IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. **VICTOR CORREA,** Defendant and Appellant.

S163273

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

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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ISSUE PRESENTED

Was defendant properly sentenced on multiple counts of being a felon in possession of a firearm where he was discovered in a closet with a cache of weapons?

INTRODUCTION

After barricading himself inside a home, appellant, a twice convicted felon, was discovered by SWAT officers hiding under a stairwell. Officers also discovered seven rifles and shotguns of various makes, models, calibers, and gauges. Appellant was convicted of seven counts of being a felon in possession of a firearm and one count of receiving stolen property. At sentencing the court found that each of the weapons had an individual purpose, declined to stay the sentences pursuant to Penal Code section 654 [1/], and imposed eight consecutive sentences of 25 years to life in prison. Appellant challenges six sentences for being a felon in possession of a firearm alleging they must be stayed pursuant to section 654 because they were part of an individual transaction.

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1. Unless otherwise designated all further references are to the Penal Code.

STATEMENT OF THE CASE

On September 14, 2006, information number 06F01135 was filed in Sacramento County Superior Court charging appellant, Victor Correa, in counts I through IX, with being a felon in possession of a firearm (§ 12021, subd. (a)(1)), in count X, with unlawful taking of a motor vehicle (Veh. Code, § 10851, subd. (a)), and in counts XI through XIII, with receiving stolen property (§ 496d, subd. (a)). (I CT 119-123.) The information further alleged that appellant had been convicted of three prior felonies within the meaning of sections 667, subdivisions (b) through (i) and 1170.12. (I CT 122-123.) On that same day appellant pled not guilty and denied the enhancements. (I CT 124.)

Jury trial commenced on September 11, 2006. (I CT 110.) On September 22, 2006, the jury found appellant guilty of counts I through VII, and XII. (I CT 203-209, 214.) Appellant was found not guilty of counts VIII through XI. (I CT 210-213.) The jury was unable to reach a verdict on count XIII, and the court declared a mistrial. (I CT 221.)

Appellant waived jury trial on the prior felony conviction allegations. (I CT 221.) The People dismissed the allegation of the first prior conviction, and the court found the remaining two allegations true. (III RT 746-749.)

On October 20, 2006, the court sentenced appellant to seven consecutive terms of 25 years to life on counts I through VII, and an additional consecutive term of 25 years to life on count XII. (I CT 273-274; III RT 763.) Appellant's aggregate sentence is eight consecutive terms of 25 years to life. (III RT 763.)

On December 4, 2006, appellant filed a notice of appeal. (I CT 276.)

On April 4, 2008, the Third District Court of Appeal affirmed appellant's judgment and sentence. (*People v. Correa* (2008) 161 Cal.App.4th 980.) On May 6, 2008, appellant filed a petition for review in this Court. On July 9, 2008, the Court granted the petition for review.

STATEMENT OF FACTS

On February 4, 2006, at approximately 5:07 p.m. Sacramento Police Officer Kevin Howland was dispatched to an address in Sacramento County regarding firearms being moved into a residence. (I RT 106-108.) When he arrived there was a black "T-bird" in the driveway. (I RT 110.) Officer Howland saw a man in the driver's seat and blocked the vehicle with his patrol car. (I RT 111.) Officer Howland told the man to put his hands in the air and stay where he was. (I RT 111.) He also saw two women in the driveway. (I RT 112.) Another man got out of a green Lexus that was parked nearby and went in the garage. (I RT 112-113.) The man in the driver's seat did not comply with Officer Howland's commands and also went in the garage. (I RT 111-112.)

Officer Howland saw a silver Nissan 300Z parked in the driveway. (I RT 118.) Another officer arrived on scene, and the man from the driver's seat, Carlos Melgar, came out of the garage and was taken into custody. (I RT 119-120, 154-155.) Officer Howland also detained the two women in the driveway. (I RT 112.) He also tried to identify the owner of the Lexus, and determined it was stolen. (I RT 120-121.) Eventually, another woman came out of the house, and Officer Howland detained her as well. (I RT 126.)

Sacramento Police Officer William McCoin is assigned to the SWAT Team. (I RT 251-252.) On February 4, 2006, he was dispatched to the residence in response to a barricaded suspect. (I RT 253.) When he arrived with other members of the SWAT team the front door was closed and they saw a dog in the garage. (I RT 257-258.) At about 1:00 a.m. the incident commander decided to use tear gas. (I RT 259.) Subsequently, Officer McCoin opened the front door, and heard a muffled voice coming from inside. (I RT 260.)

Officer McCoin and another officer yelled back and forth with the

person inside the house. (I RT 262-263.) The voice sounded like it was coming from under the stairwell. (I RT 263.) They entered the house and opened the closet door. (I RT 264.) The person said he was stuck in the closet, but they could not see him. (I RT 265.) Officer McCoin saw numerous long gun cases on the floor. (I RT 265.) He removed the gun cases and two guns that were not in cases. (I RT 266.)

Officer McCoin tore a hole in the wall, and saw appellant lying on the floor. (I RT 268.) He appeared to be stuck. (I RT 269.) The officers pulled appellant out through the opening and detained him. (I RT 270.)

On February 4, 2006, Sacramento City Police Detective Paul Schindler prepared a search warrant for the residence. (I RT 183-185.) After the SWAT team entered the residence Detective Schindler and other officers started a search. (I RT 186.) They had to use gas masks because the SWAT team used tear gas to enter the residence. (I RT 187.)

During the search Officer Schindler found two hard silver metal gun cases behind a couch. (I RT 195.) Inside the cases were a .12 gauge shotgun and a .50 caliber rifle. (I RT 196.) In an upstairs bedroom he found a Lexus ignition key and some paper work for the car. (I RT 198.) In another bedroom he found some Department of Motor Vehicles' paperwork. (I RT 199.)

Sacramento Police Detective Chou Vang also helped with the search. (II RT 367.) He took statements from some of the individuals that were detained, and then went inside the residence. (II RT 368.) Detective Vang saw several gun cases in the hallway next to the closet. (II RT 369.) He also found documents with appellant's name. (II RT 379.)

At about 7:30 p.m. on February 4, 2006, Sacramento Police Detective Denise Phillips assisted in the search of the residence. (II RT 393, 396.) Detective Phillips searched the garage and found shotgun shells and letters addressed to appellant inside a duffel bag. (II RT 396.) She also searched a

bedroom and found some shotgun shells in another bag. (II RT 399-400.)

On February 4, 2006, Sacramento Police Detective Ernest Lockwood was dispatched to the residence to assist in the preparation of the search warrant. (II RT 315-316.) After they obtained the search warrant he helped in the search. (II RT 317-318.) Officer Lockwood was assigned to log the items that other officers brought to him. (II RT 319.) Detective Vang brought him seven firearms and told him where he located the items. (II RT 322.) Detective Vang also brought him ammunition and documents. (II RT 340-344.)

Detective Schindler brought Detective Lockwood two large gun cases. (II RT 344-345.) There was a shotgun in one case and a rifle in the other. (II RT 345.) Detective Schindler also brought him some documents and a Lexus car key. (II RT 349-351.)

Edgar Smith is a part-time paid intern with the Sacramento Police Department. (II RT 465.) He is currently assigned to the evidence lab and processes evidence for latent prints. (II RT 466.) In this case he examined rifles, gun cases, and ammunition. (II RT 468-469.) The first six items he examined - all guns - did not have any prints. (II RT 470-471, 472-473, 474-476.) He also examined some .22 caliber ammunition that also did not have any fingerprints. (II RT 477.) He did find two prints on a gun case, and two prints on a manual in another gun case. (II RT 479-480.) Finally, he examined four live shotgun rounds that did not have any prints. (II RT 482.)

Brian Mallory is a technician in the latent print unit of the Sacramento Police Department. (II RT 520-521.) The latent prints he examined in this case did not belong to appellant. (II RT 526.)

On February 4, 2006, Sacramento Police Sergeant Bruce Dubke was dispatched to the residence. (II RT 407-408.) Sergeant Dubke and another detective showed a picture of appellant to Officer Howland who said he thought it was the person he saw, but would be sure if he saw the tattoos. (II RT 410-

411.) He then took up a position as the secondary hostage negotiator. (II RT 411.) Sergeant Dubke was subsequently relieved, but was asked to return to assist in the investigation of the stolen cars. (II RT 412-413.) The records check on the Lexus indicated it was stolen. (II RT 413.) A silver Nissan and a primer gray Mustang were determined to be stolen as well. (II RT 413-415.)

Kirsten Vogel was appellant's neighbor from February 2005 until November 2005. (II RT 496.) Appellant lived in the house with his mother, brother, and brother's girlfriend. (II RT 498.) Ms. Vogel testified that she saw appellant in possession of firearms. (II RT 500-501.) The first time was in her home, and appellant had a rifle or shotgun. (II RT 501-502.) The second time she was waiting in the hallway of appellant's home and saw a handgun on the floor of his bedroom. (II RT 502-503.) At the time appellant was not in the bedroom. (II RT 503.)

Defense

Caroline Correa is appellant's mother. (III RT 571-572.) Appellant occupied the bedroom in the southwest corner of the house. (III RT 575.) Her son-in-law and his son occupied another bedroom. (III RT 575.) The day the police came she had left the house around 2:00 p.m. and gone to the hospital with her daughter. (III RT 583, 588.) "Bobbie" and appellant were at the house when she left. (III RT 584.) The 1964 Ford car in the driveway belonged to her husband. (III RT 576.) The green Lexus belonged to her son Jessie's girlfriend. (III RT 577.) Jessie had not been in the house for six or seven days prior to the police arresting appellant. (III RT 582.)

There was a closet under the stairs that they kept clothes in. (III RT 578.) She never saw any guns in the closet, and never saw any gun cases in the house. (III RT 578-579.)

SUMMARY OF ARGUMENT

Pursuant to section 12021, subdivision (a), any individual with a felony conviction, who possesses a firearm is guilty of a felony. Further, pursuant to section 12001, subdivision (k), each firearm "shall constitute a distinct and separate offense" for purposes of section 12021.

The Legislature has determined that felons represent a unique and dangerous risk to the public and are prohibited from possessing firearms. Additionally, the culpability of the convicted felon, and the risk he or she poses to the public, increases with each additional firearm possessed. Here, appellant, a twice-convicted felon, was in possession of seven rifles and shotguns.

Finally, given the nature of how guns are fired, it is logical to presume that appellant could only use one firearm at a time. As a result, appellant's stockpile of weapons represented a severe risk to the public, and it was proper for the court to conclude that each weapon had a different nefarious purpose. The court's conclusion was also consistent with the Legislature's intent that felons in possession of multiple firearms have violated section 12021, subdivision (a) multiple times and are deserving of punishment for each.

ARGUMENT

APPELLANT'S SENTENCES FOR BEING A FELON IN POSSESSION OF A FIREARM SHOULD NOT BE STAYED.

Appellant claims that all seven of the convictions for being a felon in possession of a firearm arose from "a single incident" and that six of the seven sentences on those counts should be stayed pursuant to section 654.[2/] (AOB 7.) Respondent submits that appellant's separate sentences for each of the firearms is consistent with the Legislature's intent that a felon's possession of each firearm is a distinctly punishable offense. Further, appellant's possession of each one of the seven firearms had a separate and individual purpose, and as such he could be punished for each possession.

A. Procedural History

As noted above, appellant was convicted of seven counts of being a felon in possession of a firearm (§ 12021, subd. (a)(1)), and one count of receiving stolen property (§ 496d, subd. (a)). (I CT 203-209, 214.) The court also found that appellant had been convicted of two prior felonies within the meaning of sections 667, subdivisions (b) through (i) and 1170.12. (III RT 748-749.) The court sentenced appellant to seven consecutive terms of 25 years to life on each of the convictions for being a felon in possession of a firearm, and an additional consecutive term of 25 years to life for receiving stolen property. (I CT 273-274; III RT 763.) Appellant's aggregate sentence is eight consecutive terms of 25 years to life. (III RT 763.)

At sentencing the court stated:

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2. *People v. Rodriguez* (S159497) is currently pending before the Court. The issues presented to the Court are: (1) Does Penal Code section 654 apply to sentence enhancements that derive from the nature of the offense? (2) Did the trial court err in this case by imposing enhancements for personal use of a firearm (Pen. Code, § 12022.5, subs. (a)) and committing a crime for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b))?

So I should indicate that it is the Court's intended sentence to not follow exactly the probation report in the sense that the probation report calls for imposition of the 25 to life sentence in the first instance and then the other sentences concurrent and yet the Court believes that there is criteria in that report to warrant the Court imposing consecutive sentences and so I would like counsel to address that issue because it's the Court's intended sentence to sentence Mr. Correa to 25 years to life in Count 1 and then consecutively as to each count, 2 through 7, 25 years to life and in Count 12 consecutively 25 years to life. The Court believes that this is warranted by the facts and the record that Mr. Correa has and the significant number of aggravating factors with it. The Court finds no mitigating factors. And just so counsel know that's the Court's intended sentence and you can now address the Court.

(III RT 756.)

The Court further stated:

These aren't 664's so there's no way I can stay them. They are individual, in the Court's view, separate crimes. So the only way a Court stays a sentence is if it qualifies under Penal Code Section 654, and then the Court would impose the sentence but stay it. In this case, I'm finding that each one of these is a separate and individual offense with a separate and individual purpose, and therefore, I'm not finding 654. And, frankly, where that might apply and the only place I think it would apply in this case, if it did at all, would be Counts 2 through 7 because that was – I guess you'd call it, a cache, c-a-c-h-e, of weapons and so Counts 2 through 7 are each an individual weapon and – but the Court is finding that each of those is an individual and separate weapon, each had its own ammunition, and in the Court's view, there would be a different purpose and a different crime for each of those individual weapons and that's how the Court is addressing it. Not to say that you might want to make a 654 argument as to Counts 2 through 7, but my tentative ruling is I'm not going to do that. Or, my tentative sentence, rather, is that I am not. I am treating them individually and separately.

(III RT 757-758.)

B. Discussion

In this claim appellant alleges that six of the seven sentences for his convictions for being a felon in possession of a firearm must be stayed pursuant

to section 654. (AOB 7.) Respondent disagrees. The Legislature intended that felons convicted of possessing firearms be subjected to separate punishments for each conviction. Further, the trial court's determination that each firearm had a separate and individual purpose was proper.

Appellant was convicted of seven counts of violation of section 12021, subdivision (a). Appellant's arsenal of shotguns and rifles were made up of a number of different makes, models, calibers, and gauges.[3/] It is difficult to conceive any reason why a convicted felon would feel compelled to stockpile such a broad variety of firearms unless he harbored separate criminal objectives for each gun. It is further difficult to imagine an individual who presents a greater threat to society than appellant, an individual with an extensive and violent criminal history, who acquired an arsenal of various powerful firearms. (1 CT 237-240.)

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.

There are several factors that make appellant's convictions for being a felon in possession of a firearm unique from other crimes of possession. As a

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3. The makes, models, calibers, and gauges, of the firearms appellant was convicted of possessing are as follows:

Count 1, a Stevens .410 shotgun
Count 2, a Marlin .22 caliber rifle
Count 3, a Winchester .12 gauge shotgun
Count 4, a Remington .22 caliber rifle
Count 5, an 8 millimeter rifle
Count 6, a Marlin .22 caliber rifle
Count 7, a Master Mag .12 gauge shotgun

(I CT 203-209.)

convicted felon, there is no lawful way for appellant to possess a firearm. Appellant cannot purchase weapons from a licensed dealer, and therefore the lawful owner of each of the weapons in appellant's possession is a victim. Additionally, it is logical to presume that only one firearm can be used at a time. It was therefore logical for the court to presume that appellant had a different nefarious purpose for each of the firearms in his possession. If appellant did not have a distinct purpose for each gun, one gun would have been sufficient and he would not have found it necessary to acquire such a large number of different firearms. Finally, appellant, a convicted felon in possession of a large number of firearms, is inherently more dangerous than a convicted felon in possession of a single firearm. As such, appellant's culpability increased with each additional weapon he unlawfully possessed, and so should his sentence.

The very purpose of section 12021 is to protect the public from individuals like appellant. The risk to the public, and appellant's culpability increased with each additional weapon he possessed. As noted by the court in *People v. Pepper* (1996) 41 Cal.App.4th 1029, 1037-1038:

> The purpose of this law is to protect public welfare by precluding the possession of guns by those who are more likely to use them for improper purposes. [citation.] Due to the potential for death or great bodily injury from the improper use of firearms, public policy generally abhors even momentary possession of guns by convicted felons who, the Legislature has found, are more likely to misuse them.

The purpose and intent of section 12021 has been summarized by this Court as follows:

> Penal Code, section 12021, is part of the legislative scheme originally promulgated in 1917 (Stats. 1917, ch. 145, p. 221, §§ 1) and commonly known as the Dangerous Weapons Control Act. ... 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, specifically, 'to minimize the danger to public safety arising from the free access to firearms that can be used for crimes of violence.' (*People* v. *Scott*, 24 Cal.2d 774, 782 [151 P.2d 517].)" (

> *People* v. *Washington* (1965) 237 Cal.App.2d 59, 66 [46 Cal.Rptr. 545].) The law presumes the danger is greater when the person possessing the concealable firearm has previously been convicted of felony, and the presumption is not impermissible. (*People v. Dubose* (1974) 42 Cal.App.3d 847, 849-850 [117 Cal.Rptr. 235].)

(*People v. Bell* (1989) 49 Cal.3d 502, 544.)

Here, appellant's actions went far beyond "momentary possession." The police responded to appellant's residence after being informed by the dispatcher there were suspicious circumstances regarding some firearms being moved into a residence. (I RT 108.) Appellant's neighbor testified that she had seen appellant with firearms "[t]wo or three times." (II RT 501.) She said the first time was in the fall of 2005, months before his arrest, when he had a shotgun or rifle at her home. (II RT 501-502.) Finally, when discovered by SWAT officers under the stairwell, appellant had seven firearms of various makes, models, calibers, and gauges, capable of firing a broad range of ammunition and shells. (I CT 202-209; I RT 265-266, II RT 322.)

Further, convicted felons are unique in the substantial risk they pose to the public when they possess firearms. In fact, as this Court has recognized, the danger posed to the public by these individuals is so great that there are circumstance in which even a pardon by the Governor will not restore their privilege to possess a firearm.

> After release from prison, successful completion of parole, and a lengthy additional period of rehabilitation in this state during which the ex-felon must "live an honest and upright life," "conduct himself with sobriety and industry," and "exhibit a good moral character" (§§ 4852.05), he may petition the superior court for a certificate of rehabilitation (§§ 4852.07). If, after investigation by law enforcement authorities and a thorough hearing into the matter, the court finds that the petitioner has demonstrated "his rehabilitation and his fitness to exercise all of the civil and political rights of citizenship," it will issue a certificate of rehabilitation recommending that the Governor grant a full pardon. (§§ 4852.13.) But even though such a pardon entitles the ex-felon thereafter to exercise all civil and political rights and privileges, specifically

> including the right to own or possess any lawful firearm (§§ 4852.17), the legislation expressly declares that "this right shall not be restored, and Sections 12001 and 12021 of the Penal Code shall apply, if the person was ever convicted of a felony involving the use of a dangerous weapon." (*Ibid.*; see also §§ 4852 [pardon of prison inmates].)
>
> In short, the Legislature has determined that any adult convicted of a dangerous-weapon felony should be forever subject to the bar of section 12021, regardless of how complete his rehabilitation. Even the Governor, vested with the pardoning power by the Constitution (art. V, §§ 8), cannot restore such person's privilege to carry a concealable firearm.

(*People v. Bell, supra,* 49 Cal.3d at p. 545.)

Appellant is not challenging any of his seven convictions for being a felon in possession of a firearm, or his conviction for receiving stolen property. Rather, appellant claims that six of his sentences for being a felon in possession of a firearm must be stayed pursuant to section 654.

Penal Code section 654, states in relevant part:

> 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.

(Pen. Code, § 654, subd. (a).)

The general principles regarding Penal Code section 654, and its prohibition on multiple punishments are well recognized:

> 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 offenses, but not for more than one.

(*People v. Britt* (2004) 32 Cal.4th 944, 951-952, citing *Neal v. State of California* (1960) 55 Cal.2d 11, 19.)

In *People v. Harrison* (1989) 48 Cal.3d 321, the Court recognized the general principle, but went on to state:

> If, on the other hand, defendant harbored "multiple criminal objectives," which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, "even though the violations shared common acts or were parts of an otherwise indivisible course of conduct."

(*People v. Harrison, supra,* 48 Cal.3d at 335.)

Further,

> Because of the many differing circumstances wherein criminal conduct involving multiple violations may be deemed to arise out of an "act or omission," there can be no universal construction which directs the proper application of section 654 in every instance.

(*People v. Beamon* (1973) 8 Cal.3d 625, 636, implicitly overruled on other grounds in *People v. Mendoza* (2000) 23 Cal.4th 896, 908.)

In the instant case appellant was found by members of the SWAT team under a stairwell. Officers also found seven rifles and shotguns of various makes and models. But appellant's separate sentences for each of the firearms is consistent with the Legislature's intent that a felon's possession of each firearm is a distinctly punishable offense. Further, appellant's possession of each one of the seven firearms had a separate and individual purpose, and as such he could be punished for each possession.

A consideration of *People v. Kirk* (1989) 211 Cal.App.3d 58, and the subsequent amendments to the Penal Code designed to overrule it, are instructive. In *Kirk*, the defendant was convicted of two counts of burglary (§§ 459, 460), and two counts of illegal possession of a sawed-off shotgun (former § 12020, subd. (a)). A panel of the Third District Court of Appeal held that defendant's possession at the same time and place of two sawed-off shotguns did not constitute two separate violations of then-existing section 12020, subdivision (a), and one of the convictions must be reversed. (*People v. Kirk,*

supra, 211 Cal.App.3d 58.)

The court in *Kirk* analyzed the language of section 12020, subdivision (a) that existed at the time the defendant committed the crimes. Section 12020, subdivision (a), stated in relevant part, "Any person . . .who . . .possesses . . . *any* instrument or weapon of the kind commonly known as a . . . sawed-off shotgun . . . is guilty of a felony, . . ." (*People v. Kirk, supra,* 211 Cal.App.3d at p. 60, citing Stats. 1984, ch. 1414, § 3, pp. 4972-4973, italics in original; Stats. 1984, ch. 1562, § 1.1, p. 5499.)

The court observed that the word "any" had long been construed in criminal statutes as ambiguously indicating the single or the plural. (*People v. Kirk, supra,* 211 Cal.App.3d at p. 62.) The court found the United States Supreme Court decision of *Bell v. United States* (1954) 349 U.S. 81, 82-83, and subsequent federal decisions, to be persuasive authority that the Legislature's use of the word "any" was ambiguous and prohibited convictions on more than one offense when the defendant simultaneously possesses or receives several weapons. (*Id.* at p. 63.) The court ultimately concluded that section 12020, subdivision (a) was ambiguous, and that its use of the term "any" rather than "a" does not necessarily define the unit of possession in singular terms. (*Id.* at p. 65.) Because the defendant was entitled to the benefit of any statutory ambiguity he could not be convicted of multiple violations of section 12020 for his contemporaneous possession of two illegal weapons.[4/] (*Ibid.*)

In its analysis the Court also noted:

We have no doubt the Legislature could, if it wanted to, make criminal

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4. The defendant also alleged section 654 prohibited punishment for any violation of section 12020 because the guns were part of the burglaries for which he was punished. The court determined the weapons were modified after the burglaries and were possessed at a time and place remote from the burglaries. The defendant could therefore be punished for the violation of section 12020, subdivision (a). (*People v. Kirk, supra,* 211 Cal.App.3d at p. 66.)

and subject to separate punishment the possession of each and every sawed-off shotgun found at the same time and place. (See *Bell v. United States* (1954) 349 U.S. 81, 82-83 [99 L.Ed. 905, 910, 75 S.Ct. 620].)

(*People v. Kirk, supra,* 211 Cal.App.3d at p. 62.)

And that is precisely what the Legislature did. In 1994, the Legislature amended section 12001, subdivisions (k) and (l). Those amendments 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 of the same shall constitute a distinct and separate offense under those sections.[5/]

(l) For purposes of Section 12020, a violation of that section as to each firearm, weapon, or device enumerated therein shall constitute a distinct and separate offense.

As noted by the Court of Appeal in this case:

In 1994, the Legislature stated: "The amendments to Section 12001 of the Penal Code made by this act adding subdivision[ ] (k) . . . thereto are intended to overrule the holding in [*Kirk, supra*], 211 Cal.App.3d 58, 259 Cal.Rptr. 44 [a 1989 case], insofar as that decision held that the use of the term 'any' in a weapons statute means that multiple weapons possessed at the same time constitutes the same violation. It is the further intent of the Legislature in enacting this act that where multiple weapons were made, imported, transferred, received, or possessed, each weapon shall constitute a separate and distinct violation." (Legis. Counsel's Dig., Sen. Bill No. 37, 5 Stats. 1994 (1993-1994 1st Ex.Sess.) ch. 32, § 5, pp. 8657-8658; see hist. notes, 51D West's Ann. Pen.Code (2008 supp.) foll. § 12001, p. 4.)

(*People v. Correa, supra,* 161 Cal.App.4th at p. 986, fn. 4.)

As a consequence, the Legislature has not only determined that

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5. 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.

convicted felons who possess weapons represent a severe and unique risk to the public, but also that felons who possess multiple weapons have committed separate punishable offenses.

As summarized by this Court in *People v. Gonzalez* (2008) 43 Cal.4th 1118, 1125-1126:

> Under settled canons of statutory construction, in construing a statute we ascertain the Legislature's intent in order to effectuate the law's purpose. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387 [, 241 Cal.Rptr. 67, 743 P.2d 1323].) We must look to the statute's words and give them their unusual and ordinary meaning. (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 601 [, 7 Cal.Rptr.2d 238, 828 P.2d 140].) The statute's plain meaning controls the court's interpretation unless its words are ambiguous. (*Green v. State of California* (2007) 42 Cal.4th 254, 260, 64 Cal.Rptr.3d 390, 165 P.3d 118.) If the words in the statute do not, by themselves, provide a reliable indicator of legislative intent, [s]tatutory ambiguities often may be resolved by examining the context in which the language appears and adopting the construction which best serves to harmonize the statute internally and with related statutes. (*Woods v. Young* (1991) 53 Cal.3d 315, 323 [, 279 Cal.Rptr. 613, 807 P.2d 455].)

Here, the amendments to section 12001, subdivisions (k) and (l) specify that each firearm shall constitute a "distinct and separate offense." The Legislature's amendment that each firearm shall constitute a "distinct and separate offense" clarifies the legislative intent that convicted felons can be convicted and punished for each firearm in their possession. A violation of section 12021, subdivision (a) is committed when a felon owns, possesses, or has custody or control of a firearm. As summarized by the court in *People v. Ratliff* (1990) 223 Cal.App.3d 1401, 1414:

> Commission of a crime under section 12021 is complete once the intent to possess is perfected by possession. What the ex-felon does with the weapons later is another separate and distinct transaction undertaken with an additional intent which necessarily is something more than the mere intent to possess the proscribed weapon. [Citations.]

Here, appellant violated section 12021 each time he possessed one of the

guns. The Legislature has clarified that each of those possessions was a "distinct and separate offense." Because they are "distinct and separate" offenses appellant is deserving of punishment for each conviction.

Appellant attempts to distinguish *Kirk* and the subsequent amendments to the Penal Code by arguing that they addressed multiple convictions, not multiple punishments. Specifically, appellant claims:

> The gravitas driving the Legislative amendment was the inherent dangerousness itself of each of the weapons encompassed by section 12020, subdivision (a), (including the sawed-off shotgun the subject in *Kirk*) that would naturally be increased with each additional weapon. In the instant case, that was not the case. Here the gravitas was merely appellant's status as a felon; it had nothing to do with the nature or even number of the weapons themselves.

(AOB at p. 12.)

Respondent disagrees. An argument that a convicted felon in possession of a single weapon is as culpable as a convicted felon in possession of a stockpile of rifles and shotguns is illogical. The Legislative amendment was directed at individuals just like appellant, a convicted felon in possession of multiple firearms. Appellant is simply more dangerous than a felon in possession of a single firearm, and is therefore more culpable and deserving of greater punishment.

Appellant also argues that:

> In the limited context of the instant case, the gravitas of the offense of simple possession of a firearm was not enhanced by the addition of a second, third, or even seventh firearm. Appellant had only the realistic potential of being able to fire one weapon at a time. As a matter of law, there were no multiple criminal objectives. Thus, the trial court's imposition of consecutive 25 years to life sentences on Counts Two through Seven violated Section 654 and should be stayed.

(AOB at p. 11.)

Appropriately, the Court of Appeal below rejected this argument,

stating:

> We reject defendant's argument that "the gravitas of the offense of simple possession of a firearm was not enhanced by the addition of the second, third, or even seventh firearm." As the trial court noted, these were, "dangerous weapons, shotguns, rifles . . . [a]nd this was a very dangerous crime."

(*People v. Correa, supra,* 161 Cal.App.4th at p. 987.)

The Court of Appeal noted that the purpose of section 12021 was to protect the public by precluding possession of guns by those who are more likely to use them, and to provide greater punishment to an armed felon than to another. (*People v. Correa, supra,* 161 Cal.App.4th at p. 987.)

The Court of Appeal also rejected as unconvincing appellant's claim that there were no multiple objectives as a matter of law because he was capable of firing only one weapon at a time, stating:

> A felon who possesses multiple weapons that can be used to accomplish different objectives is inherently more dangerous than one who possesses only one. Defendant's culpability increased with each additional weapon in his possession.

(*People v. Correa, supra,* 161 Cal.App.4th at p. 987.)

Petitioner also claims that, "[h]ad the Legislature intended to remove the applicability of Section 654 in the context of Penal Code Part 4, Title 2, it could have done so; but it did not." (AOB 12.) Respondent submits that appellant's conclusion should not be accepted so readily. The Legislature is not necessarily required to specifically refer to section 654 to convey its intent that felons in possession of multiple firearms are deserving of a sentence for each "distinct and separate " offense.

In *People v. Siko* (1988) 45 Cal.3d 820, 823, the defendant was convicted of forcible rape, forcible sodomy, and forcible lewd conduct with a child under the age of 14, and assault with force likely to produce great bodily injury. He received a three-year term for assault and consecutive full-term

sentences pursuant to section 667.6, subdivision (c) for the sexual offenses.[6/] The lewd conduct for which defendant was convicted consisted solely of the rape and the sodomy. (*Ibid.*) This Court considered whether the consecutive full-term sentences imposed were subject to the limitation against multiple punishment in section 654. (*Ibid.*)

The People argued that in adopting section 667.6, subdivision (c), the Legislature impliedly repealed the prohibition in section 654 on multiple punishment for violations based on the same act or omissions, "insofar as that prohibition might otherwise apply to the sex offenses listed in the subdivision." (*People v. Siko, supra,* 45 Cal.3d at p. 824.) The Court rejected the People's argument and determined that 667.6, subdivision (c), did not create an implied exception to section 654 and allow a single act to be punished twice. (*Ibid.* at p. 825.)

Subsequently, in *People v. Hicks* (1993) 6 Cal.4th 784, this Court again considered section 667.6, subdivision (c). In *Hicks* the defendant entered a bakery and committed numerous sex offenses against an employee. (*People v. Hicks, supra,* 6 Cal.4th at p. 788.) The defendant was convicted of six counts of rape, two counts of forcible sodomy, two counts of digital penetration with a foreign object, and one count of burglary. (*Id.* at p. 787.) He was sentenced on the burglary count to the upper term of three years in prison and full consecutive terms of eight years on the remaining 10 counts. (*Ibid.*)

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6. At the time section 667.6, subdivision (c) states in relevant part:

> In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, Section 289, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person whether or not the crimes were committed during a single transaction.

This Court addressed

> the question left unresolved in *Siko*, namely, whether the Legislature, by enacting section 667.6(c), which authorizes consecutive full-term sentences for enumerated sexual offenses "whether or not the crimes were committed during a single transaction," created an exception to section 654's prohibition against multiple punishment for *separate acts* committed during an indivisible course of conduct.

(*People v. Hicks, supra,* 6 Cal.4th at p. 791.)

The Court noted that section 667.6, subdivision (c) did not mention section 654 directly, and its task was to determine whether the phrase, "whether or not the crimes were committed during a single transaction," used in section 667.6, subdivision (c), refers to section 654's prohibition of multiple punishment for separate acts committed during a single or indivisible course of conduct, and whether the phrase expressed a legislative intent to create an exception to 654. (*People v. Hicks, supra,* 6 Cal.4th at p. 791.) The Court determined that in context the words "single" and "indivisible" had nearly identical meanings, and there could be no question that had the Legislature used the term "indivisible transaction" rather than "single transaction" it would have created an exception to section 654. (*Id.* at pp. 791-792.)

The result was held to be just in *Hicks* because the purpose of section 667.6, subdivision (c) was to allow enhanced punishment of certain sexual offenders who commit multiple offenses. (*People v. Hicks, supra,* 6 Cal.4th at p. 796.) The Court found that such increased penalties are appropriate because a defendant who commits "a number of base criminal acts on his victim is substantially more culpable than a defendant who commits only one such act." (*Ibid,* internal quotations and citations omitted.)

Similarly, a felon in possession of multiple firearms is more culpable than a felon in possession of a single firearm. The Legislature has determined that felons with guns represent a unique and substantial risk to the public. Further, the Legislature has concluded that each gun represents a "distinct and

separate" offense. Because possession of each gun is separate and distinct from possession of another, section 654 does not prohibit the court from imposing multiple sentences. Appellant cannot claim that possession of the guns were part of an indivisible transaction when the Legislature has declared that possession of each weapon is a distinct and separate offense from another.

Further, there was sufficient evidence supporting the trial court's conclusion that appellant harbored multiple criminal objectives justifying punishment for each conviction. Appellant was convicted of seven counts of being a felon in possession of a firearm. (§ 12021; I CT 203-209.) The offense is committed when a felon owns, possesses, of has custody or control of a firearm. (*People v. Ratliff supra,* 223 Cal.App.3d at p.1414.)

In *People v. Bradford* (1976) 17 Cal.3d 8, 22, the Court noted:

> Whether a violation of section 12021, forbidding persons convicted of felonies from possessing firearms concealable upon the person,[7] constitutes a divisible transaction from the offense in which he employs the weapon depends upon the facts and evidence of each individual case. Thus where the evidence shows a possession distinctly antecedent and separate from the primary offense, punishment on both crimes has been approved. On the other hand, where the evidence shows a possession only in conjunction with the primary offense, then punishment for the illegal possession of the firearm has been held to be improper where it is the lesser offense.

(*People v. Bradford, supra,* 17 Cal.3d at p. 22, quoting *People v. Venegas* (1970) 10 Cal.App.3d 814, 821, citations omitted.)

In the instant case there was sufficient evidence from which the court could conclude that appellant harbored multiple criminal objectives. The police responded to appellant's residence after being informed by the dispatcher there were suspicious circumstances regarding some firearms being moved into a residence. (I RT 108.) Appellant's neighbor testified that she had seen

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7. Section 12021 has since been amended to prohibit possession of any firearm by a felon. (*People v. Mills* (1992) 6 Cal.App.4th 1278, 1282.)

appellant with firearms "[t]wo or three times." (II RT 501.) She said the first time was in the fall of 2005, months before his arrest, when he had a shotgun or rifle at her home. (II RT 501-502.) Further, when SWAT officers discovered appellant under the stairwell Officer McCoin saw numerous long gun cases on the floor. (I RT 265.) Officer McCoin removed the gun cases from the closet and two guns that were not in cases. (I RT 265-266.) Detective Vang entered the residence and found several gun cases in the hallway next to the closet and took each one outside and gave it to Detective Lockwood. (II RT 369, 374-375.) Detective Lockwood testified that Detective Vang brought him seven firearms and told him where he found them.[8/] (II RT 322.)

As noted above, commission of a crime under section 12021 is complete once the intent to possess is perfected by possession. (*People v. Ratliff, supra,* 223 Cal.App.3d 1401.) Therefore, each violation occurred at the moment appellant possessed the gun. Appellant claims that he had "only the realistic potential of being able to fire one weapon at a time." Respondent agrees, but submits that is indicative of appellant's multiple criminal objectives. Because appellant could only use one weapon at a time, he logically harbored multiple criminal objectives as to each weapon. Appellant's claim should be rejected.

Petitioner compares his possession of multiple firearms to cases of possession of other items. (AOB 10-11.) For example, appellant compares this

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8. Appellant was found not guilty of the being a felon in possession of a firearm as alleged in counts VIII and IX. (I CT 210-211.) The information alleged that the firearms in counts VIII and IX were a .12 gauge shotgun and a Connecticut Valley Arms .50 caliber rifle. (I CT 121.) At trial People's Exhibit 10A and 11A were a .12 gauge shotgun and a .50 caliber rifle, respectively that Detective Schindler gave to Detective Lockwood. (II RT 345-348.) Detective Schindler testified that he found two metal gun cases behind a couch. (I RT 195-196.) One contained a .12 gauge shotgun, and the other contained a .50 caliber rifle. (I RT 195-196.) Respondent submits it is therefore reasonable to assume that the guns found in the closet were the ones that resulted in appellant's convictions.

case to *People v. Butler* (1996) 43 Cal.App.4th 1224. In *Butler*, the defendant was convicted of two felony counts of receipt of an access card with intent to defraud (§ 484e, subd. (c)) and two misdemeanor counts of possession of an instrument with the intent to avoid a lawful telephone charge (§ 502.7, subd. (b)(1)). (*People v. Butler, supra,* 43 Cal.App.4th at pp. 1229-1230.) The charges all arose out of his possession of two cloned cellular phones. (*Ibid.*) The defendant also admitted a prior conviction for robbery. (*People v. Butler, supra,* 43 Cal.App.4th at p. 1230.) He was sentenced to the middle term of two years in prison for counts one and two (§ 484, subd. (c)) and one year in county jail on the two misdemeanors (§ 502.7, subd. (b)(1)). (*Ibid.*) The sentence was doubled to four years because of the prior strike conviction and remaining counts were ordered to run concurrently with count one. (*Ibid.*)

Among his arguments on appeal *Butler* claimed that pursuant to section 654 he was improperly sentenced on counts two, three, and four. In response the court stated:

> To the extent defendant is arguing that he could only be punished once even though he was apprehended using two phones because he possessed those phones at the same time, we dispense with that argument in short moment. Defendant's crimes were committed against two different victims, the lawful owners of the two cellular phone numbers. As such he can be punished separately for each crime. [citation.]

(*People v. Butler, supra,* 43 Cal.App.4th at p. 1248.)

There is no lawful way for appellant to possess a firearm. He cannot purchase weapons from a licensed dealer, and therefore the lawful owner of each of the weapons in appellant's possession is a victim. Additionally, only one firearm can be used at a time, and it was therefore logical for the court to presume that appellant had a different purpose for each of the firearms. If appellant did not have a separate and distinct purpose for each gun, one gun would have been sufficient and he would not have found it necessary to acquire

such a large number. Finally, the very purpose of section 12021 is to protect the public from individuals like appellant. The risk to the public, and appellant's culpability increased with each additional weapon he possessed.

The amendment to section 12001, subdivision (k) clarified that each possession of a firearm by appellant was a distinct and separate offense. None of Appellant's offenses were committed as a means to commit another, and none was incidental to the commission of another. Appellant is deserving of punishment for each conviction because possession of one gun is distinct and separate from another. Further, there was sufficient evidence from which the court could conclude that appellant harbored multiple criminal objectives. Appellant's culpability increased with each additional weapon he possessed and his punishment should as well.

CONCLUSION

For the foregoing reasons, respondent respectfully submits that appellant's sentence should be affirmed.

Dated: October 16, 2008

Respectfully submitted,

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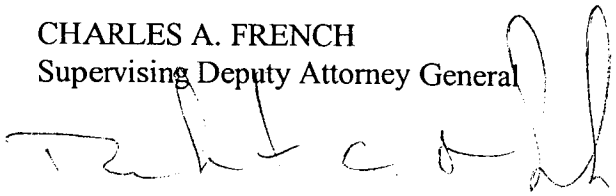

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CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S ANSWER BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 7967 words.

Dated: October 16, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
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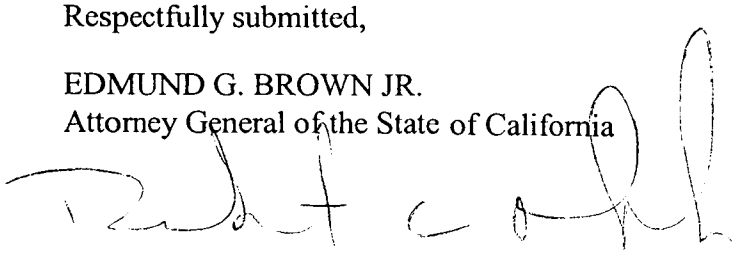

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Correa** 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 October 16, 2008, I served the attached **RESPONDENT'S ANSWER BRIEF ON THE MERITS** 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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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 October 16, 2008, at Sacramento, California.

_____
Declarant