT A

NOT TO BE PUBLISHED

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JARVONNE FEREDELL JONES,

Defendant and Appellant.

C060376

(Super. Ct. No. 08F04254)

A jury convicted defendant Jarvonne Feredell Jones of three firearms offenses and the trial court found he had served a prison term. (Pen. Code, §§ 12021, subd. (a)(1), 12025, subd. (b)(6), 12031, subd. (a)(2)(F), 667.5, subd. (b).)[1] Defendant was sentenced to prison for four years, and he timely appealed.

Defendant contends the trial court should have stayed the sentences for two counts and that the abstract reflects jail

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

fees that were not orally pronounced at sentencing. The Attorney General partly concedes the former claim. We shall modify the sentence and otherwise affirm.

FACTS

In May 2008, the car defendant was driving was searched. A loaded revolver, not registered to defendant, was found in a door panel, and defendant, a convicted felon, said he bought the gun three days earlier.

DISCUSSION

I.

Count Three Must be Stayed

Defendant was convicted of possession of a firearm by a felon (count one, § 12021, subd. (a)(1)), carrying a readily accessible concealed and unregistered firearm (count two, § 12025, subd. (b)(6)), and carrying an unregistered loaded firearm in public (count three, § 12031, subd. (a)(2)(F)).

Defendant contends he committed one possessory act and therefore multiple punishment is improper and the sentences for counts two and three must be stayed. We agree in part.

"Section 654, subdivision (a), provides in pertinent part, '[a]n 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.' Section 654 therefore

'"precludes multiple punishment for a single act or for a course of conduct comprising indivisible acts. 'Whether a course of criminal conduct is divisible . . . depends on the intent and objective of the actor.' [Citations.] . . .

"Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support them." (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1142-1143 (*Jones*).)

The probation report recommended the upper term of three years for count one. It recommended one-third the midterm on counts two and three, "stayed, pursuant to Penal Code Section 654." But a one-third midterm sentence is what is generally imposed for consecutive determinate counts. (See § 1170.1, subd. (a).) This page of the probation report contains handwritten notes, presumably made by the trial court, bracketing the paragraphs discussing counts two and three with the notation "654" and indicating "3 yrs."

At sentencing, the parties expressed no disagreement with the recommendation that counts two and three should be stayed pursuant to section 654, but contested whether defendant should receive the upper or middle term. The trial court imposed the upper term of three years on each count, but ordered counts two

and three to be served concurrently. It did not mention section 654.

It may be that the trial court agreed with the probation officer's recommendation regarding the applicability of section 654, but misapplied that statute. The correct way to implement it is for the trial court to impose sentence on all counts of which the defendant stands convicted, but then stay execution of sentence as necessary to prevent improper multiple punishment. (See *People v. Deloza* (1998) 18 Cal.4th 585, 591-592; *People v. Pearson* (1986) 42 Cal.3d 351, 359-360.) Imposing concurrent terms is not the correct method of implementing section 654. A concurrent term is not a stayed term. In fact, imposing concurrent terms is generally seen as an implied finding that the defendant bore multiple intents or objectives, that is, a rejection of the applicability of section 654. (See, e.g., *People v. Garcia* (2008) 167 Cal.App.4th 1550, 1564-1565 (*Garcia*) ["implicit in the trial court's concurrent sentencing order is that defendant entertained separate intentions"]; see *Jones, supra*, 103 Cal.App.4th at p. 1147 [same].)

The Attorney General agrees that count three should be stayed as between it and count two, because defendant committed a single act when he possessed a loaded firearm in public and possessed a concealable weapon. But the Attorney General argues that as between counts one and two, no stay is required because those crimes were committed at different times or with different

intents or both. He relies on evidence that defendant, a convicted felon, possessed a firearm for three days before his arrest. We are not entirely persuaded by the Attorney General's reasoning, but we agree with his contention that defendant may be separately punished for possession by a felon of a firearm and another offense.

The Attorney General's legal theory is that defendant admitted possessing the gun three days before his arrest, a felon commits a crime the moment she or he possesses a gun, and therefore defendant's antecedent possession of the gun is separately punishable. He relies on cases where a felon uses a gun to commit some crime with the gun, such as assault or robbery. In those cases, the rule is that where a felon acquires the gun at the scene of the crime, such as in a struggle, she or he may not be separately punished, but if the felon arrives at the scene armed, separate punishment is permitted. (See *People v. Bradford* (1976) 17 Cal.3d 8, 22-23 [felon took officer's gun during struggle, multiple punishment barred]; *People v. Venegas* (1970) 10 Cal.App.3d 814, 821 [similar holding]; cf. *Garcia, supra*, 167 Cal.App.4th at pp. 1564-1566 [felon kept gun after robberies and planned to use it to avoid arrest, multiple punishment allowed]; *People v. Ratcliff* (1990) 223 Cal.App.3d 1401, 1407-1410 [similar holding]; see generally *Jones, supra*, 103 Cal.App.4th at pp. 1144-1146 [collecting and discussing cases].)

Defendant did not use his gun to commit a nonpossessory crime. And the People did not argue defendant was guilty of possession three days before his arrest: The prosecutor mentioned defendant's admission that he bought the gun three days before to bolster the theory that defendant knowingly possessed the gun, not to base liability on possession before the date of arrest. Accordingly, we question the theory of antecedent possession in this case.

However, because of the purpose of the ban on felons possessing firearms, we agree that multiple punishment is appropriate as between count one (possession by a felon of a firearm) and either counts two or three.

The purpose of section 12021 is to protect public welfare by precluding the possession of guns by those who are more likely to use them for improper purposes--felons (*People v. Pepper* (1996) 41 Cal.App.4th 1029, 1037, citing *People v. Bell* (1989) 49 Cal.3d 502, 544), and to provide a greater punishment to an armed felon than to an unarmed felon (*People v. Winchell* (1967) 248 Cal.App.2d 580, 597). "Section 654's purpose is to ensure that punishment is commensurate with a defendant's culpability. [Citations.] This concept 'works both ways. It is just as undesirable to apply the statute to lighten a just punishment as it is to ignore the statute and impose an oppressive sentence.' [Citation.] Section 12021 uniquely

targets the threat posed by felons who possess firearms." (*Jones, supra*, 103 Cal.App.4th at p. 1148.)

In cases where a felon possessed a separately proscribed firearm, that is, an inherently unlawful weapon, multiple punishment has been barred. (*People v. Perry* (1974) 42 Cal.App.3d 451, 456 ["The possessor here happened to be one previously convicted of a felony, whose possession of a concealable firearm was punishable regardless of its being a sawed-off rifle"]; see *People v. Scheidt* (1991) 231 Cal.App.3d 162, 170 [similar facts, following *Perry*].)

But here, defendant did not possess an inherently unlawful firearm; he possessed his firearm in an unlawful way, that is, beyond the unlawfulness inherent in a felon's possession of a firearm. In this case defendant concealed the loaded firearm in a vehicle that then he drove on a public street.

In *People v. Harrison* (1969) 1 Cal.App.3d 115, Harrison was convicted of possession by a felon of a firearm and possession of a loaded firearm on a public street. Multiple punishment was upheld based on the following reasoning:

"In our case, appellant argues he possessed or controlled but one object, the revolver, and yet was punished for two crimes only because he was an ex-convict driving a car. We note these distinctions: Penal Code section 12021 applies only to a person previously convicted of a felony and who owns or has custody, control or possession of a concealable firearm, loaded

or unloaded and whether in a vehicle or not; so long as he owns or has custody, control, or possession of it, such a weapon need not be on his person or in his vehicle. The [misdemeanor] offense proscribed by Penal Code section 12031, however, applies to any person and to any firearm, concealable or not, but only if it is loaded and he carries it either on his person or in a vehicle. . . .

"The two statutes strike at different things. One is the hazard of permitting ex-felons to have concealable firearms, loaded or unloaded; the risk to public safety derives from the type of person involved. The other strikes at the hazard arising when any person carries a loaded firearm in public. Here, the mere fact the weapon is loaded is hazardous, irrespective of the person (except those persons specifically exempted) carrying it.

"The 'intent or objective' underlying the criminal conduct is not single, but several, and thus does not meet another of the tests employed to determine if Penal Code section 654 is violated. [Citation.] For an ex-convict to carry a concealable firearm is one act. But loading involves separate activity, and while no evidence shows that appellant personally loaded the pistol, there seem little distinction between loading and permitting another to do so. Thus, two acts, not a single one, are necessarily involved and bring our case outside the prohibition against double punishment for a single act or

omission. We therefore hold contrary to appellant's contentions on this point." (*People v. Harrison, supra,* 1 Cal.App.3d at p. 122.)

Here, as stated, after defendant purchased the gun, he concealed it in the car, or had someone conceal it for him. Under the reasoning of Harrison just quoted, that act merits separate punishment from mere possession. Accordingly, a section 654 stay is not required as between counts one and two.

Defendant relies in part on *In re Joseph G.* (1995) 32 Cal.App.4th 1735. There, a minor carried a loaded, concealed, gun to school, and the juvenile court sustained delinquency allegations that he violated three separate statutes proscribing, respectively, carrying a loaded firearm at school, carrying a loaded firearm in public and carrying a concealed weapon, and multiple punishment was precluded, although it was an academic victory, since no sentence had been imposed, the minor not having been removed from the home. (*Id.* at pp. 1743-1744; see *People v. Hurtado* (1996) 47 Cal.App.4th 805, 807-808, 816 [defendant convicted of carrying a loaded weapon in a car and carrying a concealed weapon in a car; court accepted People's concession of applicability of section 654, citing *Joseph G.*].) We agree *Joseph G.* supports application of section 654 as between counts two and three in defendant's case, but it does not address the issue of defendant's status as a convicted

felon. For the reasons stated above, that status merits additional punishment in this case.

In conclusion, the concurrent sentence on count two is proper, but the sentence on count three must be stayed.

II.

The Jail Fees were Properly Imposed

When a defendant is convicted, the county may recoup the "actual administrative costs . . . incurred in booking or otherwise processing arrested persons." (Gov. Code, § 29550.2, subd. (a); see *People v. Rivera* (1998) 65 Cal.App.4th 705.)

The probation report made six recommendations, including a prison sentence, an $800 restitution fine and an equivalent, stayed, parole revocation fine, and recommended the trial court order defendant to "pay a court security surcharge fee" of $60, "pay a $242.29 main jail booking fee" and "pay a $27.22 main jail classification fee", and both of the latter were "pursuant to Section 29550.2 of the Government Code[.]"

After imposing concurrent upper-term prison sentences, the trial court made the following orders: "Impose the restitution fine of $200, a . . . parole revocation fine of $200 to be stayed upon successful completion of parole; order that you pay the court security surcharge, main jail booking fee and main jail classification fees."

The abstract and court minutes reflect the three fees in the amounts recommended by the probation officer, a $60 court

security fee, a $242.29 booking fee and a $27.22 jail classification fee.

Defendant contends that because the trial court did not recite the amount of the booking and jail classification fees, they were not properly imposed. He does not raise a similar challenge as to the $60 court security fee.

Defendant relies on the rule that "Where there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls." (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385.) The abstract of judgment and court minutes must accurately reflect what the trial court ordered, and the clerk, in preparing those documents, lacks the power to add fines or fees not imposed by the court. (*Id.* at pp. 386-390.)

But in this case, there is no discrepancy between the abstract, the minutes and the trial court's order. Although the trial court did not recite the amounts of the jail booking and classification fees, the trial court ordered that they be paid. The trial court was following the recommendations of the probation officer in the order presented in the report, although it disagreed with the sentence and the amount of the restitution fines. The parties had the probation report and could follow the trial court's orders. Defendant did not object to the amount of the fees or to the failure to recite that amount. No doubt this is because the amount—actual administrative costs was

routinely calculated. For lack of objection, we presume the amounts in the probation report reflect the correct administrative costs incurred for booking and classifying defendant into jail. (See *People v. Bartell* (2009) 170 Cal.App.4th 1258, 1262; *People v. Evans* (1983) 141 Cal.App.3d 1019, 1021.)

This is not like cases where a clerk adds some fee or fine that was not actually imposed. The clerk accurately captured in the minutes and the abstract the trial court's imposed judgment. Although the trial court should have recited the amounts, we see no basis for striking those two orders in this case.

DISPOSITION

The judgment is modified by staying execution of the sentence on count three pursuant to section 654, and as so modified is affirmed. The trial court is directed to forward a new abstract of judgment to the Department of Corrections and Rehabilitation

CANTIL-SAKAUYE, J.

We concur:

BLEASE, Acting P. J.

ROBIE, J.