

LEXSTAT CAL PEN CODE § 487

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PENAL CODE
Part 1. Of Crimes and Punishments
Title 13. Of Crimes Against Property
Chapter 5. Larceny

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Cal Pen Code § 487 (2008)

§ 487. Grand theft

Grand theft is theft committed in any of the following cases:

(a) When the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400), except as provided in subdivision (b).

(b) Notwithstanding subdivision (a), grand theft is committed in any of the following cases:

(1)

(A) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding one hundred dollars (\$100).

(B) For the purposes of establishing that the value of avocados or citrus fruit under this paragraph exceeds one hundred dollars (\$100), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft avocados or citrus fruit of the same variety and weight exceeded one hundred dollars (\$100) in wholesale value.

(2) When fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding one hundred dollars (\$100).

(3) Where the money, labor, or real or personal property is taken by a servant, agent, or employee from his or her principal or employer and aggregates four hundred dollars (\$400) or more in any 12 consecutive month period.

(c) When the property is taken from the person of another.

(d) When the property taken is any of the following:

(1) An automobile, horse, mare, gelding, any bovine animal, any caprine animal, mule, jack, jenny, sheep, lamb,

hog, sow, boar, gilt, barrow, or pig.

(2) A firearm.

(e) This section shall become operative on January 1, 1997.

HISTORY:

Added Stats 1993 ch 1125 § 5 (AB 1630), effective October 10, 1993, operative January 1, 1997. Amended Stats 2002 ch 787 § 12 (SB 1798).

NOTES:

Former Sections:

Former § 487, similar to the present section, was added Stats 1989 ch 930 § 6.1, operative January 1, 1993, amended Stats 1993 ch 1125 § 4, effective October 10, 1993, and repealed, operative January 1, 1997, by its own terms.

Former § 487, similar to the present section, was enacted Stats 1872, amended Stats 1895 ch 29 § 1, Stats 1901 ch 126 § 1, Stats 1907 ch 90 § 1, Stats 1919 ch 150 § 1, Stats 1923 ch 129 § 1, Stats 1927 ch 619 § 4, Stats 1929 ch 203 § 1, Stats 1939 ch 371 § 1, Stats 1947 ch 610 § 1, Stats 1955 ch 1249 § 1, Stats 1957 ch 1794 § 1, Stats 1965 ch 161 § 1, Stats 1982 ch 80 § 2, ch 375 § 1, Stats 1987 ch 599 § 1, Stats 1989 ch 930 § 6, and repealed, operative January 1, 1993, by its own terms.

Amendments:

2002 Amendment:

Amended subd (d) by (1) adding "any of the following:"; (2) adding subdivision designation (d)(1); (3) deleting "firearm," after "An automobile,"; and (4) adding subd (d)(2).

Historical Derivation:

(a) Former Pen C § 487, as added Stats 1989 ch 930 § 6.1, amended Stats 1993 ch 1125 § 4.

(b) Former Pen C § 487, as enacted Stats 1872, amended Stats 1895 ch 29 § 1, Stats 1901 ch 126 § 1, Stats 1907 ch 90 § 1, Stats 1919 ch 150 § 1, Stats 1923 ch 129 § 1, Stats 1927 ch 619 § 4, Stats 1929 ch 203 § 1, Stats 1939 ch 371 § 1, Stats 1947 ch 610 § 1, Stats 1955 ch 1249 § 1, Stats 1957 ch 1794 § 1, Stats 1965 ch 161 § 1, Stats 1982 ch 80 § 2, ch 375 § 1, Stats 1987 ch 599 § 1, Stats 1989 ch 930 § 6.

(c) Crimes and Punishment Act § 60 (Stats 1850 ch 99 § 60), as amended Stats 1851 ch 95 § 2, Stats 1856 ch 139 § 7.

(d) Stats 1867-68 ch 376 § 1, as amended Stats 1869-70 ch 518 § 1.

Cross References:

Punishment for grand theft: *Pen C § 489*.

Value of dogs: *Pen C § 491*.

Value of written instrument: *Pen C § 492*.

Value of passage tickets: *Pen C § 493*.

Punishment for scheme to defraud owner of structure: *Pen C § 670*.

Career criminal prosecution program: *Pen C §§ 999b et seq.*

Restitution as condition of probation: *Pen C § 1203.1*.

Revocation of teaching credential or certificate upon conviction: *Ed C §§ 44424, 44435*.

Forfeiture of property for violation of section: *Fin C § 5320*.

Unlawful marking and branding of animals: *Fd & Ag C §§ 17551 et seq., 17701, 17702*.

Driving cattle from range as grand theft: *Fd & Ag C §§ 21851, 21852*.

Report to Department of Justice Stolen Vehicle System: *Veh C § 10500*.

Theft and unlawful driving or taking of vehicle: *Veh C § 10851*.

Collateral References:

Witkin & Epstein, Criminal Law (3d ed), Crimes Against Governmental Authority §§ 24, 25, 33, 37.

Witkin & Epstein, Criminal Law (3d ed), Crimes Against Property §§ 2, 4, 5, 6, 11, 12, 16, 29, 35.

Witkin & Epstein, Criminal Law (3d ed), Crimes Against Public Peace and Welfare §§ 426, Ch 5 - 66, 68, 70, 263.

Witkin & Epstein, Criminal Law (3d ed), Defenses § 164.

Witkin & Epstein, Criminal Law (3d ed), Introduction To Crimes §§ 16, 61.

Witkin & Epstein, Criminal Law (3d ed), Pretrial Proceedings §§ 183, 333.

Witkin & Epstein, Criminal Law (3d ed), Punishment §§ 162, 167, 246, 334, 513, 553, 558, 559.

10 Witkin Summary (10th ed) Parent and Child § 87.

13 Witkin Summary (10th ed) Personal Property § 21.

Cal Jur 3d (Rev) Criminal Law §§ 479, 1134, 1135, 1186, 1197-1202, 1218, 1250, 1274, 1291, 1320, 2791, 2855, 3247, 3260.

Miller & Starr, Cal Real Estate 3d § 31:51.

Cal Criminal Defense Prac., ch 143, "Crimes Against Property".

Cal. Legal Forms, (Matthew Bender) § 100A.251[1][f].

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 541A, Felony Murder: Second Degree-Defendant Allegedly Committed Fatal Act.

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1600, Robbery.

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1801, Theft by Larceny.

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1802, Theft: As Part of Overall Plan.

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1803, Theft: By Employee or Agent.

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 1950, Sale or Transfer of Access Card or Account Number.

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2601, Giving or Offering a Bribe to a Ministerial Officer.

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2602, Giving or Offering a Bribe to a Ministerial Officer: Value of Thing Offered.

Law Review Articles:

People v Sobiek: Punishing the embezzling partner. *25 Hast LJ 1266.*

Defense in welfare fraud. *5 San Diego LR 83.*

Attempted grand theft by false pretenses where victim is not deceived. *33 SCLR 227.*

California Judges Benchguide S216: Mandatory criminal jury instructions. *Cal Center Jud Edu & Research No. 11.*

Closing Argument: Taking Tougher Action Against Identity Theft. *30 LA Law 64 (July/August, 2007).*

Attorney General's Opinions:

When the owner of a vehicle has been arrested for driving without a valid license and the vehicle has been impounded, the owner may be found guilty of grand theft for removing the vehicle from the impounding agency's custody without permission or authority prior to the expiration of the 30-day impoundment period. *80 Ops. Cal. Atty. Gen. 142.*

Annotations:

Stealing carcass as within statute making it larceny to steal cattle or livestock. 78 ALR2d 1100.

Asportation of motor vehicle as necessary element to support charge of larceny. 70 ALR3d 1202.

What constitutes larceny "from a person". 74 ALR3d 271.

Coercion, compulsion, or duress as defense to charge of robbery, larceny, or related crime. 1 ALR4th 481.

Hierarchy Notes:

Pt. 1, Tit. 13, Ch. 5 Note

NOTES OF DECISIONS A. GENERAL CONSIDERATIONS 1. In General 1.5. Relationship to other laws 2. Constitutionality 3. Construction 4. Elements Generally 5. Property as Subject of Offense 6. Taking From the Person 7. Taking Specified Property 8. Related and Included Offenses 9. Defenses B. PROCEDURE GENERALLY 10. In General 11. Indictment and Information 12. Variance 13. Habitual Criminal Proceedings C. EVIDENCE 14. In General 15. Admissibility Generally 16. Theft by False Pretenses or Misrepresentations 17. Taking From Person of Another 18. Theft of Automobiles 19. Weight and Sufficiency Generally 20. Establishment of Corpus Delicti 21. Circumstantial Evidence 22. Establishment of Felonious Intent 23. Establishment of Value 24. Sufficiency of Corroboration 25. Establishment of Attempted Grand Theft 26. Sufficiency of Evidence of False Pretenses 27. Establishment of Larceny by Trick or Device 28. Establishment of Embezzlement 29. Sufficiency of Evidence of Theft From Person of Another 30. Establishment of Theft of Automobile 31. Sufficiency of Evidence of Theft of Animals D. TRIAL 32. In General 33. Questions of Law and Fact 34. Instructions 35. Failure or Refusal To Instruct 36. Verdict and Judgment E. REVIEW 37. In General 38. Evidence 39. Instructions

A. GENERAL CONSIDERATIONS

1. In General

One who through false representation obtains the possession of personal property with consent of owner, under contract by terms of which he acquired some special trust or right therein, but without change of general title, was guilty of grand larceny, on subsequently converting same to his own use, if he had felonious intent to steal property at time possession was obtained and value of goods so obtained exceeded amount prescribed for such offense. *People v. Raschke* (1887) 73 Cal 378, 15 P 13, 1887 Cal LEXIS 680.

One taking property through the use of false pretenses is subject to punishment according to this section. *People v. Wynn* (1903) 140 Cal 661, 74 P 144, 1903 Cal LEXIS 651.

Misrepresentation of welfare eligibility constitutes a crime both under special legislation (*Welf & Inst Code*, §§ 11265, 11482-formerly §§ 1564, 1577) and under the general grand theft statute (*Pen C* §§ 484, 487). *Parrish v. Civil Service Com.* (1967) 66 Cal 2d 260, 57 Cal Rptr 623, 425 P2d 223, 1967 Cal LEXIS 301.

In a prosecution for grand theft for obtaining property by false pretenses, it is unnecessary to prove that the defendant benefited personally from the fraudulent acquisition. *People v. Taylor* (1973, Cal App 2d Dist) 30 Cal App 3d 117, 106 Cal Rptr 216, 1973 Cal App LEXIS 1143.

Grand theft from the person is not, when viewed in the abstract, a felony inherently dangerous to human life which will support application of the second degree felony-murder rule. Though *Pen C* § 487, expressly delineates the taking of property "from the person of another," as an aggravated form of theft deserving of treatment as a felony in all cases,

the offense can readily be perpetrated without any significant hazard to human life. Only in the unusual case would a taking from the person involve a substantial danger of death without the thief using force against his victim, and if he does use force, either to effect the taking or to resist the victim's efforts to retrieve the property, the crime becomes robbery, and will support application of the first degree felony-murder rule under *Pen C § 189*. *People v. Morales* (1975, Cal App 4th Dist) 49 Cal App 3d 134, 122 Cal Rptr 157, 1975 Cal App LEXIS 1191.

Although a grand theft offense can result in a range of punishments, and, thus, *Pen C § 487* may be referred to as a "wobbler" statute because the resulting conviction can be either a misdemeanor or felony conviction, the Board of Immigration Appeals erred in finding that it was not bound by the state court's ruling that prospective deportee's offense was a misdemeanor, and, thus, also erred in concluding that the "petty offense" exception did not apply. *Garcia-Lopez v. Ashcroft* (2003, 9th Cir) 334 F3d 840, 2003 US App LEXIS 12928.

1.5. Relationship to other laws

Board of Immigration Appeals erred in finding that a Mexican native was not "lawfully residing" in the United States over a five-month period for purposes of 8 U.S.C.S. § 1182(h) when she requested a waiver of inadmissibility after the Immigration and Naturalization Service charged her with removability under 8 U.S.C.S. § 1227(a)(2)(A)(i) based on a conviction for grand theft in violation of *Pen C § 487(a)*; no five-month "gap" existed in the alien's 19-year presence in the United States because she was a protected Family Unity beneficiary under 8 U.S.C.S. § 1255a note during the time period in question and the Government's mishandling of the Family Unity petition did not change that status. *Yepez-Razo v. Gonzales* (2006, 9th Cir) 445 F3d 1216, 2006 US App LEXIS 10167.

Juvenile offender's maximum period of confinement for a felony theft adjudication under *Pen C § 487(c)*, established pursuant to *W & I C §§ 726, 731*, was not based on impermissible factors not found by a jury; instead, it was based on the recidivist factor deemed constitutionally permissible when applied to an adult offender. *In re Antonio P.* (2007, 5th Dist) 2007 Cal App LEXIS 1294.

2. Constitutionality

The legislature can constitutionally declare the theft of certain property to be grand theft, without reference to its value. *People v. Townsley* (1870) 39 Cal 405, 1870 Cal LEXIS 65.

"Servants, agents or employees" constitute class so reasonably identified as to justify classified legislation. *People v. Finston* (1963, Cal App 2d Dist) 214 Cal App 2d 54, 29 Cal Rptr 165, 1963 Cal App LEXIS 2571.

Where Legislature determines to increase only degree of crime where servants, agents or employees commit series of thefts from their superiors over period of time, classification is not palpably arbitrary in its nature, particularly where even prior to legislative enactment series of wrongful acts were counted together to form one offense when they were committed in pursuit of general plan of taking property from employer. *People v. Finston* (1963, Cal App 2d Dist) 214 Cal App 2d 54, 29 Cal Rptr 165, 1963 Cal App LEXIS 2571.

Subdivision 1 is not unconstitutional. *People v. Ahmad* (1965, Cal App 1st Dist) 232 Cal App 2d 314, 42 Cal Rptr 854, 1965 Cal App LEXIS 1464.

Defendant charged with grand theft under *Pen C § 487*, as a result of his appropriation, while president of an unincorporated investment club, of the group's money to his own use, could not successfully contend that a ruling that a partner may be guilty of grand theft of partnership property violated constitutional proscriptions against ex post facto determinations. Statements in prior decisions to the effect that a partner cannot be convicted of embezzling from the partnership amount only to dicta, and, in any event, common social duty would have forewarned defendant that circumspect conduct prohibited robbing his partners and also would have told him he was stealing property of another. Moreover, there is no indication in the statute itself that the Legislature did not intend to include in "property of

another" the property of partners other than the one stealing such property, or of the partnership itself. *People v. Sobiek* (1973, *Cal App 1st Dist*) 30 *Cal App 3d* 458, 106 *Cal Rptr* 519, 1973 *Cal App LEXIS* 1176, 82 ALR3d 804, cert den (1973) 414 U.S. 855, 94 S. Ct. 155, 38 L. Ed. 2d 104, 1973 U.S. LEXIS 689.

Classification of items, the taking of which constitutes grand theft under *Pen C* § 487, subd. (3), is not palpably arbitrary, and consequently the section is not unconstitutional as without a rational basis in view of the apparent consideration of the Legislature of the section's merit in contemporary society by having amended it at least a dozen times throughout the years, and as recently as 1965. *People v. Thomas* (1974, *Cal App 1st Dist*) 43 *Cal App 3d* 862, 118 *Cal Rptr* 226, 1974 *Cal App LEXIS* 1362.

3. Construction

The word "cow" includes a "heifer" in determining grand larceny. *People v. Soto* (1874) 49 *Cal* 67, 1874 *Cal LEXIS* 245.

Statutory use of word "horse" is in its generic sense, and the word "mare," following thereafter, is for more definiteness. *People v. Pico* (1882) 62 *Cal* 50, 1882 *Cal LEXIS* 699.

Contractual obligation to pay money is properly subject to theft statutes, and written contractual obligation to pay in excess of \$200 is property of value in excess of \$200, as contemplated by definition of grand theft in this section. *Buck v. Superior Court of Orange County* (1965, *Cal App 4th Dist*) 232 *Cal App 2d* 153, 42 *Cal Rptr* 527, 1965 *Cal App LEXIS* 1447, 11 ALR3d 1064, cert den *Buck v Superior Court of California* (1965) 382 US 834, 86 S Ct 77, 15 L Ed 2d 77, 1965 US LEXIS 697.

Provisions of the Pen Code are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice, and statutory language is reasonably certain if it can be understood with the aid of reference to the dictionary. Accordingly, the trial court erred in dismissing an indictment charging defendants with grand theft of bison, on the ground that a bison is not a bovine animal within the meaning of *Pen C* § 487, subd. (3), providing that grand theft is theft committed when the property taken is any bovine animal, where simple reference to the dictionary revealed that buffalo or bison are bovine animals, and where the trial court found, on substantial evidence, that the bison in question were the personal property of two named individuals, and where there was substantial evidence of the requisite mens rea in the form of defendants' behavior after the killing of the animals. *People v. Spencer* (1975, *Cal App 1st Dist*) 52 *Cal App 3d* 563, 124 *Cal Rptr* 925, 1975 *Cal App LEXIS* 1489.

The trial court erred in finding defendant guilty of three counts of grand theft based on allegations defendant took money and personal property from his employer of a value exceeding \$200 in each of three specified years, where there was no evidence from which it could be inferred that defendant had three separate intents and plans in each of the three years. The only reasonable conclusion supported by the record was that defendant had a single continuing plan or scheme for stealing money from his employer and he should have been convicted of only a single grand theft. *Pen C* § 487, subd. 1, which provides that an employee's taking of \$200 or more from his employer "in any 12 consecutive month period" constitutes grand theft, simply enables the prosecution, under specified conditions to cumulate a series of petty thefts into a grand theft, without having to prove a single intent or scheme. It does not purport to authorize multiple grand theft prosecutions where a series of takings over several years is done pursuant to a single impulse and plan. *People v. Packard* (1982, *Cal App 2d Dist*) 131 *Cal App 3d* 622, 182 *Cal Rptr* 576, 1982 *Cal App LEXIS* 1594.

The record did not support defendant's conviction of one count of second-degree robbery and one count of grand theft where defendant had placed more expensive merchandise in a box for cheaper merchandise, paid the lower price, was briefly detained on leaving the store by a store employee (who took possession of the merchandise briefly before returning it to defendant), and then assaulted a store employee in the store parking lot when the employee tried to detain defendant. All these acts were part of a single crime, which changed from grand larceny to robbery due to the incident in the parking lot. *People v. La Stelley* (1999, *Cal App 2d Dist*) 72 *Cal App 4th* 1396, 85 *Cal Rptr* 2d 835, 1999 *Cal App*

LEXIS 597, review denied (1999, Cal) 1999 Cal LEXIS 6488.

District court properly considered a police report incorporated into a criminal complaint in making its finding that defendant's prior conviction for grand theft under *Pen C § 487(a)* was a prior aggravated felony for purposes of U.S. Sentencing Guidelines Manual § 2L1.1(b)(1)(C) following defendant's conviction for illegal re-entry into the United States following deportation in violation of 8 U.S.C.S. § 1326(b); the police report was incorporated by reference into the criminal complaint underlying the prior conviction, and it recited a mutually agreed-upon statement of facts. *United States v. Espinoza-Cano* (2006, 9th Cir Cal) 456 F3d 1126, 2006 US App LEXIS 20254.

4. Elements Generally

Distinctions between grand and petty theft are in type of article stolen, whether article was taken from person of another and in its value; elements of crime remain same with exceptions noted. *Gomez v. Superior Court of Mendocino County* (1958) 50 Cal 2d 640, 328 P2d 976, 1958 Cal LEXIS 181.

It is not necessary element of attempted grand theft by false pretenses that intended victim be actually deceived. *People v. Reed* (1961, Cal App 2d Dist) 190 Cal App 2d 344, 11 Cal Rptr 780, 1961 Cal App LEXIS 2304.

Grand theft includes crimes of larceny and embezzlement, larceny by trick and device, and obtaining property by false pretenses. *People v. Schwenkner* (1961, Cal App 4th Dist) 191 Cal App 2d 46, 12 Cal Rptr 408, 1961 Cal App LEXIS 2024.

In prosecution for grand theft by false pretenses, false pretense or representation must have materially influenced owner to part with her property, but it need not be sole inducing cause. *Perry v. Superior Court of Los Angeles County* (1962) 57 Cal 2d 276, 19 Cal Rptr 1, 368 P2d 529, 1962 Cal LEXIS 172.

Larceny amounting to grand theft can be committed by trick or device, such as when the victim of a fraud intends not to pass complete title to his property but that it shall be applied to a special purpose, while the recipient intends to appropriate it to his own use, or when a loan of money, induced by fraudulent representation that it will be used for a specific purpose, is accompanied by an intent to steal, the intent to defraud being a question of fact to be determined from all of the facts and circumstances of the case. *People v. Felsman* (1967, Cal App 2d Dist) 257 Cal App 2d 437, 64 Cal Rptr 870, 1967 Cal App LEXIS 1801.

Prosecution of defendants for grand theft (*Pen C §§ 484, 487*), arising out of the procuring and cashing of fraudulent insurance claims drafts was not precluded by a misdemeanor statute proscribing presentation of false insurance claims (*Ins Code, § 556*); the felony statute requires, as an essential element, the taking of something of value, whereas a violation of the misdemeanor statute is complete when a false claim for payment of loss is presented or a false writing is prepared or presented with intent to use it in connection with such a claim, whether or not anything of value is taken or received. *People v. Cohen* (1970, Cal App 2d Dist) 12 Cal App 3d 298, 90 Cal Rptr 612, 1970 Cal App LEXIS 1629.

To constitute a violation of *Pen C §§ 484 and 487*, by obtaining property by false pretenses, there must be an intent to defraud and actual fraud committed, false pretenses must be used for the purpose of perpetrating the fraud, and the fraud or false pretenses must have caused the owner to part with his property. *People v. Lustman* (1970, Cal App 2d Dist) 13 Cal App 3d 278, 91 Cal Rptr 548, 1970 Cal App LEXIS 1237, cert den (1972) 405 US 932, 92 S Ct 989, 30 L Ed 2d 807, 1972 US LEXIS 3782, overruled *People v. Ruster* (1976) 16 Cal 3d 690, 129 Cal Rptr 153, 548 P2d 353, 1976 Cal LEXIS 250, 80 ALR3d 1269.

In a juvenile court proceeding adjudicating a petition alleging that a minor was a ward of the court by reason of his committing grand theft from the person (*Pen C § 487*, subd. 2), there was sufficient evidence to sustain the allegation. The evidence established that the minor's accomplice took a bag of groceries from a shopping cart as the victim was pushing the cart in a parking lot. The victim had not laid the grocery bag aside or abandoned control of it. She was

actively carrying the bag, not in her hands but by other means, i.e., through the medium of the shopping cart with which, at the time of the theft, she was both in physical contact and control. Thus, there was sufficient evidence to establish the "taking from the person" element of grand theft. *In re George B.* (1991, Cal App 3d Dist) 228 Cal App 3d 1088, 279 Cal Rptr 388, 1991 Cal App LEXIS 284, review denied (1991, Cal) 1991 Cal LEXIS 2882.

Grand theft by false pretenses (*Pen C* § 487, subd. (1)), consists of three elements: (1) the making of a false pretense or representation by the defendant, (2) the intent to defraud the owner of his property, and (3) actual reliance by the owner upon the false pretense in parting with his property. Although the false pretense must be corroborated whenever it is not made in writing (*Pen C* § 532, subd. (b)), it need not be an express statement. A false pretense implied from statements made in conjunction with conduct intended to deceive is sufficient to support a conviction. *People v. Gentry* (1991, Cal App 4th Dist) 234 Cal App 3d 131, 285 Cal Rptr 591, 1991 Cal App LEXIS 1094, review denied (1992, Cal) 1992 Cal LEXIS 88.

The Legislature has enacted three statutes dealing with the taking of an automobile without the owner's consent: (1) "grand theft-auto" (*Pen C* § 487, subd. (3)); (2) driving or taking a vehicle (*Veh C* § 10851); and (3) joyriding (*Pen C* § 499b). The physical conduct prohibited by the three enactments is substantially the same, but there purports to be a distinction as to the intent with which the act is done in each instance. It may be presumed that the Legislature intended by these sections to deal with problems which are properly distinguishable, although the distinction is a subtle one, and would present a difficult problem if it were required that a court instruct the jury as to the distinction in a given situation. The manner in which the auto theft is charged may determine whether instructions on the joyriding statute are required to be given as a lesser included offense of *Veh C* § 10851. *People v. Ivans* (1992, Cal App 4th Dist) 2 Cal App 4th 1654, 4 Cal Rptr 2d 66, 1992 Cal App LEXIS 100.

Defendant's conviction of grand theft (*Pen C* § 487, former subd. (1)) on the theory of theft by trick and device, based on cashing a forged check at a bank, was invalid, where there was no evidence to satisfy one element of the offense—that the victim did not intend to transfer ownership—that being the only theory on which the case was tried. There was no evidence the bank teller intended to surrender to defendant only possession, and not title to the money. Defendant's misrepresentation of himself as a depositor, although a trick or device by which he acquired possession, also gave him title. The bank did not give the money on any understanding as to its limited use; rather, believing he was the depositor whose check he forged, the bank gave defendant the money to keep or use as he would. That the bank might ultimately be contractually responsible to the depositor for the unauthorized payment of his deposits to defendant did not affect the teller's intent at the time she cashed the check. *People v. Curtin* (1994, Cal App 1st Dist) 22 Cal App 4th 528, 27 Cal Rptr 2d 369, 1994 Cal App LEXIS 111, review denied (1994, Cal) 1994 Cal LEXIS 1848.

Because an alien's conviction of grand theft under *Pen C* § 487(c) did not qualify as an aggravated felony under 8 U.S.C.S. § 1101(a)(43)(G) under either the categorical or modified categorical approach, the immigration judge and the Board of Immigration Appeals erred in determining that the alien was removable for committing an aggravated felony. *Martinez-Perez v. Gonzales* (2005, 9th Cir) 417 F3d 1022, 2005 US App LEXIS 15817.

Grand theft conviction under *Pen C* § 487(c)(2003) does not facially qualify, under the categorical approach, as an aggravated felony under 8 USC § 1101(a)(43)(G); although a grand theft conviction necessarily entails an intent to steal, thereby meeting one of the elements of a theft offense as generically defined in § 1101(a)(43)(G), that definition also requires the taking of property, which is sometimes, but not always, involved in a grand theft offense under *Pen C* § 487(c)(2003). A defendant can be convicted under § 487(c) for aiding and abetting another who takes property from a victim. *Martinez-Perez v. Ashcroft* (2004, 9th Cir Cal) 393 F3d 1018, 2004 US App LEXIS 27077, opinion withdrawn (2005, CA9) 417 F 3d 1022, reprinted as amended (2005, 9th Cir) 417 F3d 1022, 2005 US App LEXIS 15817.

Although an alien's *Pen C* § 487(c)(2003) grand theft conviction did not facially qualify as an aggravated felony under 8 USC § 1101(a)(43)(G), the conviction qualified as an aggravated felony when examined using a modified categorical approach: the conviction met the generic definition of a theft offense under § 1101(a)(43)(G) because all of the elements of that definition were met: (1) the crime necessarily entailed an intent to steal; (2) based upon the original

information filed against him, and the fact that no one else was involved in the criminal act, it was clear that, in pleading guilty, the alien had admitted taking property from his victim; and (3) the alien had been sentenced to more than a year's incarceration arising from his grand theft conviction. *Martinez-Perez v. Ashcroft* (2004, 9th Cir Cal) 393 F3d 1018, 2004 US App LEXIS 27077, opinion withdrawn (2005, CA9) 417 F 3d 1022, reprinted as amended (2005, 9th Cir) 417 F3d 1022, 2005 US App LEXIS 15817.

5. Property as Subject of Offense

Jewelry is not the subject of grand larceny, unless it exceeds the statutory value required therefor. *People v. Marshall* (1881) 59 Cal 391, 1881 Cal LEXIS 396.

The taking of gold ore may constitute grand larceny. *People v. Opie* (1899) 123 Cal 294, 55 P 989, 1899 Cal LEXIS 1064.

Where one committed a theft of different properties at different times but under one design, one purpose, and one impulse, he committed a single crime, and if the total value of the goods taken amounted to grand theft, a conviction therefor was warranted. *People v. Fleming* (1934) 220 Cal 601, 32 P2d 593, 1934 Cal LEXIS 577.

Value to be placed on stolen articles for purpose of establishing felony charge is market value of property, not value of property to any particular individual. *People v. Latham* (1941, Cal App) 43 Cal App 2d 35, 110 P2d 101, 1941 Cal App LEXIS 607.

Though each of articles described in information was taken on separate day, if entire plan of stealing was in furtherance of defendant's design to secure personal and monetary satisfaction for his treatment by his employers, to whom articles belonged, different asportations constituted single act without regard to time. *People v. Yachimowicz* (1943, Cal App) 57 Cal App 2d 375, 134 P2d 271, 1943 Cal App LEXIS 185.

There was but one general intent and only one offense, though the defendant sold his employer's goods on different days and retained the proceeds, where the defendant's acts appeared to have been part of one transaction motivated by a grievance against his employers. *People v. Howes* (1950, Cal App) 99 Cal App 2d 808, 222 P2d 969, 1950 Cal App LEXIS 1786.

Whether there is a series of petty thefts or one offense which would support conviction of grand theft depends on whether evidence discloses separate and distinct intents; if there is but one intention, one general impulse, and one plan, though there is a series of transactions, there is only one offense. *People v. Lima* (1954, Cal App) 127 Cal App 2d 29, 273 P2d 268, 1954 Cal App LEXIS 1297.

Grand theft, rather than series of petty thefts, is committed by welfare applicant in taking, under one false representation as to having no income, series of welfare payments ranging between \$52 and \$153, and totaling more than \$1,000 over about one and one-half years. *Dawson v. Superior Court of Alameda County* (1956, Cal App 1st Dist) 138 Cal App 2d 685, 292 P2d 574, 1956 Cal App LEXIS 2420.

Whether series of wrongful acts constitutes single offense or multiple offenses depends on facts of each case, and defendant may be properly convicted on separate counts charging grand theft from same person if evidence shows that offenses are separate and distinct and were not committed pursuant to one intention, one general impulse and one plan. *People v. Bailey* (1961) 55 Cal 2d 514, 11 Cal Rptr 543, 360 P2d 39, 1961 Cal LEXIS 231.

Where deeds to real property are obtained by fraud, there is no delivery or passage of title, and deeds, being worthless, cannot be made basis of charge of grand theft. *Buck v. Superior Court of Orange County* (1965, Cal App 4th Dist) 232 Cal App 2d 153, 42 Cal Rptr 527, 1965 Cal App LEXIS 1447, 11 ALR3d 1064, cert den *Buck v Superior Court of California* (1965) 382 US 834, 86 S Ct 77, 15 L Ed 2d 77, 1965 US LEXIS 697.

Contractual obligation to pay money is properly subject to theft statutes, and written contractual obligation to pay in excess of \$200 is property of value in excess of \$200, as contemplated by definition of grand theft in this section. *Buck v. Superior Court of Orange County* (1965, *Cal App 4th Dist*) 232 *Cal App 2d* 153, 42 *Cal Rptr* 527, 1965 *Cal App LEXIS* 1447, 11 ALR3d 1064, cert den *Buck v Superior Court of California* (1965) 382 *US* 834, 86 *S Ct* 77, 15 *L Ed 2d* 77, 1965 *US LEXIS* 697.

Evidence of value of property stolen is element of grand theft that should warrant closest scrutiny by defense counsel when stolen items may have value dependent on mark-up factors and type of store victimized; it would be open to defense counsel, if not incumbent on him, to show that list price being paid for similar merchandise in vicinity was lower than alleged price of stolen goods. *People v. Cook* (1965, *Cal App 2d Dist*) 233 *Cal App 2d* 435, 43 *Cal Rptr* 646, 1965 *Cal App LEXIS* 1377.

Welf & Inst Code, § 11482, defining as a misdemeanor wilfully and knowingly making a false representation, or failure to disclose information, with the intent to obtain aid, or the attempt to obtain, or to continue to receive, aid in a greater amount than entitled, is to discourage welfare recipients from committing any of the acts condemned by the statute, and does not extend to the receipt and retention of welfare payments to which the recipient is not entitled, and thus, such a recipient was properly subject to a felony prosecution under the general *Pen C* § 487, although no single payment exceeded \$200, but the amount accumulated over a seven month period exceeded \$200. *People v. Lopez* (1968, *Cal App Dep't Super Ct*) 265 *Cal App 2d* 980, 265 *Cal App 2d Supp* 980, 71 *Cal Rptr* 667, 1968 *Cal App LEXIS* 1708, overruled *People v. Gilbert* (1969) 1 *Cal 3d* 475, 82 *Cal Rptr* 724, 462 *P2d* 580, 1969 *Cal LEXIS* 223.

Pen C § 487 defines grand theft as including both theft of property worth more than \$400 and theft of an automobile. Several other statutes also define certain forms of theft to be grand theft (e.g., *Pen C* §§ 487a [theft of carcass of certain animals]; 487d [theft of gold dust from mining claim]). *Pen C* § 488 states that theft in other cases is petty theft. In charging a crime divided into degrees, it is not necessary to allege the particular degree, or facts establishing degree; a general pleading of the offense will support proof of a higher or lower degree. More specifically, *Pen C* § 952 states in part that in charging theft it is sufficient to allege that defendant unlawfully took the labor or property of another; it is not required that the charging document specify whether the alleged crime constitutes grand theft or petty theft. Because theft is a necessarily included offense of robbery, it follows that both degrees of theft, grand and petty, are necessarily included offenses of robbery. *People v. Ortega* (1998) 19 *Cal 4th* 686, 80 *Cal Rptr 2d* 489, 968 *P2d* 48, 1998 *Cal LEXIS* 7629.

6. Taking From the Person

When property is taken from the person of another, the offense is grand larceny. *People v. Nelson* (1880) 56 *Cal* 77, 1880 *Cal LEXIS* 354.

Taking \$17 from the pocket of trousers placed under the head of one asleep is not such a taking from the person as to constitute grand larceny. *People v. McElroy* (1897) 116 *Cal* 583, 48 *P* 718, 1897 *Cal LEXIS* 591.

Removal of wallet from person of victim constitutes grand theft, and value of property is immaterial. *People v. Herrin* (1947, *Cal App*) 82 *Cal App 2d* 795, 187 *P2d* 26, 1947 *Cal App LEXIS* 1276.

To establish corpus delicti of attempted grand theft from person, there must be person from whom property may be taken, and intent to take such property against will of owner, and act performed tending to accomplish foregoing; amount of money involved, if any, is extraneous fact which need neither be alleged nor proven. *People v. Twiggs* (1963, *Cal App 2d Dist*) 223 *Cal App 2d* 455, 35 *Cal Rptr* 859, 1963 *Cal App LEXIS* 1554.

Though robbery consisting solely of taking property from person's immediate presence may not include all elements of grand theft from person, it appears from statute that robbery consisting of felonious taking of personal property in another's possession from his person includes all elements of offense of taking property from person of

another. *People v. Chandler* (1965, Cal App 2d Dist) 234 Cal App 2d 705, 44 Cal Rptr 750, 1965 Cal App LEXIS 1056.

It is the felonious taking of property from the person of another that constitutes grand theft from the person under *Pen C § 487* subd 2, and not the taking of any specified amount from the person nor taking the property from any specified place on the person. *People v. Smith* (1968, Cal App 2d Dist) 268 Cal App 2d 117, 73 Cal Rptr 859, 1968 Cal App LEXIS 1280.

Where the element of "force or fear," necessary to the crime of robbery as defined by *Pen C § 211*, is absent, a taking of property from the person is grand theft under *Pen C § 487*. *People v. Morales* (1975, Cal App 4th Dist) 49 Cal App 3d 134, 122 Cal Rptr 157, 1975 Cal App LEXIS 1191.

The trial court properly denied defendant's motion for acquittal (*Pen C § 1118.1*), since the prosecution's evidence was sufficient to sustain a conviction for grand theft from the person pursuant to *Pen C § 487*, subd. (c). The facts that defendant grabbed the victim's purse from the floor as she sat in a chair in a nail salon, that the victim had placed her foot against the purse to make sure that she knew where it was, that the purse was at all times in contact with her foot, and that the victim's purpose in placing the purse against her foot was to retain dominion and control over the purse, i.e., so that she could know where the purse was at all times, were sufficient to show that the purse was taken "from the person" of the victim. Further, the obvious purpose of *Pen C § 487*, is to guard against the purse snatcher; it was not intended to include property removed from the person and laid aside. In this case, the victim's purse had not been laid aside. Rather, the purse was actually attached to her person, since she at all times maintained contact with the purse for the purpose of maintaining dominion and control over it. *People v. Huggins* (1997, Cal App 3d Dist) 51 Cal App 4th 1654, 60 Cal Rptr 2d 177, 1997 Cal App LEXIS 20.

The evidence was sufficient to sustain a finding that a juvenile committed a grand theft from the person of the victim (*Pen C § 487(c)*), even though it was only when the victim ran away, leaving his backpack and cap, that the minor took possession of the items, since it was the direct result of the minor's assault on the victim that the hat and backpack were removed and fell to the ground. Nor did the victim's running away amount to an abandonment of his possessions. However, the trial court erred in failing to designate the offense as a misdemeanor or a felony, as required by *W & I C § 702*, and it did not use any language that demonstrated an awareness of its discretion to make such a determination. Accordingly, remand was mandated. *In re Eduardo D.* (2000, Cal App 2d Dist) 81 Cal App 4th 545, 97 Cal Rptr 2d 38, 2000 Cal App LEXIS 457, review denied (2000) *Supreme Court Minute 08-30-2000*, 2000 Cal. LEXIS 7057, overruled in part *In re Jesus O.* (2007) 40 Cal 4th 859, 55 Cal Rptr 3d 523, 152 P3d 1100, 2007 Cal LEXIS 2040.

Juvenile committed theft of a cellular telephone "from the person" under *Pen C §§ 486, 487(c)*, even though his cohort picked the telephone up after the victim dropped it while fleeing from their assault and demand for money, because the property was physically connected to the victim's person when the juveniles began to take it. The generalized intent to steal money at the time the telephone was on the victim's person satisfied the larcenous intent element of grand theft. *In re Jesus O.* (2007) 40 Cal 4th 859, 55 Cal Rptr 3d 523, 152 P3d 1100, 2007 Cal LEXIS 2040.

7. Taking Specified Property

Either leading or driving away animals charged to have been stolen is carrying away within law. *People v. Smith* (1860) 15 Cal 408, 1860 Cal LEXIS 137.

The larceny of a horse is grand larceny, though its value is less than \$50. *People v. Salorse* (1882) 62 Cal 139, 1882 Cal LEXIS 709.

One finding dead animal, and carrying away body or part of it, is not guilty of grand larceny unless part carried away is worth minimum value prescribed for offense or more. *People v. Smith* (1896) 112 Cal 333, 44 P 663, 1896 Cal LEXIS 685.

To make stealing of one of animals named in this section grand larceny, it must be live one and not dead carcass,

unless defendant killed it for purpose of carrying it away. *People v. Smith* (1896) 112 Cal 333, 44 P 663, 1896 Cal LEXIS 685.

Under subd 3 any theft of automobile is grand theft, regardless of value of vehicle. *People v. Painter* (1963, Cal App 5th Dist) 214 Cal App 2d 93, 29 Cal Rptr 121, 1963 Cal App LEXIS 2576.

Gist of offense proscribed by *Veh C § 10851* is taking or driving of vehicle without owner's consent and with specific intent to deprive owner, permanently or temporarily, of title or possession; § 10851 overlaps provisions of subd 3 of this section, concerning grand theft of automobile of which defendant can be found guilty when jury applies statutory presumption in *Veh C § 10855* of embezzlement of vehicle on failure to return it within five days after agreement for its use expires. *People v. Starkey* (1965, Cal App 2d Dist) 234 Cal App 2d 822, 44 Cal Rptr 738, 1965 Cal App LEXIS 1070.

Unlawful taking of automobile in violation of *Pen C § 487*, need not necessarily be for purpose of temporarily using or operating automobile. *People v. Powell* (1965, Cal App 2d Dist) 236 Cal App 2d 884, 46 Cal Rptr 417, 1965 Cal App LEXIS 887.

In a prosecution arising from the illegal taking of abalone from coastal waters, the trial court did not err in dismissing a count charging defendants with grand theft (*Pen C § 487*, subd. 1). Theft requires the taking of the property of another, but like other wild game, abalone in coastal waters belong to the people of the state in their collective, sovereign capacity, and thus no property rights exists in these shellfish. The state acts as trustee to protect the abalone, but it has no proprietary interest that can be equated with a personal property interest. Thus, abalone cannot be the subject of larceny. Also, in enacting certain statutes, the Legislature has extended the subjects of larceny beyond those considered at common law. By failing to define the taking of wild animals as theft, the Legislature intended to preserve the common law rule that wild animals cannot be the subject of larceny. Further, in amending *Pen C § 487*, the Legislature extended the crime of larceny to the taking of marine products from a commercial operation, but not to the taking of wild shellfish from coastal waters. Finally, the offense defendants allegedly committed is punishable by several provisions of the *Fish and Game Code*. *People v. Brady* (1991, Cal App 1st Dist) 234 Cal App 3d 954, 286 Cal Rptr 19, 1991 Cal App LEXIS 1134.

8. Related and Included Offenses

Robbery included grand larceny, and under charge of grand larceny, defendant could not be acquitted though evidence showed robbery. *People v. Clark* (1905) 145 Cal 727, 79 P 434, 1905 Cal LEXIS 614.

Dismissal of charge of conspiracy to commit grand theft, after impanelment of jury, though it may in legal effect amount to acquittal of charge of conspiracy, is not bar to subsequent prosecution for commission of crime of grand theft, even though said crime is alleged in conspiracy indictment as sole overt act committed in furtherance of conspiracy. *People v. MacMullen* (1933) 218 Cal 655, 24 P2d 793, 1933 Cal LEXIS 556.

Under an information for grand theft of an automobile under this section, and driving the automobile without the owner's consent under *Veh C § 503*, charging each offense to have been committed on or about the same day in the same county, a judgment of guilty of both crimes cannot stand, although the defendant was apprehended in another county several days later, in the absence of any showing of a substantial break between the taking and use in the county designated in the accusation. *People v. Kehoe* (1949) 33 Cal 2d 711, 204 P2d 321, 1949 Cal LEXIS 233, cert den (1949) 338 US 834, 70 S Ct 39, 94 L Ed 509, 1949 US LEXIS 2019.

Petty theft is not included in a charge of grand theft under subd. 3 for taking a sheep. *People v. Piazza* (1953, Cal App) 115 Cal App 2d 811, 252 P2d 947, 1953 Cal App LEXIS 1745.

Accused may not be convicted under both this section sub 3 and *Veh C § 503* for the same taking of an automobile. *People v. Saltz* (1955, Cal App 2d Dist) 131 Cal App 2d 459, 280 P2d 900, 1955 Cal App LEXIS 2073.

Assuming, in prosecution of cashier at payment window of county probation department for theft of sum of money from probation officer that had been paid to officer pursuant to court order, that such funds were of public nature, there was not such "qualitative difference" between grand theft under § 487 subd (1) and embezzlement of public funds by public employee under § 504 as to preclude prosecution under former section where defendant was charged in information with one crime and tried on theory that she committed another, since offenses defined in § 504 are included in crime of theft and since "qualitative differences," consisting of greater punishment, disabilities relating to franchise and eligibility for public office and availability of probation relate exclusively to matters material only after conviction of person who, by virtue of his official capacity and nature of funds taken, is treated somewhat differently. *People v. Coe* (1959, Cal App 2d Dist) 171 Cal App 2d 786, 342 P2d 43, 1959 Cal App LEXIS 1897.

In a prosecution for burglary and grand theft, defendant could be punished for either offense, but not for both, and it was error to impose sentences for both burglary and grand theft, where defendant was found guilty of both burglary and grand theft with respect to the taking of merchandise from a retail outlet inside a building or shop. *People v. Morales* (1968, Cal App 4th Dist) 263 Cal App 2d 211, 69 Cal Rptr 553, 1968 Cal App LEXIS 2200, overruled *People v. Allen* (1999) 21 Cal 4th 846, 89 Cal Rptr 2d 279, 984 P2d 486, 1999 Cal LEXIS 6463.

Reversal of defendant's conviction of grand theft from the person was not required, even assuming that the crime of robbery was in fact proven by the prosecution; since robbery includes all of the elements of grand theft from the person, defendant, had he been charged with robbery, could well have been convicted under the same evidence of the lesser but necessarily included offense of grand theft. *People v. Smith* (1968, Cal App 2d Dist) 268 Cal App 2d 117, 73 Cal Rptr 859, 1968 Cal App LEXIS 1280.

Prosecution and conviction of both grand theft and violation of *Veh C § 10851*, as distinguished from imposition of punishment, was permissible in an automobile theft prosecution, where there was the lapse of a substantial period of time (62 days) between the two offenses, and a showing that the vehicle was not being driven in one continuous journey away from the locus of the theft, where the driving charge was in an entirely different location and obviously for purposes unconnected with the original taking, where there was a switch in license plates and the registration slip as well as replacement of the motor and removal of the serial numbers from the body of the automobile, where the theft was definitely completed at the time of the engine switch, and where there could have been a conviction for receiving stolen property as well as for the theft except for the special applicable Vehicle Code statute. *People v. Malamut* (1971, Cal App 2d Dist) 16 Cal App 3d 237, 93 Cal Rptr 782, 1971 Cal App LEXIS 1581.

Even though a special statute defines a theft of a particular kind of property as a felony, such a theft remains a lesser included offense so as to bar a double conviction if accomplished by means of a robbery. Consequently, the mere fact robbery can be committed without stealing a firearm does not prevent application of the rule prohibiting conviction for both the greater and a lesser included offense to a prosecution under *Pen C §§ 211*, and *487*, subd. 3, for robbery and grand theft of a firearm. *People v. Sutton* (1973, Cal App 4th Dist) 35 Cal App 3d 264, 110 Cal Rptr 635, 1973 Cal App LEXIS 707.

A special statute did not supplant a general statute unless all the requirements of the general statute were covered in the special statute. Thus, former *Ed C § 28802* (see now *Ed C § 19911*), which declared to be a misdemeanor the wilful detention of a library book for 30 days after written notice to return it, did not, with respect to charges of taking library books, supplant *Pen C § 487*, defining grand theft; *Pen C § 487* included the requirement, as former *Ed C § 28802* (see now *Ed C § 19911*), did not, that the taking had to be consensual and that the person who took the property intend permanently to deprive the owner of it. *People v. Cohen* (1976, Cal App 2d Dist) 59 Cal App 3d 241, 130 Cal Rptr 656, 1976 Cal App LEXIS 1639, cert den (1977) 429 US 1045, 50 L Ed 2d 758, 97 S Ct 748, 1977 US LEXIS 275.

A lesser and necessarily included offense is either an offense within the offense specifically charged or one which, as defined by statute, is necessarily committed when the greater offense is committed. Thus, the misdemeanor offense of wilful detention of a library book, former *Ed C § 28802*, (see now *Ed C § 19911*), was not a lesser included offense within the offense of grand theft, as defined by *Pen C § 487*; grand theft is not limited to books and other educational

material, and former Ed C § 28802 (see now *Ed C § 19911*), imposed the particular requirement that the borrower be notified in writing to return the property and that he failed to do so for 30 days. *People v. Cohen* (1976, *Cal App 2d Dist*) 59 *Cal App 3d* 241, 130 *Cal Rptr* 656, 1976 *Cal App LEXIS* 1639, cert den (1977) 429 *US* 1045, 50 *L Ed 2d* 758, 97 *S Ct* 748, 1977 *US LEXIS* 275.

Defendant was properly charged with the crime of attempted grand theft by false pretenses (*Pen C §§ 484 and 487*) where it was alleged he sold to undercover officers a quantity of a product represented to be an expensive trademarked French perfume which was in fact an imitation. *Pen C § 351a*, making it a misdemeanor for a person to attempt to sell, and falsely represent goods as the product of other than the true manufacturer, a special statute, did not supplant the general theft statute, since the special statute did not require reliance as an element of the offense. Moreover, *Pen C § 351a* was intended to relate to unfair competition and substitute only, and thus did not supplant the general criminal statutes in respect of a seller's relations with his customers or members of the public generally. *People v. Weltsch* (1978, *Cal App 1st Dist*) 84 *Cal App 3d* 959, 149 *Cal Rptr* 112, 1978 *Cal App LEXIS* 1936.

In a criminal proceeding, defendants were improperly convicted of and sentenced for both grand theft by false pretenses and unlawful sale of securities by means of untrue statements, where the securities violations were part of the same transaction, were based upon the same acts as the convictions of grand theft by false pretenses, and were thus necessarily included offenses. (Per Newsom, J., with Racanelli, P. J., and Grodin, J., concurring in the result only.) *People v. Gonda* (1981, *Cal App 1st Dist*) 119 *Cal App 3d* 67, 173 *Cal Rptr* 398, 1981 *Cal App LEXIS* 1729.

A first offense for *Pen C § 502.7(a)* could be punished as a felony, even if the amount of the loss did not exceed \$400. As amended in 1993, the statute provided that a violation could be either a felony or a misdemeanor, "except as provided in subdivision (g)." Under subdivision (g), a violation was not a "wobbler," but a felony if the person had a predicate prior conviction. Other than the reference to subdivision (g), § 502.7 contained no other limitation on when its violation was either a misdemeanor or a felony. In particular, the statute, as amended, did not refer to a loss in excess of \$400. Thus, the plain language of the statute did not incorporate the \$400 demarcation between grand and petty theft set forth in *Pen C § 487(a)*. Rather, the language of § 502.7(a), (g) demonstrated that the Legislature had expressly declared violation of the statute to be a "wobbler" for first offenders without reference to a monetary amount. *People v. Crossdale* (2002) 27 *Cal 4th* 408, 116 *Cal Rptr 2d* 686, 39 *P3d* 1115, 2002 *Cal LEXIS* 617.

In a prosecution for robbery (*Pen C § 211*) based on a purse snatching, the trial court properly refused to instruct on grand theft from the person (*Pen C § 487*), where the evidence established all of the elements of robbery, including force, and there was no evidence which would support a finding that only the crime of grand theft from the person was committed. The record showed, in part, that defendant physically grabbed the victim, that they physically struggled for two minutes before he ran off with her purse, and that the victim screamed and cried. This constituted the crime of robbery with the attendant elements of force and fear. *People v. Cooksey* (2002, *Cal App 2d Dist*) 95 *Cal App 4th* 1407, 116 *Cal Rptr 2d* 1, 2002 *Cal App LEXIS* 1353, rehearing denied (2002, *Cal App 2d Dist*) 2002 *Cal App LEXIS* 2369, review denied (2002, *Cal*) 2002 *Cal LEXIS* 3311.

In a trial for attempted carjacking under *Pen C §§ 21a, 215(a), 664*, defendant was not entitled to an instruction on attempted grand theft auto under *Pen C §§ 21a, 664, 484, 487* because attempted grand theft auto is not a lesser included offense of attempted carjacking. *People v. Marquez* (2007, *Cal App 2d Dist*) 152 *Cal App 4th* 1064, 62 *Cal Rptr 3d* 31, 2007 *Cal App LEXIS* 1090.

In a trial for capital murder involving a robbery, there was no error in denying defendant's requested instruction on grand theft, under *Pen C § 487*, as a lesser included offense of robbery because no substantial evidence established that defendant committed only grand theft and not robbery. Defendant was identified as the assailant by strong circumstantial evidence, and viewed charitably, defense evidence merely established that defendant and an unidentified third person were in the victim's car together after the victim was sexually assaulted, robbed, and shot in the head; nothing indicated that such third person committed the capital crime or that defendant was not involved in the attack. *People v. DePriest* (2007, *Cal*) 2007 *Cal LEXIS* 8291.

9. Defenses

Fact that defendant returned victim's money is no defense to charge of grand theft. *People v. Reinschreiber* (1956, *Cal App 2d Dist*) 141 *Cal App 2d* 688, 297 *P2d* 658, 1956 *Cal App LEXIS* 1906.

In prosecution for grand theft for inducing persons to sign contract to pay for aluminum siding, which included blank trust deed form, in reliance on false representation that contract would be unsecured, fact that debt obligation was admitted or that there had been no recourse to security instrument was not defense, it not being essential to crime that victim sustain financial loss. *Buck v. Superior Court of Orange County* (1965, *Cal App 4th Dist*) 232 *Cal App 2d* 153, 42 *Cal Rptr* 527, 1965 *Cal App LEXIS* 1447, 11 *ALR3d* 1064, cert den *Buck v Superior Court of California* (1965) 382 *US* 834, 86 *S Ct* 77, 15 *L Ed 2d* 77, 1965 *US LEXIS* 697.

In a prosecution for grand theft (*Pen C* § 487), the guilt of the accused does not depend on the degree of folly or credulity of the party defrauded, and the argument by defendant that the alleged victims testified they could read, and that their carelessness in failing to read the documents presented to them before signing absolved him from any criminal liability, afforded no defense against a charge of grand theft. *People v. Bresin* (1966, *Cal App 2d Dist*) 245 *Cal App 2d* 232, 53 *Cal Rptr* 687, 1966 *Cal App LEXIS* 1458, vacated (1968) 68 *Cal 2d* 822, 69 *Cal Rptr* 321, 442 *P2d* 377, 1968 *Cal LEXIS* 210.

In a prosecution for grand theft involving a complex scheme between defendant and others, including the victims, for the purchase of placer gold by the victims, the existence of a conspiracy to break the law between all parties to the scheme, including the victims, would not excuse the stealing of the victims' money by defendant, nor would the fact that others involved in the scheme might also have been chargeable with crime excuse the defendant. *People v. Walther* (1968, *Cal App 5th Dist*) 263 *Cal App 2d* 310, 69 *Cal Rptr* 434, 1968 *Cal App LEXIS* 2209.

It is no defense to a charge of grand theft that the property taken, or some of it, was returned. *People v. Kranhouse* (1968, *Cal App 4th Dist*) 265 *Cal App 2d* 440, 71 *Cal Rptr* 223, 1968 *Cal App LEXIS* 1637.

In a prosecution for grand theft involving the use by defendant chiropractor of a so-called diagnostic machine, defendant failed to make out the defense of entrapment, where the evidence, as a whole, and defendant's own testimony in particular, established that her course of conduct began long before the investigation which led to her convictions, and where defendant and her associates were prepared to accept money from anyone gullible enough to believe the claims they made. *People v. Chatfield* (1969, *Cal App 2d Dist*) 272 *Cal App 2d* 141, 77 *Cal Rptr* 118, 1969 *Cal App LEXIS* 2254, cert den (1971) 402 *US* 951, 91 *S Ct* 1629, 29 *L Ed 2d* 121, 1971 *US LEXIS* 2240.

B. PROCEDURE GENERALLY

10. In General

Where evidence given at preliminary examination showed that defendant unlawfully and surreptitiously removed his own automobile, which was subject to repairman's lien, from premises of repairman, superior court was without jurisdiction to proceed on information charging him with burglary and grand theft, since former *CC* § 3075 (see now *CC* § 3070), specifically made such act misdemeanor, and municipal court had exclusive jurisdiction of offense shown to have been committed. *In re Joiner* (1960, *Cal App 2d Dist*) 180 *Cal App 2d* 250, 4 *Cal Rptr* 667, 1960 *Cal App LEXIS* 2335.

There was sufficient evidence to satisfy the requirement of probable cause to hold defendant to answer for conspiracy to violate *Lab C* §§ 1777, 1814, former *Pub Util C* §§ 3801, 3802, and *Pen C* §§ 484, 487, subd (1), relating to tariff regulations and illegal employment practices and failure to comply with record-keeping requirements, where it was shown that, in an apparent effort to avoid the tariff regulations prescribing minimum hourly and tonnage rates for

hauling, defendants agreed to engage on a course of conduct wherein, inter alia, records of the wages paid were not accurate and in some instances falsely showed payment of overtime, and all of the defendants pretended falsely that the employees of one defendant trucking company were owner-operator drivers to avoid the prevailing wage provisions prescribed by law. *People v. Miles & Sons Trucking Service, Inc.* (1968, Cal App 4th Dist) 257 Cal App 2d 697, 65 Cal Rptr 465, 1968 Cal App LEXIS 2496.

Under *Pen C* § 793, providing that a conviction or acquittal of an act charged as a public offense within the jurisdiction of another state is a bar to prosecution or indictment in California, the trial court properly dismissed an information charging defendant with grand theft auto (*Pen C* § 487, subd. 3), and unlawful driving or taking of a vehicle (*Veh C* § 10851), where it appeared defendant had previously been convicted in Oregon of unauthorized use of a vehicle arising out of the same incident. The California charges were based on the same act as the Oregon conviction even though the California charges may have required an element, the intent to deprive the owner of his vehicle temporarily or primarily, which was not required for the prior conviction. Intent is an element of a crime or a public offense, not of an act as the term is used in *Pen C* § 793. *People v. Comingore* (1977) 20 Cal 3d 142, 141 Cal Rptr 542, 570 P2d 723, 1977 Cal LEXIS 182.

11. Indictment and Information

Indictment was sufficiently certain in charging defendant with feloniously taking three head of cattle, without showing particular species of cattle taken. *People v. Littlefield* (1855) 5 Cal 355, 1855 Cal LEXIS 142.

An information charging grand theft need not aver that the value stated is in current coin of the *United States*. *People v. Winkler* (1858) 9 Cal 234, 1858 Cal LEXIS 97.

Indictment for larceny describing property as "a black or brown mare or filly, branded with a small mule shoe on the left shoulder," was sufficient. *People v. Smith* (1860) 15 Cal 408, 1860 Cal LEXIS 137.

Where indictment charged defendant with larceny of 250 sheep, of value of \$1,000, demurrer on ground that value of each sheep should be separately stated, was properly overruled. *People v. Robles* (1868) 34 Cal 591, 1868 Cal LEXIS 27.

An indictment charging grand larceny sufficiently described the property as a horse, although the value was not alleged. *People v. Townsley* (1870) 39 Cal 405, 1870 Cal LEXIS 65.

Information alleging that property stolen was "a certain hog, said hog being property and chattel of one Albert Long," was sufficient. *People v. Stanford* (1883) 64 Cal 27, 28 P 106, 1883 Cal LEXIS 553.

Since the felonious taking of a horse is grand larceny, it is unnecessary to specify its value. *People v. Chuey Ying Git* (1893) 100 Cal 437, 34 P 1080, 1893 Cal LEXIS 815.

Description of property stolen as "four calves, then and there the property of Anton Luchessa" was sufficient, in indictment for grand larceny. *People v. Warren* (1900) 130 Cal 683, 63 P 86, 1900 Cal LEXIS 912.

In charging one with grand larceny, it is sufficient to charge the taking of a "heifer," since this word is synonymous with "cow." *People v. Phillips* (1916, Cal App) 30 Cal App 31, 157 P 1003, 1916 Cal App LEXIS 88, overruled *People v. Farmer* (1956) 47 Cal 2d 479, 304 P2d 713, 1956 Cal LEXIS 297.

Where it was charged in one count that defendant obtained certain stock from complainant, and that he paid stated sum to redeem stock from pledge and later sold it for larger sum, and difference between two figures exceeded \$200, transaction furnished sufficient basis for charge of grand theft. *People v. Weibert* (1937, Cal App) 18 Cal App 2d 457, 64 P2d 169, 1937 Cal App LEXIS 534, cert den (1937) 301 US 703, 57 S Ct 944, 81 L Ed 1358, 1937 US LEXIS 460.

Allegation in information that defendant "unlawfully" took designated sum exceeding \$200 is sufficient averment of felony offense without stating that he "feloniously" took that amount. *People v. Tullos* (1943, Cal App) 57 Cal App 2d 233, 134 P2d 280, 1943 Cal App LEXIS 170.

A count in an information specifically charging the defendant with grand theft does not, by the insertion of the additional clause "in violation of §§ 484 and 487 of the Pen Code," charge him with two offenses. *People v. Tate* (1946, Cal App) 72 Cal App 2d 467, 164 P2d 556, 1946 Cal App LEXIS 1064.

Since the 1927 amendment of § 952 an information for a violation of this section is not fatally defective, though it fails to state the exact amount of the defalcation or the precise date of the misappropriation, where such information is based on a series of thefts though but one offense is charged. *People v. Howes* (1950, Cal App) 99 Cal App 2d 808, 222 P2d 969, 1950 Cal App LEXIS 1786.

Information charging grand theft includes offense of obtaining property by false pretenses. *People v. Platt* (1954, Cal App) 124 Cal App 2d 123, 268 P2d 529, 1954 Cal App LEXIS 1707.

It is not necessary that information charging grand theft specify particular type of theft involved, such as false pretenses, embezzlement or larceny by trick and device. *People v. Pond* (1955) 44 Cal 2d 665, 284 P2d 793, 1955 Cal LEXIS 267.

Information charging defendant with grand theft under subd (1), rather than under § 497, is proper, and court of this state has jurisdiction, although evidence shows that stealing occurred without the state, in view of § 27 and fact that defendant committed a continuing trespass. *People v. Case* (1957) 49 Cal 2d 24, 313 P2d 840, 1957 Cal LEXIS 244.

Information charging crime of felony, to wit, violation of this section, in that defendant at certain time and place unlawfully took property of named department store consisting of mink stole of value in excess of \$200, was not rendered insufficient by fact that code section was definition of grand theft, information being substantially in form suggested by § 951. *People v. Antoine* (1960, Cal App 1st Dist) 180 Cal App 2d 786, 4 Cal Rptr 589, 1960 Cal App LEXIS 2398.

Indictment charging defendants with conspiracy to obtain money by false pretenses, to commit grand theft, and to violate Corporate Securities Act was sufficient, though not naming victims, where it alleged dates, named conspirators and set forth eighteen overt acts. *People v. Mason* (1960, Cal App 2d Dist) 184 Cal App 2d 317, 7 Cal Rptr 627, 1960 Cal App LEXIS 1882, cert den (1961) 366 US 904, 6 L Ed 2, 81 S Ct 1046, 1961 US LEXIS 1285.

Indictment charging defendants with unlawfully taking specified sum of money that was personal property of specified individual was sufficient. *People v. Mason* (1960, Cal App 2d Dist) 184 Cal App 2d 317, 7 Cal Rptr 627, 1960 Cal App LEXIS 1882, cert den (1961) 366 US 904, 6 L Ed 2, 81 S Ct 1046, 1961 US LEXIS 1285.

Information charging that defendant, on or about specified date, unlawfully and feloniously took \$500, personal property of named person, was sufficient to notify defendant of crime with which he was charged. *People v. O'Hara* (1960, Cal App 2d Dist) 184 Cal App 2d 798, 8 Cal Rptr 114, 1960 Cal App LEXIS 1937.

Counts of indictment charging grand theft as to president of company and president of corporation were sufficient as against motion to set aside where evidence before grand jury showed that each transaction consisted of issuance of check by company's president on company's behalf to account of corporation, that thereafter, usually in same amount and on same, or approximately same date, corporation issued its check to company's president who then deposited it to his personal account, and that his signature was identified on each of company's checks as was his handwriting on deposit slips. *People v. Olf* (1961, Cal App 2d Dist) 195 Cal App 2d 97, 15 Cal Rptr 390, 1961 Cal App LEXIS 1429.

Where defendant is charged with grand theft, district attorney is not required in advance of proof to elect whether he will proceed on theory of larceny, embezzlement or obtaining property by false pretenses. *People v. Rosson* (1962,

Cal App 2d Dist) 202 Cal App 2d 480, 20 Cal Rptr 833, 1962 Cal App LEXIS 2505.

Mere fact that information charged defendants under § 484, defining theft, does not vitiate judgment of conviction when it set out facts of crime of which defendants were ultimately convicted, theft of motor vehicle, which can only be grand theft. *People v. O'Neal (1962, Cal App 1st Dist) 204 Cal App 2d 707, 22 Cal Rptr 641, 1962 Cal App LEXIS 2300.*

One charged with robbery in words of enactment describing offense is charged with taking property from another's person, as defined by subd 2, and can be properly convicted when evidence supports charge. *People v. Chandler (1965, Cal App 2d Dist) 234 Cal App 2d 705, 44 Cal Rptr 750, 1965 Cal App LEXIS 1056.*

Allegations that defendant wilfully, unlawfully, feloniously and by means of force and fear took from person, possession and immediate presence of druggist money and narcotics included all elements of violation of subd 2. *People v. Chandler (1965, Cal App 2d Dist) 234 Cal App 2d 705, 44 Cal Rptr 750, 1965 Cal App LEXIS 1056.*

Accusatory pleading that defendant wilfully, unlawfully, feloniously and by means of force and fear took from person, possession and immediate presence of druggist money and narcotics properly informed defendant that he must be prepared at trial to contravene evidence that he took money and narcotics from person of druggist. *People v. Chandler (1965, Cal App 2d Dist) 234 Cal App 2d 705, 44 Cal Rptr 750, 1965 Cal App LEXIS 1056.*

An information charging grand theft covers the offense of obtaining property by false pretenses, on proof of which, as on proof of larceny, a conviction of grand theft may rest. *People v. Felsman (1967, Cal App 2d Dist) 257 Cal App 2d 437, 64 Cal Rptr 870, 1967 Cal App LEXIS 1801.*

Under *Pen C § 952*, relating to the sufficiency of criminal charges, an information charging grand theft (*Pen C § 487*, subd. 1) was not defective in alleging that the accused took "property" instead of specifying "personal property." *People v. Gray (1976, Cal App 2d Dist) 65 Cal App 3d 220, 135 Cal Rptr 206, 1976 Cal App LEXIS 2204.*

The trial court committed reversible error in granting defendant's motion (*Pen C § 995*) to dismiss an information charging her with the commission of grand theft in violation of *Pen C § 487*, subd. 1, where the only ground for the motion was that defendant's crime arose out of the use of a cancelled credit card and credit card fraud could be prosecuted only under a statute specifically applying to credit cards. While *Pen C § 484g* expanded and particularized the definition of grand theft as it appeared in *Pen C § 487*, by specifically referring to use of an expired or revoked credit card, that statute did not create a separate offense nor state the punishment for the offense it described. Thus, since the evidence received at the preliminary examination indicated that defendant committed acts which *Pen C § 484g* stated constituted grand theft, it was immaterial that the prosecutor only mentioned *Pen C § 487*, in the information, and the information adequately pleaded the charge of grand theft. *People v. Edwards (1978, Cal App 2d Dist) 86 Cal App 3d 260, 150 Cal Rptr 86, 1978 Cal App LEXIS 2068.*

In a criminal action in which defendant was charged with grand theft based on thefts by the mailing of fraudulent representations to thousands of people, the complaint did not allege sufficient facts to support the cumulation of the thefts to constitute the charge of grand theft. However, a series of thefts of amounts less than \$200 from more than one victim can be cumulated to charge grand theft if the allegations support the theory that the series of thefts were accomplished as a result of one scheme or plan to defraud the victims and a single intent to act. Therefore, a demurrer to the complaint should have been sustained with leave to amend in order to allow for amendment alleging that the thefts were linked in a series and that the series of thefts constituted an illegal scheme which was pursuant to a single intent. *People v. Columbia Research Corp. (1980, Cal App Dep't Super Ct) 103 Cal App 3d Supp 33, 163 Cal Rptr 455, 1980 Cal App LEXIS 1645.*

The accusatory pleading in a grand theft prosecution was not defective in charging that defendants committed theft between two specified dates several days apart rather than specifying a single point in time when "the" theft occurred, where the evidence supported the conclusion that there had been committed not just one theft, but a series of thefts.

People v. Ramirez (1980, Cal App 2d Dist) 109 Cal App 3d 529, 167 Cal Rptr 174, 1980 Cal App LEXIS 2183.

Pen C § 666 by its terms does not require the statute to be specifically pleaded in the information or indictment; nor do constitutional principles of due process require that the statute be specifically alleged as long as the pleading apprises the defendant of the potential for the enhanced penalty and alleges every fact and circumstance necessary to establish its applicability. Thus, an accusatory pleading charging the greater offense of robbery and alleging several prior prison terms for theft offenses was sufficient because it necessarily put defendant on notice of the lesser included offense of petty theft and prior theft convictions and prison terms to support a felony sentence. *People v. Tardy* (2003, Cal App 2d Dist) 112 Cal App 4th 783, 6 Cal Rptr 3d 24, 2003 Cal App LEXIS 1552, review denied (2004, Cal) 2004 Cal LEXIS 225.

12. Variance

Under information charging grand larceny in stealing horse alleged to be property of one J. Suey Lung, proof that horse belonged to Chinese company, of which J. Suey Lung was manager, and that he bought stolen horse in his own name, and that he alone could sell horse, did not show material variance, but sufficiently sustained allegation. *People v. Nunley* (1904) 142 Cal 105, 75 P 676, 1904 Cal LEXIS 904.

Fact that payee did not endorse cashier's check which he gave defendant until date beyond that alleged in indictment charging grand theft as of date payee gave check to defendant constitutes only immaterial variance, where previous false representation was motivating cause of transfer of possession and title. *People v. Adams* (1955, Cal App 4th Dist) 137 Cal App 2d 660, 290 P2d 944, 1955 Cal App LEXIS 1241.

Where information charges grand theft of money and personal property of more than certain value, while evidence discloses embezzlement of deed, its transmutation into promissory note and sale of latter for cash, all such activities being part of single scheme to appropriate certain person's property, variance amounts to nothing more than that information contained erroneous description of stolen property, which is not fatal. *People v. Zucker* (1960, Cal App 2d Dist) 177 Cal App 2d 172, 2 Cal Rptr 112, 1960 Cal App LEXIS 2443.

Defendant's conviction of attempted grand theft was supported by sufficient evidence, though the indictment, in charging the offense, made no reference to the name of the victim, and though the grand jury transcript indicated that the prosecuting attorney had referred to the charge as relating to a named person other than the victim, where there was ample evidence to establish that the attempted larceny of the actual victim occurred on or about the date specified, where, at the time of trial, all parties treated the charge as involving the incident relating to the actual victim, and where no consideration appeared to have been given to any charge relating to the person named by the prosecuting attorney. *People v. Albin* (1970, Cal App 2d Dist) 9 Cal App 3d 31, 88 Cal Rptr 422, 1970 Cal App LEXIS 1924.

13. Habitual Criminal Proceedings

Conviction in sister state of "larceny of an auto" is offense within habitual criminal statute where at time of conviction both in such state and in California larceny of automobile, irrespective of its value, is felony. *In re Ward* (1946) 28 Cal 2d 583, 170 P2d 665, 1946 Cal LEXIS 238.

Findings that defendant was convicted merely of larceny in another state in 1913 and 1930 were not findings that he suffered prior convictions of California offense of grand theft as then known in this state, where, at times mentioned, larceny in another state was not defined by statute and hence was committed when personal property of any value was concerned, whereas under this statute property stolen must have had value exceeding designated sum. *In re Wolfson* (1947) 30 Cal 2d 20, 180 P2d 326, 1947 Cal LEXIS 146.

Prior conviction of "larceny of auto, a felony," in another state may properly be considered in fixing defendant's status as habitual criminal where such offense is substantially equivalent to California offense of grand theft. *In re*

Pearson (1947) 30 Cal 2d 871, 186 P2d 401, 1947 Cal LEXIS 211.

Indictment merely alleging prior conviction of grand larceny in another state, which in California might be either grand theft or petty theft, and which appears from copies of information and judgment filed in other state, would have only amounted to petit larceny in this state at time of commission of offense, does not support determination that defendant is habitual criminal. *In re Bramble (1947) 31 Cal 2d 43, 187 P2d 411, 1947 Cal LEXIS 220, cert den (1949) 337 US 960, 69 S Ct 1522, 93 L Ed 1759, 1949 US LEXIS 2131, superseded by statute as stated in In re Stonewall F. (1989, Cal App 3d Dist) 207 Cal App 3d 1136, 255 Cal Rptr 475.*

Prior conviction of "Larceny from the person," in another state may be considered in adjudging defendant habitual criminal where such crime would have constituted grand theft in California. *People v. Burns (1960, Cal App 1st Dist) 181 Cal App 2d 480, 5 Cal Rptr 301, 1960 Cal App LEXIS 2018.*

Because California's theft statute criminalizes more than just the taking of property, a prior conviction for grand theft under *Pen C § 487(a)* is not categorically a conviction for an aggravated felony for purposes of 8 U.S.C.S. § 1101(a)(43)(G). *United States v. Espinoza-Cano (2006, 9th Cir Cal) 456 F3d 1126, 2006 US App LEXIS 20254.*

C. EVIDENCE

14. In General

A defendant may be convicted of grand theft on proof showing either larceny, embezzlement, or obtaining money by false pretenses. *People v. Cannon (1947, Cal App) 77 Cal App 2d 678, 176 P2d 409, 1947 Cal App LEXIS 1323.*

Where a promoter of a corporation obtained money as a payment on unlicensed stock by representing that he would place the money in a bank in trust for the purchaser, if the promoter intended from the outset to appropriate the money to his own use he committed larceny by trick or device, and if he appropriated it at any time after obtaining it he committed embezzlement; in either event he was guilty of grand theft. *People v. Mason (1948, Cal App) 86 Cal App 2d 445, 195 P2d 60, 1948 Cal App LEXIS 1639.*

Where there is conclusive evidence that defendants were guilty of theft of savings of old and innocent people and, if facts do not fit one form of grand theft as defined in section, they fit in other, it is immaterial whether offense proved be larceny, obtaining money by false pretenses or embezzlement. *People v. Shepherd (1956, Cal App 2d Dist) 141 Cal App 2d 367, 296 P2d 919, 1956 Cal App LEXIS 1855.*

Proof of specific intent is required for conviction of grand theft. *People v. Wright (1962, Cal App 5th Dist) 199 Cal App 2d 30, 18 Cal Rptr 243, 1962 Cal App LEXIS 2799.*

In a prosecution of an attorney for grand theft (*Pen C § 487, subd. (1)*), in which it appeared that the attorney's account with a brokerage firm had been garnished and the attorney subsequently opened a new account with an out-of-town check, then closed the account and received and cashed the brokerage firm's check therefor, which was in an amount approximately equal to the garnished fund, after which the attorney stopped payment on the check, the trial court as trier of fact was not required to give credence to the attorney's claim that when he acquired the check from the brokerage firm he did so in the honest belief that he had a legal right to the money and that the brokerage firm had no right to withhold the garnished fund, where the court could properly conclude that defendant, as a lawyer, was well aware of the brokerage firm's legal rights and that his claim that he was only taking his own property was an after-the-fact attempt to justify conduct which he knew was unlawful. *People v. Silver (1975, Cal App 2d Dist) 47 Cal App 3d 837, 121 Cal Rptr 153, 1975 Cal App LEXIS 1071.*

In a prosecution for grand theft (*Pen C § 487, subd. (1)*), testimony of an accomplice witness at the preliminary hearing was admissible at the trial under the unavailability rule (Evid. Code, § 420, subd. (a)(3)), where, even though the accomplice was present at the trial, he refused to testify because of his fear for his life if he testified against

defendant and was then returned to prison. *People v. Quaintance* (1978, Cal App 3d Dist) 86 Cal App 3d 594, 150 Cal Rptr 281, 1978 Cal App LEXIS 2106.

15. Admissibility Generally

In prosecution of union officers for grand theft by embezzlement, based on paying union less than they received from automobile dealer for sales of used cars of union, where union bookkeeper testified that in each case he made entry as to amount paid, and by whom, at direction of paying defendant, dealer's books showed amounts paid by dealer, and to whom, union's books showed amount paid to it, and by whom, and there was no issue as to accuracy of these entries, there was no error in admission of these business records, adequate foundation having been laid. *People v. Clancy* (1960, Cal App 1st Dist) 184 Cal App 2d 403, 7 Cal Rptr 532, 1960 Cal App LEXIS 1887.

Defendant, charged with grand theft, is entitled to introduce any competent evidence that might tend to present defense of any of forms of crime. *People v. Rosson* (1962, Cal App 2d Dist) 202 Cal App 2d 480, 20 Cal Rptr 833, 1962 Cal App LEXIS 2505.

In prosecution for grand theft and for conspiracy to commit grand theft through fraudulent receipt of child welfare payments, no prejudicial error resulted from court's refusal to admit in evidence certain expenses claimed as offset to unreported income, introduced in order to show lack of intent to defraud, where defendant did not give offsetting expenses as reason for failing to report her income to Welfare Department but only her fear that report might have effect on custody of her child, and where certain of these expenses were already before jury. *People v. Wood* (1963, Cal App 4th Dist) 214 Cal App 2d 298, 29 Cal Rptr 444, 1963 Cal App LEXIS 2607.

In prosecution for grand theft, evidence of prior theft by defendant that tended to show common plan or scheme was not too remote to be admissible where such theft occurred nine months prior to one under consideration. *People v. Zurica* (1963, Cal App 2d Dist) 219 Cal App 2d 418, 33 Cal Rptr 145, 1963 Cal App LEXIS 2390.

In prosecution for grand theft, evidence of value of goods stolen may be given by owner, regardless of whether he is expert on value, and weight to be given owner's testimony is for trier of fact. *People v. Henderson* (1965, Cal App 1st Dist) 238 Cal App 2d 566, 48 Cal Rptr 114, 1965 Cal App LEXIS 1172.

In a prosecution for grand theft arising from the theft of telephone wire, testimony of the victim's supply foreman was admissible to establish the replacement cost of the stolen cable to the victim on the date of the theft where the packing slips that he described were similar to price tags or business labels furnished by the seller and kept by the buyer in the regular course of their business, and hence were competent to establish the purchase price of the telephone wire accompanying the packing slips. *People v. Renfro* (1967, Cal App 5th Dist) 250 Cal App 2d 921, 58 Cal Rptr 832, 1967 Cal App LEXIS 2184.

In a prosecution for grand theft, testimony of a witness relating statements by the district attorney concerning defendant, made during a meeting between the district attorney, the witness, and defendant, was admissible, where the statements were introduced to show defendant's response to them pursuant to *Evid. Code, § 1221*, providing that, absent constitutional considerations, a statement offered against a party may be introduced when the party manifests his adoption of the statement or his belief in its truth, and the question whether defendant's response actually constituted an adoptive admission was a question for the jury to decide. Moreover, admission of the statements did not violate defendant's Sixth Amendment right to confront adverse witnesses in view of the prosecution's declaration that the evidence was offered only to show the response of defendant to the district attorney's accusation, and defendant's failure to request a limiting instruction. *People v. Richards* (1976) 17 Cal 3d 614, 131 Cal Rptr 537, 552 P2d 97, 1976 Cal LEXIS 312, overruled *People v. Carbajal* (1995) 10 Cal 4th 1114, 43 Cal Rptr 2d 681, 899 P2d 67, 1995 Cal LEXIS 4783, superseded by statute as stated in *Collins v. Department of Motor Vehicles* (1984, Cal App 1st Dist) 158 Cal App 3d 74, 204 Cal Rptr 373, 1984 Cal App LEXIS 2289.

In a prosecution for grand theft of library books, it was not error to admit into evidence books not yet overdue, despite defendant's contention that, with regard to those books, there was not sufficient evidence of the intent permanently to deprive the library of their possession, where the defendant admitted that she had checked out a substantial number of books from the library, had returned none of them, and had sold many of them to a used book store after obliterating their identifying marks. *People v. Cohen* (1976, Cal App 2d Dist) 59 Cal App 3d 241, 130 Cal Rptr 656, 1976 Cal App LEXIS 1639, cert den (1977) 429 US 1045, 50 L Ed 2d 758, 97 S Ct 748, 1977 US LEXIS 275.

In a prosecution of defendant for grand theft (*Pen C* § 487, subd. 1), the trial court did not abuse its discretion in denying defendant's motion to preclude the use of prior convictions for burglary and receiving stolen property for impeachment purposes if defendant took the stand, where the prior convictions were probative on the issue of credibility, where the fact the prior convictions were four years old did not point toward exclusion of the evidence, and where, if defendant had testified it could be inferred that he would probably have corroborated testimony already given in his defense, and his testimony was not essential to the presentation of his defense. *People v. Lassell* (1980, Cal App 1st Dist) 108 Cal App 3d 720, 166 Cal Rptr 678, 1980 Cal App LEXIS 2100.

16. Theft by False Pretenses or Misrepresentations

In prosecution for grand theft by false pretenses arising out of sale of distributorship for powder to be added to fruit juice to make drink, evidence as to transaction not involved in prosecution was properly admitted to show scheme and design and fraudulent intent on defendant's part, and to provide corroboration. *People v. Carlin* (1960, Cal App 1st Dist) 178 Cal App 2d 705, 3 Cal Rptr 301, 1960 Cal App LEXIS 2646.

In prosecution of mother for grand theft by false pretenses in that she received county welfare aid for needy children to which she was not entitled, where testimony that mother was employed during months in question was admitted without objection, evidence of earnings of man with whom she was living was relevant in view of regulations calling for consideration by Social Welfare Department of the income of man assuming role of spouse, since it had bearing on mother's intent in making misrepresentations and tended to corroborate her admission that man had made regular contributions for support of herself and her children. *People v. Shirley* (1961) 55 Cal 2d 521, 11 Cal Rptr 537, 360 P2d 33, 1961 Cal LEXIS 232, 92 ALR2d 413.

In prosecution for grand theft of county welfare funds by false pretenses, it was not error to admit in evidence picture of store in Mexico allegedly operated by defendant's husband which was taken by investigator for district attorney after he had seen defendant and her husband together at store, since there was no showing that investigator had no authority to make investigation outside United States and even if such fact were assumed, it did not render inadmissible testimony with respect to information obtained by him in course of such investigation. *People v. De Casaus* (1961, Cal App 4th Dist) 194 Cal App 2d 666, 15 Cal Rptr 521, 1961 Cal App LEXIS 1863.

In prosecution for grand theft by false pretenses, where there was neither proof nor contention that defendant mulcted widows other than two prosecuting witnesses, probative value of newspaper clippings, carried by defendant, concerning money left two other widows, was less weighty than proof of other actual confidence game ventures and their prejudicial effect was also less weighty; thus admission of these clippings to prove intent was not abuse of discretion. *People v. Curtis* (1965, Cal App 3d Dist) 232 Cal App 2d 859, 43 Cal Rptr 286, 1965 Cal App LEXIS 1539.

In a prosecution of three defendants for conspiracy to commit grand theft, and for grand theft, based on misrepresentations in the sale of trust indentures, the fact that a civil injunction suit was pending on appeal did not render inadmissible otherwise competent evidence as to injunctive orders and judgment in the civil suit where the injunction was prohibitory and, hence, not stayed by an appeal. *People v. Lynam* (1968, Cal App 4th Dist) 261 Cal App 2d 490, 68 Cal Rptr 202, 1968 Cal App LEXIS 1769.

Admissibility of evidence of prior offenses is a question for the trial court; and in a prosecution for grand theft involving a complex scheme between defendant and others, including the victims, for the purchase of placer gold by the

victims, the trial court did not abuse its discretion in admitting testimony as to a similar weird and incredible happening a year earlier by which defendant had attempted to cheat the witness and had committed a battery on a third person who discovered defendant's substitution of wet sand for gold, where the plan, scheme, system, or design into which fitted the commission of the offense for which he was being tried. *People v. Walther* (1968, Cal App 5th Dist) 263 Cal App 2d 310, 69 Cal Rptr 434, 1968 Cal App LEXIS 2209.

In a prosecution for grand theft (*Pen C* § 487), based on the transfer of funds to defendant by the complaining witness for the purpose of purchase of letters of credit to be used to purchase foreign-made T-shirts, the trial court properly excluded evidence offered by defendant to negative fraudulent intent showing that the foreign manufacturer existed and that defendant had made some prior attempts to import T-shirts, where the excluded evidence was unrelated and noncontemporaneous to the transactions testified to by the complaining witness. The trial court also did not abuse its discretion in limiting cross-examination of the complaining witness so as to exclude testimony on the irrelevant question as to whether or not the complaining witness breached a contract obligation to defendant. *People v. Kagan* (1968, Cal App 1st Dist) 264 Cal App 2d 648, 70 Cal Rptr 732, 1968 Cal App LEXIS 2129, cert den (1969) 394 US 911, 89 S Ct 1027, 22 L Ed 2d 224, 1969 US LEXIS 2364.

In a prosecution for grand theft arising out of defendant's fraudulent real estate dealings with the victim, the trial court properly admitted evidence of another uncharged fraudulent real estate transaction in which defendant had engaged, where the victims of both transactions were elderly women, and where, in the course of defrauding each of the women, defendant resorted to use of a fictitious name ("Okuma Aikba" and "Jack Shitmeyer," respectively). The similarity in the transactions disclosed defendant's customary modus operandi. *People v. Utter* (1972, Cal App 2d Dist) 24 Cal App 3d 535, 101 Cal Rptr 214, 1972 Cal App LEXIS 1153, overruled *People v. Morante* (1999) 20 Cal 4th 403, 84 Cal Rptr 2d 665, 975 P2d 1071, 1999 Cal LEXIS 2968.

In a prosecution for grand theft by false pretenses (*Pen C* § 487), attempted grand theft (*Pen C* §§ 487, 664), and the filing of false insurance claims (Ins. Code, former § 556, subd. (a)), arising from the filing of claims for treatment by a chiropractor following a series of automobile accidents allegedly staged by defendant, the expert testimony of three police officers as to whether the accidents had been staged did not amount to inadmissible "profile" evidence, but rather was admissible because it was relevant. Defendant's posture at trial was that the collisions were not staged. Short of an admission from him or an accomplice, the prosecution was left to circumstantial evidence. The experts testified in order to explain the relationship between the various pieces of evidence, such as the extent of damage, type and extent of injuries, number of passengers in the car, use of a common caregiver or attorney, etc. Their opinions, that the collisions were staged, were based on the integration of these factors. These opinions were relevant because defendant was charged with staging fraudulent collisions, a sophisticated course of conduct. *People v. Singh* (1995, Cal App 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 818, rehearing denied (1995, 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 819, review denied (1995, Cal) 1995 Cal LEXIS 6622.

In a prosecution for grand theft by false pretenses (*Pen C* § 487), attempted grand theft (*Pen C* §§ 487, 664), and the filing of false insurance claims (Ins. Code, former § 556, subd. (a)), arising from the filing of claims for treatment by a chiropractor following a series of automobile accidents allegedly staged by defendant, the admission of evidence involving three collisions for which defendant was not charged was not prejudicial. The evidence of uncharged conduct, while certainly not similar enough to prove identity (an element not at issue), was similar enough to negate a claim of accident and thus prove the element of intent, whether or not the evidence was sufficient to prove a common plan or scheme. Further, the trial court properly exercised its discretion, under *Evid. Code*, § 352, to admit or deny admission of the evidence, even though it did not expressly say it was doing so, since it ruled only after hearing argument from both sides following defendant's objection to admission of the evidence. Finally, there was sufficient proof, by a preponderance of the evidence, of the uncharged collisions to warrant their consideration by the jury. Defendant never disputed that they occurred, only that the uncharged, as well as the charged, collisions were staged. Even if innocent, the uncharged collisions could have provided the experience upon which defendant later relied to construct and enact his fraudulent scheme. *People v. Singh* (1995, Cal App 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 818, rehearing denied (1995, 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 819,

review denied (1995, Cal) 1995 Cal LEXIS 6622.

Defendant was properly convicted of theft by false pretenses to obtain workers' compensation benefits under *Ins C § 1871.4(a)(1)*, and grand theft by false pretenses. Although defendant argued that his statements regarding his pain and the need for assistance at home were opinion, rather than fact, they were sufficient for purposes of proving these offenses. The evidence credited by the jury showed that defendant did not honestly hold the opinions he expressed. He told his doctor that he experienced intense pain and was unable to perform even the most basic personal hygiene tasks. However, a videotape showed that defendant could drive a car, pilot a commercial fishing boat, climb a vertical ladder, and hoist his catch onto sorting tables. Defendant knew his pain was not as severe as he represented and never honestly held the opinion that he required an in-home attendant. *People v. Webb* (1999, Cal App 2d Dist) 74 Cal App 4th 688, 88 Cal Rptr 2d 259, 1999 Cal App LEXIS 791, review denied (1999, Cal) 1999 Cal LEXIS 8438.

Employee's report that auto dealerships that purchased products from the employer were misrepresenting their customers' monthly payments dealt with theft by false or fraudulent representations or pretenses; thus, the public policy underlying a wrongful termination claim was sufficiently tethered to statutory authority. *Casella v. Southwest Dealer Services, Inc.* (2007, 4th Dist) 2007 Cal App LEXIS 2014.

17. Taking From Person of Another

In prosecution for larceny from person, wherein prosecution sought to prove that coin purse containing money and found in defendant's possession was taken by her with intent to steal it from handbag of owner while latter was marketing, but defendant denied stealing purse and testified that she stumbled over it and then picked it up from floor of market, evidence of similar acts on part of defendant immediately prior to offense charged was relevant and admissible to rebut her testimony. *People v. Williams* (1936) 6 Cal 2d 500, 58 P2d 917, 1936 Cal LEXIS 542.

Though money was not put in evidence and the People made no attempt to show that it belonged to someone else, it was proper, in prosecution for attempted grand theft, for prosecutor to elicit testimony from police officer relating to quantity of money, including a \$100 bill, found on defendant's person when he was arrested and fact that money was found loose in various of defendant's pockets, since evidence of its presence and particularly its location on defendant's person was relevant as tending to show that defendant was engaged in pickpocket activities; possession of currency of denominations not commonly carried may afford basis for inference as to source of money. *People v. Twiggs* (1963, Cal App 2d Dist) 223 Cal App 2d 455, 35 Cal Rptr 859, 1963 Cal App LEXIS 1554.

In prosecution for theft of watch from person, testimony that defendant pawned other watches before date of alleged crime indicated at least his knowledge of method of turning watch into ready cash and was relevant to motive; but where there was nothing to indicate that other watches were obtained by theft, pawning of other watches did not disclose criminal plan or scheme. *People v. Pargo* (1966, Cal App 4th Dist) 241 Cal App 2d 594, 50 Cal Rptr 719, 1966 Cal App LEXIS 1275.

In a prosecution for attempted grand theft from the person, where money and jewelry had been found in the accused's pocket following his arrest in crowds turned out for a presidential visit, testimony of a jewelry store salesman proffered by the accused to corroborate his claimed purchases and his purpose in being downtown on that day was immaterial and properly excluded. *People v. Watson* (1966, Cal App 2d Dist) 244 Cal App 2d 89, 52 Cal Rptr 821, 1966 Cal App LEXIS 1547.

In the prosecution of a prostitute for grand theft of about \$420 from the victim's money belt that he had removed and placed in his pants pocket before he was taken into the bathroom by defendant and detained there an unusual length of time, it was not an abuse of discretion to permit a qualified expert to testify over objection as to the modus operandi used by prostitutes in Los Angeles County known as "the creeper" whereby two prostitutes worked together to relieve the victim of his money, a matter sufficiently beyond common experience that the expert's opinion would assist the trier of fact, where, though no hypothetical question was asked, the presence of another person whose entry into the room

where the victim's money belt was and the taking of the money could be inferred. *People v. Crooks* (1967, Cal App 2d Dist) 250 Cal App 2d 788, 59 Cal Rptr 39, 1967 Cal App LEXIS 2166.

In a prosecution for grand theft from the person, the trial court did not err in admitting evidence of two offenses not charged in the information, where there were sufficient points of similarity between the thefts not charged and one of those charged to establish defendant's identity as to the crime charged and to show a common plan, scheme, and design. *People v. Henley* (1969, Cal App 5th Dist) 269 Cal App 2d 263, 74 Cal Rptr 611, 1969 Cal App LEXIS 1643.

18. Theft of Automobiles

In grand theft prosecution, where used car salesman had testified that defendant, representing himself as prospective buyer, drove off in car which he failed to pay for or return, and further testified that defendant had claimed to have account in certain out-of-town bank, admission in evidence of teletype query to named bank as to whether defendant had account, and of bank's negative reply by teletype, did not prejudice defendant, though reply was hearsay, inasmuch as entire case hinged on whether jury believed that defendant or salesman was telling truth, where defendant flatly denied having claimed to have account at that bank, and further denied ever having any account there, since, under these circumstances, teletype messages were in no way inconsistent with his defense and did not harm him, but rather aided him since they appeared to substantiate his version of facts. *People v. Torres* (1962, Cal App 1st Dist) 201 Cal App 2d 290, 20 Cal Rptr 315, 1962 Cal App LEXIS 2594, cert den (1962) 371 US 850, 9 L Ed 2d 86, 83 S Ct 89, 1962 US LEXIS 808.

In prosecution for grand theft of rented car, evidence of defendant's efforts to return car after due date would tend to prove that felonious intent was not formed by him after he rented car, and such evidence is clearly relevant and material. *People v. Rosson* (1962, Cal App 2d Dist) 202 Cal App 2d 480, 20 Cal Rptr 833, 1962 Cal App LEXIS 2505.

In prosecution for grand theft of rented car, it was prejudicial error to exclude questions regarding conversations between defendant and another person that would show that words of demand, refusal and notice were uttered by defendant in his continuous efforts to get car back to its owner. *People v. Rosson* (1962, Cal App 2d Dist) 202 Cal App 2d 480, 20 Cal Rptr 833, 1962 Cal App LEXIS 2505.

In a prosecution for grand theft involving the taking of an automobile, the trial court correctly admitted a Mexican jailer's testimony that defendant had been in jail in Tijuana and connected with the stolen automobile. *People v. Remme* (1966, Cal App 4th Dist) 243 Cal App 2d 618, 52 Cal Rptr 665, 1966 Cal App LEXIS 1714.

The best evidence rule was not violated where, in a prosecution for grand theft of an automobile, the officer who impounded the car was permitted to testify as to the contents of the vehicle registration slip which he had found in the car, where the prosecution established that the registration slip was booked into evidence and recorded in the property report, but was thereafter mistakenly destroyed at the direction of the investigating officer. *People v. Peterson* (1967, Cal App 2d Dist) 251 Cal App 2d 676, 59 Cal Rptr 694, 1967 Cal App LEXIS 2023.

In a prosecution for grand theft of an automobile (*Pen C* § 487, subd 3), the testimony of a Utah Highway Patrol officer was properly admitted into evidence, not being the result of an unlawful search and seizure, where defendant was stopped when driving a car stolen by defendant in California by the officer in a routine license and registration check in which all vehicles on the road were stopped, defendant admitted he had no driver's license on being asked to show the same to the officer, the registration identification shown to the officer by defendant was recognized by the officer as false, and an ensuing search of the car was made by the officer to check the vehicle identification number for comparison with the registration certificate defendant exhibited. *People v. Washburn* (1968, Cal App 2d Dist) 265 Cal App 2d 665, 71 Cal Rptr 577, 1968 Cal App LEXIS 1663.

In a prosecution on grand theft counts arising out of a transaction in which another man gave money to defendant in exchange for a car and defendant subsequently retrieved the car under the ruse of borrowing it, the trial court did not err

in excluding evidence of a municipal court judgment in defendant's favor in a suit brought by the buyer against defendant for the money he lost in the car transaction. The evidence was properly excludable as hearsay, although the trial court sustained an objection to its admission on the basis of relevance. The trial court also did not err in excluding from evidence a police record which supported defendant's claim that he had called the police to report a vehicle repossession when he took the car back from the buyer. The police record was inadmissible hearsay in that it was evidence of an out- of-court statement made by defendant, offered to prove the truth of the matter asserted, i.e., that defendant had repossessed a vehicle. Though police records may in some circumstances be admissible under the business records exemption to the hearsay rule (*Evid. Code, § 1271*), defendant failed to establish a proper foundation, as required by the statute, for the evidence to be considered under that exception. *People v. Ferguson* (1982, *Cal App 1st Dist*) 129 *Cal App 3d* 1014, 181 *Cal Rptr* 593, 1982 *Cal App LEXIS* 1394.

19. Weight and Sufficiency Generally

It is not necessary that anyone see accused take property in order for him to be convicted of crime of grand theft. *People v. Cole* (1958, *Cal App 3d Dist*) 158 *Cal App 2d* 183, 322 *P2d* 29, 1958 *Cal App LEXIS* 2347.

Conviction of burglary and of grand theft was supported by evidence of defendant's conscious possession of stolen property within few days of one of crimes charged and within less than two months of all of them, by evidence that character of most, if not all, of items was such that defendant could reasonably be expected to remember how he acquired them so recently, but when questioned by police he either attempted explanations that jury was entitled to reject as false in view of their vagueness and lack of important details, made statements that could be found to constitute admissions, or remained silent under circumstances of type that could permit use of his silence as reflecting consciousness of guilt, and by fact that defendant's initial denial of ownership of automobile equipped with parts from stolen car was incriminating, as was evidence that he carried stolen adding machine home in middle of night. *People v. McFarland* (1962) 58 *Cal 2d* 748, 26 *Cal Rptr* 473, 376 *P2d* 449, 1962 *Cal LEXIS* 305, superseded by statute as stated in *People v. Burns* (1984, *Cal App 1st Dist*) 157 *Cal App 3d* 185, 203 *Cal Rptr* 594, 1984 *Cal App LEXIS* 2190.

Conviction of grand theft was sustained by evidence that defendant was seen taking tools from car trunk in which they were locked, putting them into another car and driving away with them, that defendant at one time during questioning by sheriff admitted taking tools but later denied that he took them, and that tools were worth about \$800. *People v. Coleman* (1963, *Cal App 2d Dist*) 222 *Cal App 2d* 358, 35 *Cal Rptr* 141, 1963 *Cal App LEXIS* 1673, cert den (1964) 377 *US* 937, 12 *L Ed 2d* 300, 84 *S Ct* 1341, 1964 *US LEXIS* 1330.

Evidence that defendant took moneybag from behind store counter and ran, that he was pursued and apprehended by store employee and two bystanders, and that bag contained more than \$200 was sufficient to establish essential elements of larceny, and it was not necessary for defendant to have known or have reason to know contents of bag at time he took it. *People v. Earle* (1963, *Cal App 2d Dist*) 222 *Cal App 2d* 476, 35 *Cal Rptr* 265, 1963 *Cal App LEXIS* 1692.

Evidence sufficiently supported conviction of second degree burglary and grand theft where it appeared that defendant after giving dollar bill for 10 cent purchase, requested other items located behind cashier, who lost sight of both cash register and defendant in reaching for them, that customer saw hand of man standing by defendant coming from till while cashier's back was turned, that \$380 was missing from register, and that defendant and other man drove off together, and where qualified expert testified that facts of case put in form of hypothetical question showed modus operandi of till tapping. *People v. Clay* (1964, *Cal App 1st Dist*) 227 *Cal App 2d* 87, 38 *Cal Rptr* 431, 1964 *Cal App LEXIS* 1159, 100 *ALR2d* 1421.

Evidence was sufficient for a judgment of conviction of grand theft and forgery where it was substantial and sustained the jury's finding of guilt to a moral certainty and beyond a reasonable doubt, and where that part of it which was circumstantial was not only consistent with the prosecution's hypothesis of guilt but inconsistent with any other reasonable hypothesis. *People v. Turner* (1967, *Cal App 2d Dist*) 249 *Cal App 2d* 909, 57 *Cal Rptr* 854, 1967 *Cal App*

LEXIS 2300, cert den (1967) 389 US 963, 19 L Ed 2, 88 S Ct 348, 1967 US LEXIS 324.

Under *Pen C § 487*, providing, among other things, that grand theft is committed when the property taken is a firearm, the evidence was sufficient to support a conviction where it established not only that defendant, a jail trusty, broke into an officer's locker and stole his revolver and jacket, used the firearm in an escape, kidnaping and assault, but later confessed the crime to police officers. *People v. Pierce (1968, Cal App 2d Dist) 260 Cal App 2d 852, 67 Cal Rptr 438, 1968 Cal App LEXIS 1925, cert den (1968) 393 US 917, 89 S Ct 245, 21 L Ed 2d 203, 1968 US LEXIS 541.*

In a prosecution for second degree burglary (*Pen C § 459*) and grand theft (*Pen C § 487, subd 1*), the evidence was sufficient to support conviction, though a defense witness testified that defendant had sold his car to the witness prior to the offense and that defendant did not have possession of the car again until after the date of the offense, where defendant admitted in police interrogation that he owned the car, that he had never loaned the car, and that no one other than himself used the car, where defendant was seen at the time of the offense loading and moving the car, which was identified by the witness as to color, make and license number, where stolen items were found in the car when defendant was apprehended, and where the identification of defendant by the eyewitness was sufficient to connect defendant with the crime. *People v. Midkiff (1968, Cal App 2d Dist) 262 Cal App 2d 734, 68 Cal Rptr 866, 1968 Cal App LEXIS 2362.*

The elements necessary to prove grand theft are the taking of personal property of a value in excess of \$200 from the owner, into the possession of the criminal without the consent of the owner or under a claim of right, the asportation of the subject matter, and with the specific intent to deprive the owner of his property wholly and permanently which intent may be shown circumstantially. *People v. Walther (1968, Cal App 5th Dist) 263 Cal App 2d 310, 69 Cal Rptr 434, 1968 Cal App LEXIS 2209.*

In a prosecution for grand theft tried to the court without a jury, the evidence was sufficient to support defendant's conviction despite his claim of a good faith belief that he was entitled to distrain the victim's personal property for payment of a debt, where defendant assaulted the victim when he requested the return of his suitcase, took the suitcase, put it in his car, left the scene, and did not return that evening, where he testified that he would not have returned the suitcase except for the advice of his attorney, and where he opened the suitcase and took some papers and personal effects belonging to the owners and kept them. *People v. Kranhouse (1968, Cal App 4th Dist) 265 Cal App 2d 440, 71 Cal Rptr 223, 1968 Cal App LEXIS 1637.*

In a prosecution for grand theft (*Pen C § 487, subd. 1*), the burden of proving that a witness was an accomplice is on the defendant, and the finding of the trial court on that issue will be sustained on appeal if there was substantial evidence to support it, including all reasonable inferences drawn in its favor. *People v. Smith (1972, Cal App 2d Dist) 26 Cal App 3d 404, 102 Cal Rptr 625, 1972 Cal App LEXIS 952.*

In a prosecution for conspiracy and grand theft, there was no substantial evidence to support jury findings that acts of grand theft were not discovered more than three years before the indictment was filed, and could not have been discovered before that time with the exercise of reasonable diligence, so as to extend the limitations period under *Pen C § 800*, where the uncontradicted evidence produced at trial showed that with the exercise of reasonable diligence the facts constituting the acts of grand theft could have been discovered at an earlier time. The uncontradicted evidence demonstrated that investigators failed to investigate obvious discrepancies in statements by one defendant, never talked to another defendant despite evidence that property had been intentionally burned by persons to whom this defendant had entrusted its management, failed to substantiate a claim that a party had taken place at one defendant's residence on the night of the fire, failed to confront the arsonist with overwhelming evidence implicating him, failed to interview a realtor who had supplied information that a particular person could confirm facts about the fire and failed to contact another person who claimed knowledge about details of the fire. *People v. Zamora (1976) 18 Cal 3d 538, 134 Cal Rptr 784, 557 P2d 75, 1976 Cal LEXIS 371.*

Defendants committed burglary and conspired to commit grand theft when they broke into a warehouse and moved

\$900,000 worth of computer monitors to a receiving dock, where they were discovered in the act and subsequently apprehended. Thus, the evidence was sufficient for purposes of an enhancement under *Pen C § 12022.6*. *People v. Fernandez* (2004, Cal App 4th Dist) 123 Cal App 4th 137, 20 Cal Rptr 3d 54, 2004 Cal App LEXIS 1737, review gr, depublished (2005) 23 Cal. Rptr. 3d 695, 105 P.3d 116, 2005 Cal. LEXIS 847, review dismissed (2005) 34 Cal. Rptr. 3d 193, 119 P.3d 958, 2005 Cal. LEXIS 9967, 2005 D.A.R. 11115.

Although murder defendant argued that the victim allowed defendant to drive her car and had loaned it to him on the day of her murder, defendant did not have permission to still be driving the victim's car when he was arrested after midnight. Coupled with evidence defendant killed the car's owner, there was sufficient evidence defendant did not intend to return the car to the victim. *People v. Abilez* (2007) 41 Cal 4th 472, 61 Cal Rptr 3d 526, 2007 Cal LEXIS 6758, modified (2007, Cal) 2007 Cal LEXIS 8908, modified, rehearing denied (2007, Cal) 2007 Cal LEXIS 8987.

20. Establishment of Corpus Delicti

Corpus delicti was established by evidence showing that on evening of given day automobile in question was in locked garage, that next morning it was discovered that garage had been broken open and that car was gone and it was later found at given city in another state, independent of defendant's statement or confession. *People v. Groenig* (1922, Cal App) 57 Cal App 495, 207 P 502, 1922 Cal App LEXIS 487.

In prosecution for grand theft and forgery, where defendant presented "cashier's check," which he indorsed, as deposit for rental of car, and car was not returned and check was not paid, slight or prima facie evidence was sufficient to establish corpus delicti. *People v. Van Scoyoc* (1938, Cal App) 25 Cal App 2d 416, 77 P2d 485, 1938 Cal App LEXIS 834.

Testimony of car owner that he left vehicle in front of his house on certain evening, that later it was gone, that he gave no one permission to take car or to sign his name in connection therewith, and that none of signatures of his name to documents incident to transfer was genuine established corpus delicti of automobile theft. *People v. Ohman* (1945, Cal App) 67 Cal App 2d 467, 154 P2d 463, 1945 Cal App LEXIS 1163.

Corpus delicti of either burglary or theft is established by evidence showing that window at warehouse was broken, that property belonging to warehouse was found at premises of another company, that property was taken without owners' knowledge or consent, and that it was of value in excess of statutory requirement for grand theft. *People v. Selby* (1956, Cal App 2d Dist) 144 Cal App 2d 483, 301 P2d 290, 1956 Cal App LEXIS 1745.

Corpus delicti of grand theft was established by evidence indicating that about eight thousand five hundred dollars worth of merchandise was missing from store, that defendant, as employee, had access and key to business places and frequently transported merchandise in his automobile, and that store owner found some of stolen merchandise in trunk, and where defendant, on day of his arrest, admitted stealing "around about eight thousand dollars" in merchandise. *People v. Johnson* (1957, Cal App 2d Dist) 153 Cal App 2d 870, 315 P2d 468, 1957 Cal App LEXIS 1571.

Evidence that aluminum ingots of value of \$270 were stolen from yard of metal refining company, that each ingot contained identifying mark, that defendant and his companion drove defendant's truck containing most of stolen ingots on to premises of another metal company which bought approximately 1,100 pounds of ingots and made out purchase ticket, which defendant and his companion signed, and that check for purchase price was given defendant, was conclusive evidence of guilt of grand theft. *People v. Lewis* (1960, Cal App 2d Dist) 177 Cal App 2d 243, 2 Cal Rptr 87, 1960 Cal App LEXIS 2457.

Conviction of grand theft of mink stole belonging to department store was sustained by testimony of store's security officer that fur in evidence could be identified through store's stock control system, which involved price tags in triplicate, department number, manufacturing number and registration number, that this fur not only had stock control number which appeared in fur department's stock control records, but also was one of its type in stock, and that replaced

tags, which fur bore at time it was admitted in evidence were duplicates of originals of which photographs were taken and authenticated by security officer. *People v. Antoine* (1960, Cal App 1st Dist) 180 Cal App 2d 786, 4 Cal Rptr 589, 1960 Cal App LEXIS 2398.

In a grand theft prosecution of a real estate development firm's bookkeeper for alleged misappropriation of firm's funds, corpus delicti of crime was established where it appeared that more than \$200 was missing and had been taken by someone and that entire entry in firm's books of receipts was defendant's responsibility and books did not contain such entry when it was established that money was paid to firm through her, and where there was sufficient foundation laid for admission of testimony of witness to whom defendant was claimed to have confessed misappropriations. *People v. Coke* (1964, Cal App 4th Dist) 230 Cal App 2d 22, 40 Cal Rptr 649, 1964 Cal App LEXIS 839.

To establish the corpus delicti of attempted grand theft from the person (*Pen C* § 487, subd. 2), there must be a person from whom the property may be taken, an intent to take such property against the will of the owner, and an act performed tending to accomplish the foregoing. *People v. Watson* (1966, Cal App 2d Dist) 244 Cal App 2d 89, 52 Cal Rptr 821, 1966 Cal App LEXIS 1547.

21. Circumstantial Evidence

Conviction of burglary and grand theft was supported by evidence that defendant entered clothing store and was recognized by salesman by his peculiar high pompadour hair dress as having been in store previously, that defendant and others picked bundle of suits off racks, left by rear door, got into old automobile and drove away without lights, that police officer chased car answering description of one used by defendant, caught it when occupants abandoned it, and found suits in car, that such car belonged to defendant, that defendant was later identified by store salesman, despite fact that he had gotten his hair cut shortly before arrest, and that defendant had been stopped by policeman some eighteen hours before crime and at that time was still wearing his hair in high pompadour style. *People v. Miller* (1960, Cal App 4th Dist) 182 Cal App 2d 782, 6 Cal Rptr 569, 1960 Cal App LEXIS 2179.

In a prosecution for grand theft, in which one of three accused, the actual taker of the stolen cash, had already pleaded guilty, the verdict and judgment of conviction of the other two were justified by ample circumstantial evidence that all three were acting in concert to secure access to the cash register of a store while the checker's attention was diverted so that he would not see the actual asportation of the money, that their intent to steal existed from the start, that all three ran off in different directions, and that on being arrested police found on their persons several 20-dollar bills, with which the cash register had been replenished just before the crime. *People v. Graham* (1967, Cal App 5th Dist) 251 Cal App 2d 513, 59 Cal Rptr 577, 1967 Cal App LEXIS 2000.

In a prosecution of two defendants for grand theft, the circumstances reasonably justified the inference that defendants removed property and did so with the intention of not returning it to the owner, where on a day on which defendants had no right to be in an apartment, they moved; shortly thereafter property was found to be missing and a key was found on a table inside the apartment, the door of which was closed; the property was part of and in the apartment when rented to defendants; it was of a kind that had to be carefully packed for removal; and the household nature of the items taken and the necessity for packing and transporting them made it unlikely that one defendant could have innocently taken them without the knowledge of the other. *People v. Crain* (1967, Cal App 2d Dist) 255 Cal App 2d 726, 63 Cal Rptr 494, 1967 Cal App LEXIS 1334.

In a prosecution for grand theft, submitted upon the transcript of the testimony taken at the preliminary hearing, the determinations of the trial court in finding defendant guilty and denying his motion for new trial were amply supported, as against defendant's contention that he was not positively identified as the thief, by the testimony of two eyewitnesses showing that a man was seen leaving a store with an armful of suits, that on the cry of "stop thief" he ran to a car and drove off, that the make and number of the car were noted, that the store was informed and found \$1100 worth of suits missing, and that the eyewitnesses were "pretty sure" that the defendant in court was the man they had seen running to the car with the clothing. *People v. Sweeting* (1967, Cal App 2d Dist) 256 Cal App 2d 636, 64 Cal Rptr 401, 1967 Cal

App LEXIS 1898.

Sufficient evidence supported defendant's conviction of grand theft of a wallet left by the owner in the locked trunk of his car and discovered to be missing after defendant had access to the trunk while it was unlocked; defendant's occupation of the owner's seat at a football game compelled the inference that defendant had been in possession of the owner's missing seat tickets left in the wallet, and the circumstances surrounding the disappearance of the wallet permitted the inference it and its contents were stolen, rather than lost accidentally. *People v. Mosqueira* (1970, *Cal App 2d Dist*) 12 *Cal App 3d* 1173, 91 *Cal Rptr* 370, 1970 *Cal App LEXIS* 1704.

22. Establishment of Felonious Intent

In prosecution for grand larceny, evidence showed that money for larceny of which defendant was convicted was taken by him merely for safe-keeping, and without any felonious intent. *People v. Stewart* (1889) 80 *Cal* 129, 22 *P* 124, 1889 *Cal LEXIS* 874.

In a prosecution of a bank employee and a business man for grand theft through the manipulation of the bank's funds and accounts by such employee, the felonious intent of such business man was established by evidence that, after being refused a loan in an amount much less than that appropriated, such defendant drew checks far in excess of his cash balance and received all the funds appropriated by the bank employee in covering such checks during a period when he knew that his credit was exhausted, without any further attempt to secure a loan, arrange for an overdraft, or establish credit with the bank, and that the two defendants functioned together in such a manner that their operations constituted a conspiracy to defraud the bank. *People v. Colton* (1949, *Cal App*) 92 *Cal App 2d* 704, 207 *P2d* 890, 1949 *Cal App LEXIS* 1749.

In prosecution on three counts of attempted grand theft from the person, evidence was sufficient to show that defendant had specific wrongful intent to commit crimes charged where police officer testified that he observed defendant stand next to each of three male victims, lift up their coats, and put his hand into their left rear trouser pockets; viewing these facts in a light most favorable to People, as appellate court is required to do where contention on appeal is that evidence is insufficient to support judgment, conclusion is that defendant intended to pick pockets of his would-be victims. *People v. Twiggs* (1963, *Cal App 2d Dist*) 223 *Cal App 2d* 455, 35 *Cal Rptr* 859, 1963 *Cal App LEXIS* 1554.

Intent necessary to support conviction of burglary and grand theft arising out of taking of fur from store was shown by evidence that defendant and companion were seen looking at furs in store's display window before they entered store, that, on entry, defendant asked clerk if she might try on some furs and defendant's companion left on pretext that she had forgotten her car keys, implying that she would return to meet defendant, that defendant did not wait but hurried from store to be picked up by slowly moving car that had been rented by her companion, and that when defendant left one of furs on display when defendant and her companion entered was missing. *People v. Moore* (1965, *Cal App 4th Dist*) 234 *Cal App 2d* 29, 44 *Cal Rptr* 184, 1965 *Cal App LEXIS* 990.

In a prosecution for grand theft where defendant told the victims no trust deed would be required as part of their respective contracts, and trust deeds were in fact required, the requisite intent to defraud could be inferred from the false representations made by defendant. *People v. Bresin* (1966, *Cal App 2d Dist*) 245 *Cal App 2d* 232, 53 *Cal Rptr* 687, 1966 *Cal App LEXIS* 1458, vacated (1968) 68 *Cal 2d* 822, 69 *Cal Rptr* 321, 442 *P2d* 377, 1968 *Cal LEXIS* 210.

In a prosecution for grand theft, there was sufficient evidence to sustain a finding that defendant took the victim's money with the intent to permanently deprive him of it, where the money was obtained on the pretext of financing an oil venture, defendant never issued the necessary assignments nor secured the additional capital promised, and did not use the money in the oil venture, but instead spent it for his own purposes. *People v. Brown* (1967, *Cal App 2d Dist*) 253 *Cal App 2d* 820, 61 *Cal Rptr* 368, 1967 *Cal App LEXIS* 2409.

In a prosecution for grand theft by false pretenses the evidence was sufficient to sustain the finding that defendant intended to defraud the complaining witness at the time defendant made representations to the witness in a transaction wherein defendant was delivered a \$5,000 letter of credit by the witness, where defendant represented he would use the funds to purchase specified merchandise in Africa and ship the merchandise to the witness in California, on arrival the shipment made to the witness contained shavings, logs, chips and junk of no value, defendant obtained payment of the letter of credit in Africa through dishonest means, and, on return to California, defendant told the witness she would not get any of the merchandise unless she gave defendant an additional \$2,000. *People v. Hedrick* (1968, Cal App 2d Dist) 265 Cal App 2d 392, 71 Cal Rptr 352, 1968 Cal App LEXIS 1632.

In a prosecution for grand theft of an automobile, an inference that defendant intended to convert the automobile to his own permanent use or at least that the owner would be deprived of the car permanently was justified, where it appeared that if defendant intended to sell the car, as he stated, he clearly did not intend to get the car back to the owner; and where defendant changed the identification numbers, the license plates, and painted the car a different color, in the absence of some explanation, clearly were not done to the end that the police or the owner could locate the car easily. *People v. Farrant* (1969, Cal App 2d Dist) 273 Cal App 2d 715, 78 Cal Rptr 517, 1969 Cal App LEXIS 2219.

In a prosecution for grand theft arising out of defendant's picking up of supermarket shopping carts in areas adjacent to the markets and refusing to return them without payment of a "finder's fee," there was substantial evidence supporting the trial court's findings that defendant intended to permanently deprive the owners of the carts if they did not pay his expenses, plus a reward, where defendant systematically took the carts from areas where they had been left by patrons before the markets could retrieve them, held them for a few days while accumulating expenses incurred by him in the business he specifically set up to retrieve the carts, and made demands on the owners to pay a ransom or reward of ten times the going rate for retrieving carts in order to release them, and where, upon refusal of the markets to pay, he removed all indicia of ownership, sold the carts to other markets, and kept the proceeds. *People v. Stay* (1971, Cal App 2d Dist) 19 Cal App 3d 166, 96 Cal Rptr 651, 1971 Cal App LEXIS 1267.

In the prosecution of a mayor and city planning commissioner for attempted grand theft (*Pen C* §§ 484, 487) arising out of their attempt to "shake down" a farmer for \$10,000 on the pretext of obtaining favorable treatment for him from the board of supervisors in connection with the extension of his agricultural lease on property held by the county, there was substantial evidence of defendant's intent to defraud the farmer where the evidence adduced at trial indicated that the defendants, by word and deed, managed to create the impression that the farmer needed, through one of the defendants, to get money to the supervisors in order to retain his lease, that the promise to pay off the board of supervisors was false, that defendants had no intention to make such payments, all of which led to the unavoidable conclusion that defendants intentionally employed a false representation to defraud the farmer of his money. *People v. Fujita* (1974, Cal App 4th Dist) 43 Cal App 3d 454, 117 Cal Rptr 757, 1974 Cal App LEXIS 1330, cert den (1975) 421 US 964, 95 S Ct 1952, 44 L Ed 2d 451, 1975 US LEXIS 1569.

There was substantial evidence to convict an attorney of grand theft (*Pen C* § 487, subd. (1)), where it appeared that his account with a brokerage firm had been garnished and the firm refused to pay over the amount garnished when the account was closed; that the attorney subsequently opened a new account with an out-of-town check, then closed the account and received and cashed the brokerage firm check therefor in an amount approximately equal to the garnished fund, after which payment on the out-of-town check was stopped; that the attorney refused demands by the brokerage firm to repay the sum, and instead demanded an additional amount, and that the attorney stated to an employee of the brokerage firm, after he had cashed the check closing out the new account, that it was better that the brokerage firm be "screwed" than that he be "screwed." Furthermore, even if it had been found that the attorney intended to repay the brokerage firm, that finding would not have required acquittal as a matter of law, since it was merely evidence of the attorney's state of mind at the time the firm's check was obtained, which was required to be weighed together with all the other evidence. *People v. Silver* (1975, Cal App 2d Dist) 47 Cal App 3d 837, 121 Cal Rptr 153, 1975 Cal App LEXIS 1071.

In a prosecution of an attorney for grand theft arising out of his obtaining by false representation and trickery a

check from a brokerage firm in an amount approximately equal to funds being withheld by the brokerage firm under a writ of garnishment, the fact that the attorney segregated the money received from the brokerage firm and never used it for his own use and benefit, did not compel a conclusion as a matter of law that at the time he acquired the money he had no intent to defraud, since the money was segregated in his wife's name, consistent with his disputed claim that the funds withheld were his wife's property. *People v. Silver* (1975, Cal App 2d Dist) 47 Cal App 3d 837, 121 Cal Rptr 153, 1975 Cal App LEXIS 1071.

Evidence that defendant accompanied three other men and a boy when they pulled up to a stranger's open garage in a hillside residential area and stole a motorcycle out of the garage, together with reasonable inferences from the testimony, was sufficient to support his convictions as an aider and abettor to burglary and grand theft of personal property. Furthermore, the evidence showed that the burglars, including defendant, were aware of the motorcycle's owner as they looked up when he yelled at them in his driveway. Defendant also stayed with the burglars in their truck while the motorcycle owner chased them, even though defendant could have demanded they stop and let him out. *People v. Guzman* (1996, Cal App 2d Dist) 45 Cal App 4th 1023, 53 Cal Rptr 2d 67, 1996 Cal App LEXIS 473, review denied (1996, Cal) 1996 Cal LEXIS 4733.

23. Establishment of Value

In prosecution for grand theft, absent evidence contrary to that given by prosecuting witness as to value of goods stolen from clothing store, defendant could not expect trier of fact to reach conclusion as to value different from that established by witnesses' testimony. *People v. Cook* (1965, Cal App 2d Dist) 233 Cal App 2d 435, 43 Cal Rptr 646, 1965 Cal App LEXIS 1377.

In prosecution for grand theft, testimony of owner of stolen property that he paid \$350 for it few months before it was taken, refused offers to buy it for \$450 and \$650, and valued it between \$500 and \$600, supported implied finding necessary to sustain conviction that its value was more than \$200. *People v. Daugherty* (1965, Cal App 4th Dist) 235 Cal App 2d 564, 45 Cal Rptr 528, 1965 Cal App LEXIS 956.

Although the fair market value of personalty is the test to be applied to determine whether the theft of such property constitutes grand theft or petty theft, this rule is necessarily subject to the qualification that where the property has a unique or restricted use and an extremely limited market, the actual or replacement cost to the victim is its fair market value and under these circumstances the term "market value" is synonymous with the term "replacement value"; and in a prosecution for grand theft arising from the theft of telephone wire, there was substantial evidence for the court to find under the circumstances that the replacement cost of the telephone wire to the victim was in fact its fair market value where there was testimony that the stolen wire was unique; that the purchase price could depend on the company's specifications that varied; that there were few manufacturers of telephone wire; and that the wire stolen was made to the specifications of the victim. *People v. Renfro* (1967, Cal App 5th Dist) 250 Cal App 2d 921, 58 Cal Rptr 832, 1967 Cal App LEXIS 2184.

In a prosecution for grand theft tried to the court sitting without a jury, a conviction could not stand based on a record presenting only a set of assumptions based on hearsay of the least possible value, where the victim was unable to identify defendant as the thief. *People v. Barbosa* (1967, Cal App 2d Dist) 254 Cal App 2d 581, 62 Cal Rptr 212, 1967 Cal App LEXIS 1431.

The \$200 grand theft requirement was met in a charge of defrauding truck drivers of their labor where it was represented to the drivers that the value of their services would be 100 percent of the gross income from the trucks, less expenses for fuel and upkeep, but where the drivers were paid 27 percent of the gross income, and where the evidence supported a showing that this amount as to each of the subject trucks exceeded \$200. *People v. Miles & Sons Trucking Service, Inc.* (1968, Cal App 4th Dist) 257 Cal App 2d 697, 65 Cal Rptr 465, 1968 Cal App LEXIS 2496.

In the absence of proof that the price charged by a retail store from which merchandise is stolen does not accurately

reflect the value of the merchandise in the retail market, that price is sufficient to establish the value of the merchandise within the meaning of *Pen C* §§ 484 and 487, relating to larceny and grand theft. *People v. Tijerina* (1969) 1 Cal 3d 41, 81 Cal Rptr 264, 459 P2d 680, 1969 Cal LEXIS 190.

24. Sufficiency of Corroboration

In prosecution for grand theft in which trickery by means of which theft from several victims were committed is similar, each victim's testimony corroborates that of the others. *People v. Reinschreiber* (1956, Cal App 2d Dist) 141 Cal App 2d 688, 297 P2d 658, 1956 Cal App LEXIS 1906.

Where stolen property was found in defendant's house shortly after his arrest and defendant had previously told officer that property which he and another man had taken to his apartment consisted of tools which were taken there to be given his brother, told officer that he did not care to talk about machines and that all could be explained later, and where defendant's testimony relating to circumstances under which he obtained articles contained inconsistency as to whether he owed his brother money or whether brother owed money to him, such false, evasive, and inconsistent statement constituted corroborating evidence justifying his conviction of grand theft. *People v. Ransome* (1960, Cal App 2d Dist) 180 Cal App 2d 140, 4 Cal Rptr 347, 1960 Cal App LEXIS 2322, cert den *Dean v. California* (1960) 364 US 887, 5 L Ed 2d 107, 81 S Ct 178, 1960 US LEXIS 301.

No corroboration is necessary to sustain conviction of grand theft by trick and device. *People v. Maggart* (1961, Cal App 2d Dist) 194 Cal App 2d 84, 14 Cal Rptr 745, 1961 Cal App LEXIS 1794.

Corroboration of the victim's testimony was essential to support a conviction of larceny on the theory of false pretenses, former *Pen C* § 1110 (see now *Pen C* § 532), but corroboration was not necessary to sustain a conviction of grand theft by trick and device. *People v. Felsman* (1967, Cal App 2d Dist) 257 Cal App 2d 437, 64 Cal Rptr 870, 1967 Cal App LEXIS 1801.

The failure of defendant to volunteer an explanation for his possession of an automobile, which had been stolen from a used car lot, when he was arrested shortly after he had been driving it was not a sufficient corroborating circumstance to show defendant guilty of the theft of the automobile and related burglary arising from the entry into the locked office in which the keys to the automobile were kept, where, at the time defendant was arrested, the police knew nothing about the automobile having been stolen, and defendant's arrest was not shown to have been in any way connected with the theft, and where, thus, the circumstances did not call for him to explain his possession of the automobile. *People v. Champion* (1968, Cal App 2d Dist) 265 Cal App 2d 29, 71 Cal Rptr 113, 1968 Cal App LEXIS 1594.

There was ample corroborative evidence of inculcating circumstances to support a conviction of grand theft of an automobile, where it was shown that a week after defendant had made inquiries at a car rental agency, one of its Ford Mustangs disappeared, that it was found a week later by the police, with defendant seated inside, its license plates changed and its registration slip missing, that on being arrested and duly warned defendant said he bought the car new, that after further due warning he declined to comment on the change of license plates but explained his possession of the car by claiming to have hitched a ride in it, recognized it as the car stolen from the agency, and when picked up was returning it to its owners, both of which statements, on the witness stand, he denied having made. *People v. Lumar* (1968, Cal App 2d Dist) 267 Cal App 2d 900, 73 Cal Rptr 682, 1968 Cal App LEXIS 1467.

25. Establishment of Attempted Grand Theft

Conviction of attempted theft was supported and corpus delicti of crime was established by evidence that victim, while shopping in crowded store, found her purse open and saw defendant standing nearby, and that police officer saw defendant put her hand in victim's purse and pull out card case containing dollar bill and then drop it back into purse. *People v. Ambrose* (1962, Cal App 2d Dist) 202 Cal App 2d 73, 20 Cal Rptr 584, 1962 Cal App LEXIS 2447.

Though the would-be victims were not named in the information and were not called to testify against defendant, evidence was sufficient to support defendant's conviction of attempted grand theft where police officer, a percipient witness, testified in part that he observed defendant stand next to each of three male victims, lift up their coats and put his hand into their left rear trouser pockets; law does not require that conviction may be had only on testimony of immediate victims who are often dead, absent from jurisdiction, or unknown to police. *People v. Twiggs* (1963, Cal App 2d Dist) 223 Cal App 2d 455, 35 Cal Rptr 859, 1963 Cal App LEXIS 1554.

In a grand theft prosecution of two defendants for obtaining a contract for repair of a residence by falsely reporting to the victim the extent of alleged termite damage and urgent need for extensive repairs, the evidence dictated a finding of an attempt to commit the offense, where there was evidence of actionable false representations of the damaged condition of the residence in which defendants were joint participants, although it established, as a matter of law, the only thing defendants obtained from the victim was a writing expressing an offer to enter into a contract, subject to withdrawal at any time before acceptance in a prescribed manner, which was never so accepted, was of no value, and as a consequence no property was taken from the victim, but where the transaction had advanced far beyond the planning stage and all that remained was acceptance of the offer by defendants' employer company. *People v. Layman* (1968, Cal App 4th Dist) 259 Cal App 2d 404, 66 Cal Rptr 267, 1968 Cal App LEXIS 1983.

In a prosecution for grand theft, former Pen C § 487, subd. 1 (there was sufficient evidence to sustain defendant's conviction by the jury, where the record showed that at the time of the offense defendant was in the victim's store, that before his arrest for the offense he had been seen pushing a shopping cart around the store for several hours, that when he pushed the cart up to the checkstand the cashier noticed that in the cart there was a large cardboard box for the packaging of a chandelier and that the box appeared to have been recently loosely taped, that after the cashier told defendant he would have to open and check the contents of the box before defendant could pay the price marked on the box and remove it from the store, defendant left the box with the cashier and walked back through the checkstand into the store, whereupon defendant was arrested by store security after the box was opened and discovered to contain in excess of \$900 worth of miscellaneous store items, but no chandelier. The record did not show that defendant even attempted to prove an innocent intent for his actions or that they were the result of a careless mistake. *People v. Khoury* (1980, Cal App Dep't Super Ct) 108 Cal App 3d Supp 1, 166 Cal Rptr 705, 1980 Cal App LEXIS 2104.

26. Sufficiency of Evidence of False Pretenses

In prosecution on information charging defendant with unlawfully having taken property of another consisting of shares of stock in corporation of value in excess of \$200, evidence was sufficient to sustain verdict of guilty, where it was shown, among other things, that defendant and another entered into conspiracy to obtain possession of certificate of stock of corporation on misrepresentation, and that after obtaining certificates pursuant thereto, conspirators converted them into cash and divided proceeds. *People v. Lalor* (1928, Cal App) 95 Cal App 242, 272 P 794, 1928 Cal App LEXIS 467.

A conviction of grand theft was sustained by evidence showing that the defendant sold a used automobile on the representation that the cash payment required in addition to the complaining witness' trade-in would be used in discharging an outstanding lien on the used car and a clear title delivered; that the defendant subsequently sold the trade-in to a purchaser who was able to secure the complaining witness' title from the bank; that the lien on the used car was greatly in excess of the complaining witness' cash payment; that the defendant applied neither the cash payment nor the sale of the trade-in to discharge the lien; that the used car was repossessed by a finance company; and that the defendant has returned neither the trade-in nor the cash payment. *People v. Nor Woods* (1951) 37 Cal 2d 584, 233 P2d 897, 1951 Cal LEXIS 312, cert den (1952) 344 US 860, 73 S Ct 101, 97 L Ed 667, 1952 US LEXIS 1713.

In prosecution of automobile salesman for theft by false pretenses in sale of new car by telling victims he would give them \$1,295 as trade-in allowance for their old car and then actually allowing them only \$350 by inserting such amount in purchase order and conditional sales contract that victims had been induced to sign in blank, if excess of old car's actual value over \$350 allowed on trade-in was not in itself sufficient to show grand theft, evidence that purchase

order and conditional sales contract obligated victims to pay sums in excess of \$200, and that, in addition, such documents obligated them to pay more than \$200 more than they would have had to pay had trade-in allowance or monthly payments been what defendant represented them to be, was sufficient to support grand theft conviction. *People v. Caruso* (1959, Cal App 2d Dist) 176 Cal App 2d 272, 1 Cal Rptr 428, 1959 Cal App LEXIS 1480, cert den (1960) 363 US 819, 4 L Ed 2d 1517, 80 S Ct 1259, 1960 US LEXIS 977.

Conviction of grand theft by false pretenses can rest either on fraudulent statements of actual character, or on promise made without intent to perform. *People v. Wallace* (1960, Cal App 1st Dist) 182 Cal App 2d 624, 6 Cal Rptr 309, 1960 Cal App LEXIS 2155.

Conviction of grand theft by false pretenses was sustained by evidence that defendant approached persons who had advertised their automobiles for sale, represented he had proper documents for sale of cars in Mexico and obtained transfer of cars by giving his signed promissory note which was never paid, and by corroborating testimony of many others who were similarly defrauded by defendant. *People v. Wallace* (1960, Cal App 1st Dist) 182 Cal App 2d 624, 6 Cal Rptr 309, 1960 Cal App LEXIS 2155.

Conviction of grand theft was supported by evidence that defendants induced victims to put up money for stock in oil corporation on representation that money would be secured by chattel mortgage on oil field equipment, victims to have option to purchase more stock for ten days after notice that well had gone on "production," that notice was subsequently given that well was on production and one of victims, acting as trustee for others, inspected well and then executed release of chattel mortgage in exchange for more stock, and that inspection was not sufficient to put victim on notice that well was not in fact commercially productive. *People v. Mason* (1960, Cal App 2d Dist) 184 Cal App 2d 317, 7 Cal Rptr 627, 1960 Cal App LEXIS 1882, cert den (1961) 366 US 904, 6 L Ed 2, 81 S Ct 1046, 1961 US LEXIS 1285.

Despite his conflicting evidence, defendant's participation in crime was shown by evidence that defendant introduced complaining witness to codefendant and made false statements regarding codefendant's connection with factory in which he was supposed to be employed, that codefendant and complaining witness were to engage in bookmaking in factory, that after first day's activity complaining witness found that losses were heavy and suspected that codefendant had "past-posted" them, that defendant stated that codefendant was square guy and would not do such thing, that complaining witness furnished \$500 to pay off losses and thereafter defendant demanded more money from him stating that he had killed man who failed to pay debt, that defendant introduced codefendant under fictitious name and aided him in avoiding disclosure of his surname, and that defendant tried to protect codefendant by telling complaining witness that only defendant could get through to codefendant on telephone while he was at work. *People v. O'Hara* (1960, Cal App 2d Dist) 184 Cal App 2d 798, 8 Cal Rptr 114, 1960 Cal App LEXIS 1937.

Conviction of grand theft of county welfare funds was sustained by evidence sufficient to support implied findings of jury that defendant made false representations of fact with intent to defraud, that when she promised to report any change in her household and financial condition she had no intention of keeping her promise, that welfare payments were made in reliance on the false representations, and that county was defrauded. *People v. Shirley* (1961) 55 Cal 2d 521, 11 Cal Rptr 537, 360 P2d 33, 1961 Cal LEXIS 232, 92 ALR2d 413.

Conviction of theft by false pretenses arising out of sale of automobile by defendant to victims was supported by evidence that defendant told the victims he had authority from dealer from whom he took car to sell it when in fact he had no such authority, that victims relied on his representations and parted with their money in reliance on them. *People v. McNear* (1961, Cal App 2d Dist) 190 Cal App 2d 541, 12 Cal Rptr 124, 1961 Cal App LEXIS 2337.

Conviction of defendant husband of grand theft of county welfare funds was supported by evidence that he set up ostensible separate residence while he actually continued to live with wife and family, knowing that welfare payments were being made on basis that he was absent from family, that he discussed with wife fact that he was in home so much of time and its relevance to welfare payments, and that he stated to his son-in-law that he need not work when county could support his family. *People v. Phipps* (1961, Cal App 4th Dist) 191 Cal App 2d 448, 12 Cal Rptr 681, 1961 Cal

App LEXIS 2071.

Convictions of grand theft and forgery were supported by evidence that defendant told new auto purchaser that price would be approximately \$3,200, that trade-in value of old car was \$800 and that it would cover down payment, that purchaser signed contract which did not indicate purchase price, that later contract indicated price of \$4,331.50 and that trade-in value of purchaser's old car was only \$500, that purchaser was never told of enhanced price of new car, and that he suffered loss of new car, which was repossessed, and did not recover his old car or any money in its place. *People v. Winning (1961, Cal App 1st Dist) 191 Cal App 2d 763, 12 Cal Rptr 885, 1961 Cal App LEXIS 2121.*

Conviction of grand theft of county welfare funds was sustained by evidence sufficient to support jury's conclusion that defendant falsely represented she did not know her husband's whereabouts, that she had not heard from him, that she was not living with him, that she was not living in Mexico, and that defendant's promise to notify welfare department of any real or personal property transactions, change in income or other financial conditions, of any change of address, or of any information as to address or whereabouts of her husband was made without any intention of performing it. *People v. De Casaus (1961, Cal App 4th Dist) 194 Cal App 2d 666, 15 Cal Rptr 521, 1961 Cal App LEXIS 1863.*

Defendant's conviction of grand theft was supported by evidence that he represented to various persons, in order to obtain money from them, that he had friend in Division of Highways from whom he obtained valuable information relating to purchase of houses that had to be moved because of freeway construction, that such houses could be sold quickly at substantial profit and that money obtained would be used to acquire such houses, whereas defendant did not have connection in Division of Highways from whom he received valuable information, and had not purchased or arranged to purchase land or houses being disposed of by *Division of Highways*. *People v. Kovach (1961, Cal App 2d Dist) 197 Cal App 2d 80, 16 Cal Rptr 876, 1961 Cal App LEXIS 1314.*

Conviction of grand theft of county welfare funds was sustained by evidence that defendant had been living in recipient's home knowing that welfare payments were being made into such home and that his presence, if revealed, would reduce those payments, that when defendant's child was born to recipient he told her to seek support for it from government, that he hid when there were visitors, to make his presence inconspicuous, and that he did not work, but ate food and used shelter furnished by funds for needy children. *People v. Flores (1961, Cal App 4th Dist) 197 Cal App 2d 611, 17 Cal Rptr 382, 1961 Cal App LEXIS 1385.*

To support conviction of theft for obtaining property by false pretenses, it must be shown that defendant made false pretense or representation, that representation was made with intent to defraud owner of his property, and that owner was in fact defrauded in that he parted with his property in reliance on representation. *Perry v. Superior Court of Los Angeles County (1962) 57 Cal 2d 276, 19 Cal Rptr 1, 368 P2d 529, 1962 Cal LEXIS 172.*

Express testimony of victim of false pretenses that she was induced to part with her money by fraudulent statements of accused is not essential, it being sufficient if inference of her reliance can be drawn from all evidence. *Perry v. Superior Court of Los Angeles County (1962) 57 Cal 2d 276, 19 Cal Rptr 1, 368 P2d 529, 1962 Cal LEXIS 172.*

In prosecution for grand theft, based on defendant's fraudulent receipt of welfare funds under aid to needy children program, determination that adult male had assumed role of defendant's spouse was supported by evidence that during periods when defendant received aid defendant had signed contracts as wife of adult male and had signed application for credit in like manner, that male had given his employer defendant's address as his residence, that male's clothing was found in defendant's bedroom, that male on several occasions was seen in defendant's residence and that male admitted he had resided with defendant. *People v. Rozell (1963, Cal App 3d Dist) 212 Cal App 2d 875, 28 Cal Rptr 478, 1963 Cal App LEXIS 2923.*

In prosecution for grand theft and for conspiracy to commit grand theft through fraudulent receipt of child welfare payments, where state produced evidence to effect that defendant and her codefendant resided together during certain

periods of time, that each of them worked and earned funds during certain periods, that overpayments by Department of Public Welfare attributed to both unreported income and cohabitation with codefendant totalled \$606, and that cohabitation and earnings were not reported to department as promised by appellant in two written statements filed with department, evidence was sufficient to support verdict against defendant on each count. *People v. Wood* (1963, Cal App 4th Dist) 214 Cal App 2d 298, 29 Cal Rptr 444, 1963 Cal App LEXIS 2607.

Verdicts of guilty of grand theft were amply supported by evidence that defendant had obtained money from two persons on representation that he would install two-way radio equipment in their automobiles or trucks, that defendant did not have any equipment, and that defendant used money for his personal expenses. *People v. Roof* (1963, Cal App 2d Dist) 216 Cal App 2d 222, 30 Cal Rptr 619, 1963 Cal App LEXIS 2008.

There was ample support for a conviction of defendant of the crime of grand theft where victim testified defendant represented that a friend of his had developed a hydraulic motor that was being tested by two prominent automobile manufacturers, that money was needed for "backing," that money would be held in escrow for 10 days at which time there would be report from automobile manufacturers, that if manufacturers did not accept motor, money would be returned to persons who furnished it, but if motor was accepted such persons would receive certificates for stock in company, that a named attorney was attorney for company involved and that another person had invested money in the venture, where victim further testified that she gave defendant \$500 in reliance on his representation that attorney was connected with venture, that money was never returned and that she received no stock, where another witness testified to being present when defendant's representations were made to victim and corroborated victim's testimony, and where attorney denied his connection with defendant and his venture. *People v. Billings* (1963, Cal App 2d Dist) 219 Cal App 2d 627, 33 Cal Rptr 360, 1963 Cal App LEXIS 2416.

Evidence was sufficient to sustain conviction of grand theft by false pretenses where it was shown that victim traded real property to defendant for other property and a note secured by trust deed in reliance on defendant's knowingly false representation as to size of his property, relative priority of trust deed, and release of a prior trust deed, and that victim lost about \$56,000 as direct result. *People v. Kassab* (1963, Cal App 2d Dist) 219 Cal App 2d 687, 33 Cal Rptr 494, 1963 Cal App LEXIS 2424.

In prosecution for grand theft by false pretenses it is not necessary to prove that defendant benefited personally from fraudulent act. *Buck v. Superior Court of Orange County* (1965, Cal App 4th Dist) 232 Cal App 2d 153, 42 Cal Rptr 527, 1965 Cal App LEXIS 1447, 11 ALR3d 1064, cert den *Buck v Superior Court of California* (1965) 382 US 834, 86 S Ct 77, 15 L Ed 2d 77, 1965 US LEXIS 697.

Evidence of guilt of charge of grand theft and requisite fraudulent intent were present where defendant had knowledge that her payments by welfare agency would be reduced according to income of man, not her husband, if agency knew that he was living in her home, and her promises, made without intent to keep them, to inform agency if man were to return to her home. *People v. Ford* (1965, Cal App 4th Dist) 236 Cal App 2d 438, 46 Cal Rptr 144, 1965 Cal App LEXIS 838, appeal dismissed (1966) 384 US 100, 16 L Ed 2d 396, 86 S Ct 1365, 1966 US LEXIS 1761.

Overwhelming evidence established defendant's intent to commit theft by false pretenses or theft by embezzlement where it was shown that he intended to solicit funds for trust deed association by making representations so flagrantly false that he could not possibly have believed them to be true and that moneys paid into trust account were withdrawn under his direction for alien purpose. *People v. Collins* (1966, Cal App 2d Dist) 242 Cal App 2d 626, 51 Cal Rptr 604, 1966 Cal App LEXIS 1166.

In prosecution for grand theft based on misappropriations of deposits with trust deed association and failure to deliver trust deeds as promised in exchange for deposits, jury could reject defendant's protests that others were running company, that he had no idea trust deeds were not being assigned to investors, and that he believed company was operating as advertised where other evidence established he was equal owner in business, made all major decisions, and was final authority on all matters. *People v. Collins* (1966, Cal App 2d Dist) 242 Cal App 2d 626, 51 Cal Rptr 604, 1966

Cal App LEXIS 1166.

In a prosecution for grand theft based on obtaining welfare funds by false pretenses, there must be proof of the corpus delicti before extrajudicial declarations can be used; absent proof that defendant's husband was physically present in her home, her conviction of obtaining funds through false representations as to her separation from her husband cannot be sustained by evidence of her representations to her landlord, financial counsellors, and a finance company, that she and her husband were living at the same address. *People v. Samuel* (1966, *Cal App 1st Dist*) 245 *Cal App 2d* 210, 53 *Cal Rptr* 887, 1966 *Cal App LEXIS* 1457.

In a prosecution for grand theft the evidence was sufficient to support a judgment of conviction where it was shown that the defendant informed a prospective purchaser that he would install aluminum siding for a certain price, that it would not be necessary to sign a trust deed, and that the product had a written lifetime guarantee, and where substantially the same promises were made to a second prospective purchaser along with a promise to add an extra room to the purchaser's house as part of the deal, and defendant failed to make good on each of his promises. *People v. Bresin* (1966, *Cal App 2d Dist*) 245 *Cal App 2d* 232, 53 *Cal Rptr* 687, 1966 *Cal App LEXIS* 1458, vacated (1968) 68 *Cal 2d* 822, 69 *Cal Rptr* 321, 442 *P2d* 377, 1968 *Cal LEXIS* 210.

There was sufficient evidence to sustain convictions of forgery and grand theft where defendants, aluminum siding salesmen, represented to their victims that the amount to be paid for the siding was a certain sum exceeding \$200, when in fact it was a sum greatly in excess of this, and where they induced the victims to sign trust deeds on their property by presenting a sheaf of papers for a signature, representing them to be copies of the purchase order. *People v. Parker* (1967, *Cal App 2d Dist*) 255 *Cal App 2d* 664, 63 *Cal Rptr* 413, 1967 *Cal App LEXIS* 1326.

A trial court's finding that defendant intended to defraud his victim of money in excess of \$200 (*Pen C* § 487, subd (1)), and his conviction of grand theft, was supported by evidence that, although he gave the victim, a woman of 65, a promissory note for his loans from her, he requested one of the loans (\$1,000) to help him with overdue car payments, whereas he admittedly used it for his living expenses, as he did with another loan \$2,500, which he represented was to settle a lawsuit following an automobile accident, his negligible liability for which was, in fact, covered and paid for by his insurance policy, and by evidence that she lent him a further \$3,500, relying on his representation that he would obtain a divorce and on his expressed intention to marry her, an intention which he abandoned when he learned she had no money left. *People v. Felsman* (1967, *Cal App 2d Dist*) 257 *Cal App 2d* 437, 64 *Cal Rptr* 870, 1967 *Cal App LEXIS* 1801.

In a grand theft prosecution of two defendants for obtaining a contract for repair of a residence by false representations in which it appeared that the contract obtained had never been accepted in the manner prescribed therein and as a consequence no property was taken from the victim, a provision of the writing for a fee upon cancellation of the contract did not impose an obligation on the victim so as to constitute the transaction a theft where the contract never came into existence, and if the provision referred to the cancellation of an "offer" it was without a consideration and not binding on the victim. *People v. Layman* (1968, *Cal App 4th Dist*) 259 *Cal App 2d* 404, 66 *Cal Rptr* 267, 1968 *Cal App LEXIS* 1983.

In a prosecution for attempted grand theft by use of a "bunco scheme", commonly known as "The Jamaica Switch", the evidence was insufficient to support a conviction and showed nothing more than, at most, mere preparation not going far enough to constitute an attempt, where the only evidence showed that the scheme failed because defendant abandoned it before it reached its first significant step, and many steps and potential slips remained before the cup of success would reach defendant's lip. *People v. Orndorff* (1968, *Cal App 2d Dist*) 261 *Cal App 2d* 212, 67 *Cal Rptr* 824, 1968 *Cal App LEXIS* 1734.

In a prosecution for grand theft based on misrepresentations in the sale of trust indentures, there was substantial evidence to support conviction of a codefendant, at least as an aider and abettor, where it appeared that she was an official and cotrustee of an estate organization issuing the trust indentures; that she was present when defendant made

false representations in regard to the trust indentures and by her conduct signified her agreement with him; that she acted as defendant's driver and secretary and took down the information necessary to prepare trust indenture forms; that she notarized the signatures of the parties executing the trust; and that she was subject to and had knowledge of the contents of certain civil preliminary and permanent injunctions enjoining similar misrepresentations as to the effect of the trust indentures. *People v. Lynam* (1968, Cal App 4th Dist) 261 Cal App 2d 490, 68 Cal Rptr 202, 1968 Cal App LEXIS 1769.

In a prosecution for grand theft (*Pen C § 487*) the evidence was sufficient to support conviction based on theft by false pretenses, where it could be inferred therefrom that defendant accepted money from the complaining witness on condition that defendant purchase letters of credit, that defendant represented he would use the funds to obtain letters of credit, and that the complaining witness parted with her money based on defendant's representations, but defendant applied the funds primarily to his personal use, that defendant impliedly promised to return any unutilized funds from the promise of his attorney to do so and that the witness parted with her money on the representation that unutilized funds would be returned to her, and, the intent of defendant to defraud was corroborated by his later use of a forged photocopy of a false letter of credit and the admission of a witness that she lied to the prosecuting witness on behalf of defendant as to defendant's use of the funds. *People v. Kagan* (1968, Cal App 1st Dist) 264 Cal App 2d 648, 70 Cal Rptr 732, 1968 Cal App LEXIS 2129, cert den (1969) 394 US 911, 89 S Ct 1027, 22 L Ed 2d 224, 1969 US LEXIS 2364.

In a prosecution on two counts of grand theft against a defendant retained by land developers for arranging the zoning and land engineering requirements, during the course of which there had been some difficulty in obtaining from the city council permission to erect more units per acre than the zoning ordinance normally allowed and he had obtained from the developers a fund of \$10,000 in 1964 and another of \$14,000 in 1965 for "changing of the zone and for political purposes," the evidence was sufficient to support his conviction on both counts, where justifiable inference that he had falsely represented to the developers the purposes for which the funds would be used, and that he had misapplied them for his own purposes, could be drawn from evidence that no part of the funds had been received by any of the councilmen for voting on the matter, that if any campaign contributions paid out by defendant had come from such funds, they had amounted to only a part of the total amount, that none of the most influential people to help in obtaining a special use had received anything for such services, and that he had asked the developers not to be required to account for the use of the money; and where, although no adverse inference could be drawn from the failure of defendant himself to take the witness stand, such inference could be drawn from the fact that he produced no witnesses to explain how the greater part of the two funds had, in fact, been spent. *People v. Gibson* (1969, Cal App 2d Dist) 275 Cal App 2d 198, 79 Cal Rptr 693, 1969 Cal App LEXIS 1905.

In prosecutions for grand theft by false pretenses, proof of a false factual representation need not be by words alone; it may be implied from conduct; it may be made either expressly or by implication; the form of the words in which the pretense is couched is immaterial; and, if the words or conduct are intended to create the impression that defendant is making a representation as to a present fact, the pretense is within the statute. *People v. Brady* (1969, Cal App 4th Dist) 275 Cal App 2d 984, 80 Cal Rptr 418, 1969 Cal App LEXIS 2008.

In a prosecution for grand theft by false pretenses, the evidence was sufficient to sustain defendant's conviction, where the case involved inducing an auto agency owner to part with money in exchange for a stolen automobile, where the jury could have inferred from the evidence that defendant purchased a damaged chassis (later placed in the stolen car) using a fictitious name, or that the chassis was purchased in his behalf; that he presented false and forged documents depicting title to the auto agency; that he offered to sell the stolen car by use of forged documents of ownership, for which he received the automobile dealer's check in which the same fictitious person was designated as payee; that the check was deposited in a bank account in that name; that defendant had been seen in the bank on several occasions; and that he was identified as being the same person as the fictitious payee; and where it could also be inferred that defendant, being in the business of rebuilding salvaged automobiles, possessed tools for changing identification numbers. *People v. Brady* (1969, Cal App 4th Dist) 275 Cal App 2d 984, 80 Cal Rptr 418, 1969 Cal App LEXIS 2008.

In a multiple prosecution for grand theft by false pretenses and for conspiracy to commit such theft, the evidence was sufficient to support defendants' convictions, where it was shown by expert testimony that defendants, in promoting a trust-foundation plan, had falsely represented that those who would invest in their plan would receive substantial tax benefits, that the trust creators would be able to retain control over their property by appointing members of their families as trustees or as officers of the foundation, that the plan concepts and documents were court-approved and had been upheld by the Supreme Court of the United States, and that the creation of a second foundation within the trust would not require the filing of papers with the Attorney General's office, and where, although the expert testimony was in conflict as to whether charitable deductions could be obtained on the decease of the participants, such issue was presented to the jury on appropriate instructions and determined against defendants. *People v. Fahy* (1970, Cal App 4th Dist) 13 Cal App 3d 808, 92 Cal Rptr 451, 1970 Cal App LEXIS 1289, cert den (1971) 404 US 966, 92 S Ct 341, 30 L Ed 2d 285, 1971 US LEXIS 373.

In a prosecution for grand theft (*Pen C* § 487, subd. 1) and willful violation of the provisions pertaining to issuance and sale of corporate securities (*Corp. Code*, § 25540), evidence was sufficient to sustain convictions even though there was no showing that defendant personally defrauded investors or that he had received any personal benefit from the transaction, where representations, which were false and known by him to be false were made by him through an innocent agent and circulated with his knowledge and acquiescence to the investors for the purpose of obtaining "completion funds," reporting the satisfactory progress of an oil and gas drilling operation when, in fact, nothing had been done to the property and it was later determined to be a dry hole and plugged, and where the testimony of a special investigator for the state Department of Corporations and another witness supported the inference that security interests in the lease had never been qualified as required by *Corp. Code*, § 25110, and thus subjected defendant to criminal prosecution for such noncompliance. *People v. Taylor* (1973, Cal App 2d Dist) 30 Cal App 3d 117, 106 Cal Rptr 216, 1973 Cal App LEXIS 1143.

In the prosecution of a mayor and city planning commissioner for attempted grand theft by false pretenses (*Pen C* §§ 484, 487), arising out of their attempt to "shake down" a farmer for \$10,000 on the pretext of obtaining favorable treatment for him from the board of supervisors in connection with the extension of his agricultural lease on a valuable piece of property held by the county, there was sufficient evidence regarding the making of the false pretense where it appeared defendants told the farmer that they needed the money to "pay off" the board, the city planning commissioner implied he had great influence with the supervisors regarding disposition of the leasehold, intending the farmer to understand that he would have to make up for his reluctance to contribute to the supervisors' election campaigns if he expected to retain his interest in the leasehold, and where defendants, by their own admission, never intended to convey any part of the money to the board or any member thereof. *People v. Fujita* (1974, Cal App 4th Dist) 43 Cal App 3d 454, 117 Cal Rptr 757, 1974 Cal App LEXIS 1330, cert den (1975) 421 US 964, 95 S Ct 1952, 44 L Ed 2d 451, 1975 US LEXIS 1569.

In a prosecution of defendant for grand theft (*Pen C* § 487, subd. 1, arising out of defendant's sale of what he represented was a diamond ring, but which in fact contained only cubic zirconiums, in which the primary issue was the identity of the man who sold the ring to the victim, the evidence was sufficient to support the jury's guilty verdict where the victim's son positively identified defendant, where the victim made a reasonably certain identification and where the victim's store's records supported that testimony. The jury was not required to give credence to testimony offered by defense witnesses which conflicted with that given by prosecution witnesses. *People v. Lassell* (1980, Cal App 1st Dist) 108 Cal App 3d 720, 166 Cal Rptr 678, 1980 Cal App LEXIS 2100.

In a prosecution for grand theft by false pretenses (*Pen C* §§ 484, subd. (a), 487, 532), based on defendant's use of his automated teller machine (ATM) card to obtain cash from grocery stores even though he knew that the checking account to which the card was connected was overdrawn and was to be closed, the evidence was sufficient to establish that the stores relied on defendant's presentation of his ATM card in approving his request for money, and not merely on the computer system they used to verify customers' credit. There was a glitch in the computer system concerning defendant's account, such that, rather than transmitting a code declining the transaction because defendant's account had been closed, it kept returning a code to the stores indicating that there was no response. This, in turn, caused them to

treat each transaction as a "stand-in" without a verification or approval from the computer system, under which circumstance they had a policy of accepting a customer's card and giving the customer money. Thus, it could hardly be said that the stores relied on the computer system instead of defendant's representation that his card was valid. Even assuming that the use of a computer verification system could be described as an investigation, the computer system in fact never approved defendant's transactions. As a result, the stores had nothing to rely on except defendant's implicit representation that his ATM card was valid. It elected to take the risk and rely solely on defendant's representation. *People v. Whight* (1995, Cal App 3d Dist) 36 Cal App 4th 1143, 43 Cal Rptr 2d 163, 1995 Cal App LEXIS 665.

An intent to defraud may be determined by consideration of all the circumstances in evidence. Criminal intent may be inferred from the general circumstances surrounding the transactions, and other similar transactions carried on by a defendant are sufficient to prove guilty knowledge and criminal intent. *People v. Singh* (1995, Cal App 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 818, rehearing denied (1995, 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 819, review denied (1995, Cal) 1995 Cal LEXIS 6622.

In a prosecution of a chiropractor for three counts of grand theft by false pretenses (*Pen C § 487*), based on fraudulent billings to insurance companies following a series of allegedly staged automobile accidents involving defendant's patients, there was reliance by one of the insurance companies to support the charges, even though the company thought the claims by the patients were questionable. The company paid the claims, and that was overwhelming evidence that it ultimately accepted the billings. In fact, the evidence suggested that the company was concerned about the relationship among the patients and the frequency of accidents. The billings could only have served to demonstrate to the company that the injuries were legitimate, that the care was necessary, and that a settlement was the best avenue to take. *People v. Singh* (1995, Cal App 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 818, rehearing denied (1995, 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 819, review denied (1995, Cal) 1995 Cal LEXIS 6622.

In a prosecution of a chiropractor for three counts of grand theft by false pretenses (*Pen C § 487*), based on fraudulent billings to insurance companies, the evidence of false representations was sufficient to support defendant's convictions even though he used lawyers as a conduit for the fraudulent claims. Defendant sent the billings to the attorneys, knowing they were representing his patients in their personal injury claims and knowing they would forward the billings to the insurers. Since defendant knew the billings were fraudulent, he must then have known he would ultimately be defrauding the insurers by sending the billings to a law firm. Indeed, his billing practices were tailored to facilitate insurance payment, and he could not hide behind the firm to avoid guilt. The jury was instructed that, in order to be guilty, defendant must have harbored the specific intent to defraud the insurers. The jury's guilty verdict reflected that they found defendant intended to defraud the insurers when he sent the billings to the law firm. *People v. Singh* (1995, Cal App 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 818, rehearing denied (1995, 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 819, review denied (1995, Cal) 1995 Cal LEXIS 6622.

In a prosecution of a chiropractor for grand theft by false pretenses (*Pen C § 487*), based on fraudulent billings to insurance companies, and for presentation of a false insurance claim (Ins. Code, former § 556, subd. (a)(1)), there was sufficient evidence of defendant's intent to defraud. The prosecution maintained that defendant overtreated his patients by using medically unnecessary diagnostic tests. Although he was acquitted on charges relating to referral to a diagnostic laboratory without valid medical need, this did not mean that the jury believed other diagnostic testing was medically valid. Prosecution witnesses testified that defendant's use of certain tests was unnecessary and indiscriminate, and there was also substantial evidence that defendant overprescribed the use of pain therapies. Further, the evidence was uncontradicted that defendant billed no-shows as "routine brief treatment" and postdated massage therapy by one day, and the evidence showed that both were meant to deceive the insurance company. That the billings for diagnostic tests represented the cost of procedures that were actually performed did not detract from their fraudulent nature. When a caregiver causes an insurance company to part with money on the basis of medical procedures that, though actually conducted, were not necessary, fraud occurs. Finally, defendant's improper use of a certain billing code was fraudulent even though he was not required to use it for the particular patients involved, since his use of a widely used,

standardized system could only have suggested to insurers that he was using it accurately. *People v. Singh* (1995, Cal App 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 818, rehearing denied (1995, 1st Dist) 37 Cal App 4th 1343, 44 Cal Rptr 2d 644, 1995 Cal App LEXIS 819, review denied (1995, Cal) 1995 Cal LEXIS 6622.

27. Establishment of Larceny by Trick or Device

Though loan transaction generally creates only civil rights and obligations, borrower may be held criminally liable under evidence sufficiently showing larceny by trick or device; thus fact that receipt for \$20,000 recited that it was "loan" did not free defendant from criminal liability where he obtained money from victim by trick or device, and where, in addition, document on its face indicated that it was receipt from company in which victim had no interest and specifically declared that spending limit was \$5,000 in absence of further authorization. *People v. Woolson* (1960, Cal App 2d Dist) 181 Cal App 2d 657, 5 Cal Rptr 766, 1960 Cal App LEXIS 2042.

Conviction of grand theft by trick or device was sustained by evidence that defendant represented to victim that land scrip was for sale for \$1500 whereas scrip was held in bank's collection department to be delivered to defendant on payment of \$249.50 and collection charges of \$2.50, that defendant told victim his only financial interest was in profits that would result from obtaining of land by use of scrip whereas he was in fact to obtain for himself \$748 of the \$1000 supplied by victim, that victim, at time he gave defendant checks for second transaction, continued to believe and rely on earlier statements defendant had made to him, and that in third transaction, though varying from other two in that victim delivered his check directly to bank, defendant had so arranged the matter with bank that proceeds were entirely under his control and bank was merely his instrumentality for obtaining possession of victim's money. *People v. Maggart* (1961, Cal App 2d Dist) 194 Cal App 2d 84, 14 Cal Rptr 745, 1961 Cal App LEXIS 1794.

In a prosecution for grand theft, the evidence was amply sufficient to prove defendant's guilt where, having resorted to complex trickery to induce the victim to get out of a hired automobile to open a gate, defendant rapidly backed away from where the victim was standing and escaped with \$180,000 belonging to the victim and two other persons, which was in a container on the back seat of the automobile, where part of the money taken was spent by defendant to purchase an old automobile, and where defendant fled and remained successfully hidden for over two years. *People v. Walther* (1968, Cal App 5th Dist) 263 Cal App 2d 310, 69 Cal Rptr 434, 1968 Cal App LEXIS 2209.

In a prosecution for grand theft (*Pen C § 487*), the evidence was sufficient to support conviction based on larceny by trick or device, where it could be inferred therefrom that the complaining witness gave money to defendant for the particular purpose of purchasing letters of credit and that defendant never intended to do so but instead transferred most of the money into his personal accounts. *People v. Kagan* (1968, Cal App 1st Dist) 264 Cal App 2d 648, 70 Cal Rptr 732, 1968 Cal App LEXIS 2129, cert den (1969) 394 US 911, 89 S Ct 1027, 22 L Ed 2d 224, 1969 US LEXIS 2364.

In a prosecution for grand theft, the evidence was sufficient to establish that merchandise was taken without the consent of a department store, where one of the store security officers testified that he was informed when someone had permission to remove merchandise and that he had not been told that defendant had such permission, and where, moreover, the manner of the taking, defendant's dropping a box filled with merchandise on being discovered, his flight, and the absence of a sales slip were also evidence of lack of consent. *People v. Tijerina* (1969) 1 Cal 3d 41, 81 Cal Rptr 264, 459 P2d 680, 1969 Cal LEXIS 190.

In a grand theft prosecution the record disclosed sufficient evidence to support defendant's conviction, and to support codefendant's conviction as an aider and abettor of defendant's crime or as a conspirator. The record showed that \$1.5 million had been credited to defendant's \$10 account with a savings and loan association as the result of a phone call from a caller pretending to be from "Union Bank" falsely advising of a purported wire transfer of \$1.5 million for defendant's savings and loan account. Defendant had previously advised the association he was expecting such a wire transfer. He used much of the money from his account to obtain cashier's checks from the association, and to open an account with a bank in another city, funds from which he obtained cashier's checks from that bank. Also defendant had cashed and spent many of the cashier's checks. The jury could infer the caller advising of the purported

wire transfer was either defendant, codefendant, or a confederate, and that the association relied, in parting with its money, partly on defendant's advisement that he was expecting the transfer. As to codefendant, there was evidence he had obtained a \$400,000 cashier's check from defendant's savings and loan account on presenting a note of authorization from defendant, that several of the cashier's checks obtained by defendant were made payable and delivered to codefendant, that codefendant had spent the proceeds from some of the checks, and that on defendant's arrest he was found with a note acknowledging he had received \$875,000 from codefendant. *People v. Ramirez* (1980, Cal App 2d Dist) 109 Cal App 3d 529, 167 Cal Rptr 174, 1980 Cal App LEXIS 2183.

Where defendant promised to obtain software licenses for his employers and actually took the purchase money from one but never obtained the licenses for either employer, he was guilty of larceny by trick or device and attempted larceny by trick or device, not theft by false pretenses, because no title to the employers' money passed, and the fact that the jury was instructed. *People v. Traster* (2003, Cal App 2d Dist) 111 Cal App 4th 1377, 4 Cal Rptr 3d 680, 2003 Cal App LEXIS 1424, rehearing denied (2003, Cal App 2d Dist) 2003 Cal App LEXIS 1544, review denied (2003, Cal) 2003 Cal LEXIS 9694.

28. Establishment of Embezzlement

In prosecution of insurance agent for grand theft by appropriation of money collected by him for payment of premiums under group insurance policies, trial court is justified in concluding that defendant occupied position of collector of premiums for insurer in view of evidence that policies were handled by defendant under written agreement with insurer to pay, in addition to his sales commission, an administration fee, the amount of which was based on percentage of premiums collected plus an amount equal to one-half of cost of certain office expenses, where premiums for policies were collected by defendant and deposited in a single, unsegregated trustee's account, from which only he was authorized to draw, and where each month he would prepare a statement, summarizing number and classifications of members of group insurance organization, and send it with amount shown to be due to insurer. *People v. Hedderly* (1954) 43 Cal 2d 476, 274 P2d 857, 1954 Cal LEXIS 266.

Two officers of construction company, real estate investment business and corporation acting as trustees under deeds of trust were guilty of grand theft of trust deeds, despite fact that trust deeds were not taken from possession of complaining witnesses to whom they were originally assigned, where evidence showed that corporations were trustor, trustee and beneficiary under the deeds of trust involved, that defendants twice reconveyed land covered by trust deeds in question, that such unauthorized reconveyance enabled defendants to sell another trust deed on same property, and that as result of defendants' manipulations complaining witnesses were deprived of their security with nothing having been paid on principal of either. *People v. Glass* (1960, Cal App 2d Dist) 181 Cal App 2d 549, 5 Cal Rptr 289, 1960 Cal App LEXIS 2026.

In prosecution of union officers for grand theft by embezzlement, based on paying less than they received from automobile dealer for sales of used cars of union, where direct evidence implicated both defendant treasurer and defendant corresponding secretary and, as to defendant president, circumstances supported finding of his knowing participation in sales, his conviction was supported by evidence whether he be deemed principal as aider and abettor or conspirator. *People v. Clancy* (1960, Cal App 1st Dist) 184 Cal App 2d 403, 7 Cal Rptr 532, 1960 Cal App LEXIS 1887.

In prosecution of union officers for grand theft by embezzlement, based on paying union less than they received from automobile dealer for sales of used cars of union, conclusion that defendants were converting union property, of which they were trustees, was sustained by evidence that all sales took place only after defendant treasurer had negotiated altered method of trading in used cars, that in each instance "purchasing" defendant directed entry to be made when he paid union, that all but three of these entries showed dealer, rather than defendant, as purchaser, that in no case was document of title transferred to name of defendant, but that each ran to dealer and that in each case payment to union by defendant was made after dealer had paid defendant larger amount. *People v. Clancy* (1960, Cal App 1st Dist) 184 Cal App 2d 403, 7 Cal Rptr 532, 1960 Cal App LEXIS 1887.

In a prosecution for grand theft (*Pen C § 487*), the evidence was sufficient to support conviction based on embezzlement, where it could be inferred therefrom that defendant was entrusted with money by the complaining witness for the sole purpose of purchasing letters of credit and defendant diverted the money into his personal accounts. *People v. Kagan* (1968, *Cal App 1st Dist*) 264 *Cal App 2d* 648, 70 *Cal Rptr* 732, 1968 *Cal App LEXIS* 2129, cert den (1969) 394 *US* 911, 89 *S Ct* 1027, 22 *L Ed 2d* 224, 1969 *US LEXIS* 2364.

29. Sufficiency of Evidence of Theft From Person of Another

Circumstantial evidence was sufficient to justify conviction of grand larceny taking purse containing money from pocket of man who was in drunken sleep on doorstep, though neither defendant nor his companion were seen in actual contact with his person, but situation and circumstances were such as to have afforded them opportunity, and to have justified jury in inferring that purse was in pocket when taken and was abstracted therefrom. *People v. Appleton* (1898) 120 *Cal* 250, 52 *P* 582, 1898 *Cal LEXIS* 744.

It is of little consequence that prosecuting witness did not testify that he saw defendant actually take money where evidence in grand theft case cogently tends to prove that defendant took money from person. *People v. Alexander* (1949, *Cal App*) 92 *Cal App 2d* 230, 206 *P2d* 657, 1949 *Cal App LEXIS* 1678.

Conviction of grand theft from person was supported by police officer's testimony that he saw defendant open victim's purse, remove small coin purse, put it inside his pocket, and then enter bus with victim; it was immaterial that victim did not observe theft and that defendant told different story. *People v. De La Paz* (1965, *Cal App 2d Dist*) 237 *Cal App 2d* 81, 46 *Cal Rptr* 614, 1965 *Cal App LEXIS* 1228, cert den (1967) 385 *US* 1015, 87 *S Ct* 729, 17 *L Ed 2d* 551, 1967 *US LEXIS* 2685.

It is not necessary for the victim of a theft from the person (*Pen C § 487*, subd 2) to testify if other evidence is available to prove all of the elements of the crime; thus, in such a prosecution it was not incumbent upon the state to provide a translator so that the victim, who was of Mexican descent and could not communicate in English, could testify in Spanish, where the theft of property from his person was shown by the testimony of an eyewitness. *People v. Smith* (1968, *Cal App 2d Dist*) 268 *Cal App 2d* 117, 73 *Cal Rptr* 859, 1968 *Cal App LEXIS* 1280.

In a prosecution for grand theft from the person, the evidence was sufficient to sustain the jury's finding of guilt, regardless of the value of the property taken, where defendant and his codefendant were seen to put their hands in the victim's pockets as the three scuffled in the middle of the street, where, when the victim's wallet and his pants fell to the street, the codefendant picked them up and, accompanied by defendant, ran to the rear of a nearby hotel, where the taking of the pants and the wallet was sufficient in itself to sustain the conviction, and where, although the victim was not sure of the amount of money in his wallet, it was a reasonable inference that some money was taken. *People v. Smith* (1968, *Cal App 2d Dist*) 268 *Cal App 2d* 117, 73 *Cal Rptr* 859, 1968 *Cal App LEXIS* 1280.

In a prosecution for grand theft from a person (*Pen C § 487*, subd. 2), there was substantial evidence to support defendant's judgment of conviction, as against his claim that he was not the perpetrator of the purse-snatching in question, where it was shown that ten minutes after the snatch his car, with the purse and its contents strewn in it, was parked within one block of the scene of the crime, that he fled from the police to avoid arrest, and when, about an hour later, he was questioned on a bus, he gave a false story and a false name because, as he later admitted, he was trying to get home and did not want to be caught, and that distinctive clothing similar to what he had been wearing in his parked car was found in his home. *People v. McDowell* (1976, *Cal App 2d Dist*) 59 *Cal App 3d* 807, 130 *Cal Rptr* 839, 1976 *Cal App LEXIS* 1674, overruled (1993) 5 *Cal 4th* 228, 19 *Cal Rptr 2d* 520, 851 *P2d* 802, 1993 *Cal LEXIS* 2493.

Defendant was properly convicted of grand theft of a firearm, a pistol, where the evidence clearly showed that defendant intended to steal the purse that contained the pistol. He therefore had the intent, necessary to a conviction of grand theft, to steal its contents. *People v. Campbell* (1976, *Cal App 3d Dist*) 63 *Cal App 3d* 599, 133 *Cal Rptr* 815, 1976 *Cal App LEXIS* 2113.

Evidence was sufficient to support conviction for "grand theft person" in violation of Pen C § 487.2, where the evidence established that the defendant was not merely present at the scene of the crime but was with the person who struck the victim, rummaged through the victim's pockets and fled from the scene with the principal assailant, even though the principal assailant had the victim's property when apprehended. *People v. Fuentes* (1976, Cal App 2d Dist) 64 Cal App 3d 953, 134 Cal Rptr 885, 1976 Cal App LEXIS 2175.

The evidence was insufficient to support defendant's conviction for grand theft person, former Pen C § 487, subd. 2 (see now *Pen C § 487(c)*), where the victim's purse was not taken from her person, but rather from the car seat beside her. The crime of theft from a person contemplated that the property should at the time be in some way actually upon or attached to the person, or carried or held in actual physical possession, or held or carried in the hands, or by other means upon the person. The crime was not intended to include property removed from the person and laid aside, however immediately it might be retained in the presence or constructive control or possession of the owner. *People v. Williams* (1992, Cal App 5th Dist) 9 Cal App 4th 1465, 12 Cal Rptr 2d 243, 1992 Cal App LEXIS 1163, modified, rehearing denied (Cal App 2nd Dist) 1992 Cal App LEXIS 1247, 92 CDOS 8718, 92 Daily Journal DAR 14432, review denied (1992, Cal) 1992 Cal LEXIS 6352.

Evidence was insufficient to support a juvenile court's finding of grand theft person under *Pen C § 487(c)* where the evidence did not show that the juvenile took the victim's cell phone from his pocket or that he tried to reach into the victim's pocket, precipitating a struggle that caused the phone to fall to the ground. Instead, the victim's phone fell out of his pocket at some point during the fight; the victim and his friends had already fled the scene when the juvenile's companion discovered the victim's cell phone. *In re Jesus O.* (2005, Cal App 2d Dist) 135 Cal App 4th 237, 37 Cal Rptr 3d 300, 2005 Cal App LEXIS 1975, rehearing denied (2006, Cal App 2d Dist) 2006 Cal App LEXIS 187, review gr, depublished (2006, Cal) 43 Cal Rptr 3d 301, 134 P3d 287, 2006 Cal LEXIS 4745, rev'd, superseded (2007) 40 Cal 4th 859, 55 Cal Rptr 3d 523, 152 P3d 1100, 2007 Cal LEXIS 2040.

To show grand theft person under *Pen C § 487(c)*, the prosecution must present proof that the property was in the actual physical possession of the victim at the time of the taking. *In re Jesus O.* (2005, Cal App 2d Dist) 135 Cal App 4th 237, 37 Cal Rptr 3d 300, 2005 Cal App LEXIS 1975, rehearing denied (2006, Cal App 2d Dist) 2006 Cal App LEXIS 187, review gr, depublished (2006, Cal) 43 Cal Rptr 3d 301, 134 P3d 287, 2006 Cal LEXIS 4745, rev'd, superseded (2007) 40 Cal 4th 859, 55 Cal Rptr 3d 523, 152 P3d 1100, 2007 Cal LEXIS 2040.

30. Establishment of Theft of Automobile

Where it appeared that defendant, garage proprietor, bought car similar to stolen car, but which had damaged body, and sold stolen car to used car dealer with motor and body serial number plate which had been in purchased car and that plate bearing body serial number of stolen car was found in his garage, evidence was sufficient to justify conclusion that defendant was guilty of grand theft. *People v. Cleveland* (1934, Cal App) 3 Cal App 2d 357, 38 P2d 798, 1934 Cal App LEXIS 1184.

In prosecution for grand theft of automobile by means of fraudulent representations, where evidence showed that defendant obtained automobile from sales agency by misrepresenting his name and identity and giving two worthless checks therefor, verdict and judgment against him had sufficient evidentiary support. *People v. Thompson* (1937, Cal App) 23 Cal App 2d 339, 72 P2d 927, 1937 Cal App LEXIS 661.

Where defendant took automobile from used car lot without owner's permission, and on same day, when car broke down, defendant signed order for its repair by garage owner and thereby asserted indicia of ownership of car, evidence supported inference that defendant intended to steal car. *People v. Reed* (1938, Cal App) 27 Cal App 2d 484, 81 P2d 162, 1938 Cal App LEXIS 699.

Where evidence showed, among other things, that car was removed from its garage without owner's consent and taken to alley where defendant was caught in act of stripping it, evidence supported conviction of grand theft. *People v.*

Olivar (1940, Cal App) 40 Cal App 2d 48, 104 P2d 382, 1940 Cal App LEXIS 62.

Conviction of grand theft was sustained by evidence that, among other things, defendant obtained automobile from dealer by false representations. *People v. Alexander (1942, Cal App) 54 Cal App 2d 393, 128 P2d 923, 1942 Cal App LEXIS 367.*

A conviction of grand theft of an automobile was warranted by the defendant's driving of the stolen car when apprehended, his false and equivocal statement as to its ownership, and claim that he must have been asleep if he was driving; his accompaniment in the car by a codefendant who admitted stealing the car and testified that he and the defendant used it for bookmaking; and his failure to take the witness stand to explain the suspicious circumstances. *People v. Wissenfeld (1951) 36 Cal 2d 758, 227 P2d 833, 1951 Cal LEXIS 225.*

A conviction of grand theft of automobile is sustained by evidence that defendants, with intent of using victim's automobile in holdup activities, took it without his permission, drove it to an abandoned garage, and appropriated some of its contents to their own use. *People v. Hooker (1954, Cal App) 126 Cal App 2d 394, 272 P2d 839, 1954 Cal App LEXIS 2031.*

Conviction of grand theft of automobile is sustained by evidence that, after defendant had altercation with his landlady, he rode away in automobile similar to stolen automobile and that he was found injured one quarter of mile from badly damaged stolen automobile which contained many of his possessions. *People v. Saltz (1955, Cal App 2d Dist) 131 Cal App 2d 459, 280 P2d 900, 1955 Cal App LEXIS 2073.*

In prosecution for theft of truck and trailer and load of reenforcing steel, prosecuting witness' testimony that it was defendant who drove truck into yard for sale of steel to scrap metal buyers, gave false name, weighed load and unloaded it, signed weight slip, took stub and went to cashier for checks, was not so impeached by defendant's testimony and that of handwriting expert, who stated that there were more similarities between signature on weight slip and third person's signature on one of checks than there were between signature and defendant's writing, so as to render it insufficient to support conviction. *People v. Gray (1960, Cal App 2d Dist) 180 Cal App 2d 594, 4 Cal Rptr 605, 1960 Cal App LEXIS 2376.*

Conviction of grand theft of transmission and carburetors of auto was sustained by evidence of defendant's admission to his partner and to employee in his shop that he had removed this equipment from owner's car. *People v. Van Wagoner (1961, Cal App 4th Dist) 196 Cal App 2d 126, 16 Cal Rptr 342, 1961 Cal App LEXIS 1554.*

There was not sufficient evidence to uphold a conviction of grand theft where the only evidence against defendant was that he was seated in the driver's seat of a recently stolen car and defendant's explanation was that he was on his way home from a movie when he saw police about a block away approaching and shooting and he headed for shelter in the parked automobile, and where the incident took place during the time of and in the area of the Watts disturbance of 1965, even though there was discrepancy between defendant's and the arresting officer's testimony as to whether the car lights were on and the engine running. *People v. Mangum (1966, Cal App 2d Dist) 246 Cal App 2d 550, 54 Cal Rptr 743, 1966 Cal App LEXIS 1054.*

There was sufficient evidence that defendant was guilty of feloniously taking a motor vehicle where it was shown that the car was taken without permission from the lot of a body shop where the owner had sent it for repairs, that the same car was later impounded in connection with a drunk driving charge and a registration slip carrying defendant's name and referring to another car was found therein, along with the receipt for a battery purchased by defendant, his wage and tax statement, and license plates registered to defendant's car, and that defendant came to the police station seeking release of the car and stating, in response to a question, that he was the owner thereof. *People v. Peterson (1967, Cal App 2d Dist) 251 Cal App 2d 676, 59 Cal Rptr 694, 1967 Cal App LEXIS 2023.*

In a prosecution for grand theft, the evidence was sufficient to support the determination of guilt, where it was established that defendant sold a stolen car and a stolen motorcycle, where there was expert testimony that he had

signed a false statement of facts for the Department of Motor Vehicles in connection with the car, and where his explanation as to acquisition of the car was extremely vague. *People v. Sims* (1968, Cal App 2d Dist) 264 Cal App 2d 427, 70 Cal Rptr 280, 1968 Cal App LEXIS 2101.

The evidence was insufficient to support the conviction of defendant for the theft of an automobile and related burglary arising from the entry into the locked office in which the keys to the automobile were kept, where, though there was evidence that defendant had been observed driving the automobile shortly after it was stolen, there was no corroborating evidence to connect him with the theft or burglary. *People v. Champion* (1968, Cal App 2d Dist) 265 Cal App 2d 29, 71 Cal Rptr 113, 1968 Cal App LEXIS 1594.

In a prosecution for grand theft of an automobile (*Pen C* § 487, subd. 3), tried to the court without a jury, the evidence fell short of the quantum necessary to overcome the presumption of innocence and to meet the burden resting on the prosecution to establish guilt beyond a reasonable doubt, where defendant had rented the automobile in question for a two-day period through the use of false identification, where, at the time of defendant's trial, *Pen C* § 484, created a presumption of fraud by the obtaining of a rental car through the use of false identification only if the car was not returned within 10 days after the expiration of the rental period, where defendant was arrested and possession of the car was obtained by the police within the two-day rental period, and where there was no other evidence bearing on defendant's intent. *People v. Turner* (1968, Cal App 2d Dist) 267 Cal App 2d 440, 73 Cal Rptr 263, 1968 Cal App LEXIS 1407.

It is not necessary for a conviction of grand theft of an automobile that the accused was actually seen taking the car in the first instance. *People v. Lumar* (1968, Cal App 2d Dist) 267 Cal App 2d 900, 73 Cal Rptr 682, 1968 Cal App LEXIS 1467.

Possession of a stolen car is not of itself sufficient to sustain a conviction of grand theft auto, but corroborating evidence of acts, conduct, or declarations (plus possession of the stolen car) need be but slight, and failure to show that possession was honestly obtained is itself a strong circumstance tending to show the possessor's guilt of the theft. Thus, in a prosecution for grand theft of an automobile, the failure of defendant at the trial to make any effort to show that his possession of the car was honestly obtained or that it was obtained upon any theory inconsistent with his guilt of the offense charged was a strong circumstance tending to show his guilt. *People v. Farrant* (1969, Cal App 2d Dist) 273 Cal App 2d 715, 78 Cal Rptr 517, 1969 Cal App LEXIS 2219.

In a prosecution for grand theft of an automobile, the evidence was sufficient to sustain a conviction, where it appeared from the record that defendant went to a paint shop to get a car painted which even the owner and operator of the paint shop attempted to dissuade defendant from having done because it did not need painting; that defendant said he wanted to make a quick sale and the paint job would facilitate such a sale; that defendant removed the license plates from the car and took them with him and left the plates from another car which he had purchased as salvage under a false name; and that defendant said the car had been in storage for two years when in fact it had been stolen the night or morning before. *People v. Farrant* (1969, Cal App 2d Dist) 273 Cal App 2d 715, 78 Cal Rptr 517, 1969 Cal App LEXIS 2219.

The evidence was sufficient to support defendant's conviction, following a trial by jury, of grand theft of an automobile (*Pen C* § 487), where there was evidence that defendant had possession of the stolen automobile at about the time of its theft, and where defendant gave conflicting explanations as to how he had obtained the vehicle. *People v. Arceo* (1979, Cal App 3d Dist) 95 Cal App 3d 117, 157 Cal Rptr 10, 1979 Cal App LEXIS 1914.

In a prosecution in which defendant was convicted of two counts of grand theft arising out of his obtaining a car from its owner without payment and selling it to another person without transferring the title to him, the record did not establish reversible error by reason of state action preventing defendant from fulfilling his obligations to pay the owner and transfer title to the buyer. Evidence that investigating officers directed the owner not to transfer title to the car to defendant or accept money from him was perhaps probative on the issue of defendant's intent, but there was other

evidence from which the jury could reasonably determine that defendant acted with fraudulent intent when he obtained the car without paying the agreed consideration and later took money from the buyer without transferring title as promised. *People v. Ferguson* (1982, Cal App 1st Dist) 129 Cal App 3d 1014, 181 Cal Rptr 593, 1982 Cal App LEXIS 1394.

In a prosecution for grand theft (*Pen C § 487*), the evidence was sufficient to support defendant's conviction on a count charging theft of an automobile, where defendant obtained the car on the basis of his promise to give the owner a stereo in return, and where the owner received neither the promised stereo nor a later agreed upon cash payment of \$200. Such evidence supported a finding that defendant misled the owner into letting him have the car based on his false promises of compensation. *People v. Ferguson* (1982, Cal App 1st Dist) 129 Cal App 3d 1014, 181 Cal Rptr 593, 1982 Cal App LEXIS 1394.

The fact that the Legislature has enacted separate crimes and punishments for different types of automobile takings (*Pen C § 487*, subd. (3); *Veh C § 10851*; *Pen C § 499b*; *Pen C § 459*) does not preclude a trier of fact from concluding, based on the circumstances of the break-in of a locked vehicle, that the culprit intended to permanently deprive the owner of the car or property therein. The statutes governing the taking or driving of a vehicle, or the attempt to do so, simply establish different crimes depending on the factual determination made by the trier of fact as to the intent of the perpetrator in attempting to take or drive a motor vehicle. *People v. Morales* (1993, Cal App 3d Dist) 19 Cal App 4th 1383, 24 Cal Rptr 2d 847, 1993 Cal App LEXIS 1096, modified, rehearing denied (1993, 3rd Dist) 19 Cal App 4th 1853e, 1993 Cal App LEXIS 1175.

31. Sufficiency of Evidence of Theft of Animals

Where, on trial for stealing horse, prosecution proved larceny by accomplice, further proof that next morning after horse was stolen, prisoner received him from person who took horse from owner, and immediately removed him to another place for pasturage, and gave assumed name to person with whom he left horse for pasturage, was sufficient corroboration of testimony of accomplice to sustain conviction. *People v. Cleveland* (1875) 49 Cal 577, 1875 Cal LEXIS 36.

In prosecution for grand larceny of steer, evidence to effect that owner missed his steer and shortly afterwards its hide and some entrails were found buried in defendant's backyard was sufficient corroboration of accomplice. *People v. Grundell* (1888) 75 Cal 301, 17 P 214, 1888 Cal LEXIS 535.

Possession by defendant on morning after theft of cow, which defendant was accused of stealing, was prima facie evidence of guilty possession, and was circumstance to be taken in connection with other corroborating circumstances, tending to show guilt of larceny alleged, unless satisfactorily explained. *People v. Luchetti* (1898) 119 Cal 501, 51 P 707, 1898 Cal LEXIS 661, overruled *People v. McFarland* (1962) 58 Cal 2d 748, 26 Cal Rptr 473, 376 P2d 449, 1962 Cal LEXIS 305.

Where possession of stolen horse by defendant was indicated only by circumstantial evidence tending to show that during night of theft he was leading horse in direction away from where it was taken, and which satisfied jury of that fact, their verdict was not contrary to evidence, because no witness testified to seeing defendant in actual possession of horse, nor because it was turned loose before it was found. *People v. Nunley* (1904) 142 Cal 105, 75 P 676, 1904 Cal LEXIS 904.

In prosecution for grand theft of bovine animal, evidence that defendants intended, before animal was shot, to take meat for their own use supports implied finding that defendants had specific intent to deprive owner of his animal. *People v. Adams* (1962, Cal App 1st Dist) 206 Cal App 2d 614, 24 Cal Rptr 130, 1962 Cal App LEXIS 2062.

Testimony claiming ownership and lack of consent to slaughtering of cow is sufficient evidence to establish these facts in prosecution for grand theft when both defendants testify and neither claim consent of any owner to killing.

People v. Adams (1962, Cal App 1st Dist) 206 Cal App 2d 614, 24 Cal Rptr 130, 1962 Cal App LEXIS 2062.

In a prosecution for grand theft, the jury was justified in convicting defendant either as a direct principal or as an aider and abettor to a companion driving the car where there was evidence that a heifer was shot with a gun which could have been used by defendant or his companion, where the two were about to load the heifer in the vehicle when interrupted by the approach of another vehicle, and where the trial court correctly instructed the jury that a person who aids and abets another in a criminal act is regarded as a principal under *Pen C § 31*. *People v. Orr* (1974, Cal App 3d Dist) 43 Cal App 3d 666, 117 Cal Rptr 738, 1974 Cal App LEXIS 1346.

D. TRIAL

32. In General

In prosecution for grand theft of automobile, affidavits of cafe owner and his bartender in support of defendant's motion for new trial, offered as newly discovered evidence, that on morning car was stolen man told affiant bartender that he was taking car away from his wife who was divorcing him, that affiant drove man to location where car was parked, that man later drove car to cafe and left, that affiant saw man two days later when man stated he was going to out-of-state city, and that affiant had not seen man since that time were inadequate as showing material evidence that could not have been discovered in exercise of reasonable diligence. *People v. Onstad* (1960, Cal App 2d Dist) 178 Cal App 2d 109, 2 Cal Rptr 698, 1960 Cal App LEXIS 2567.

In a prosecution for grand theft, defendant was in no position to object to a visitation of the jury to the premises where the theft was accomplished where defendant himself, through his counsel, prevailed on the court to have the jury visit the scene of the crime, and where the trial court properly instructed the officer in charge of the jury as to his duties and was careful to see that, while all of those going to the scene of the alleged crime were in the same bus including defendant and others whose duty it was to be present, the conduct of everyone was required to be beyond exception. *People v. Walther* (1968, Cal App 5th Dist) 263 Cal App 2d 310, 69 Cal Rptr 434, 1968 Cal App LEXIS 2209.

In the presence of uncontroverted facts establishing defendant's theft of two calves, in violation of *Pen C § 487*, subd. (3), defense trial counsel presented the only reasonable defense available in contending there was no intent by defendant to permanently deprive the calves' owner of his property and that proceeds from an attempted sale would have been returned to the owner; defense counsel's trial tactics were entirely reasonable in presenting defendant in the posture of having nothing to hide, using defendant's Miranda waiver and signed statement of involvement in the theft to support this posture. *People v. Thomas* (1974, Cal App 1st Dist) 43 Cal App 3d 862, 118 Cal Rptr 226, 1974 Cal App LEXIS 1362.

In a criminal prosecution for grand theft of an automobile in violation of *Pen C § 487*, subd. 3, and receiving stolen property in violation of *Pen C § 496*, the trial court erred in denying defendant's motion to order disclosure of an informant without first holding an in camera hearing on defendant's motion. Although the informant did no more than advise the authorities of a state of facts which to him required investigation, and although it was not shown that he participated in the crime or was possessed of any knowledge which might have exonerated defendant, the record established that the informant was aware of sufficient facts relative to defendant's possession and claimed ownership of the allegedly stolen vehicle to permit a speculative possibility that he could provide exculpatory evidence or information which could well have been investigated by an in camera hearing pursuant to *Evid. Code, § 1042*, subd. (d). *People v. Blouin* (1978, Cal App 2d Dist) 80 Cal App 3d 269, 145 Cal Rptr 701, 1978 Cal App LEXIS 1415.

Following a conviction for burglary and theft, an ineffective assistance of counsel claim failed because the issue of whether "were they lying" questions was prosecutorial misconduct had not been addressed in California, and defense counsel could not be held responsible for failing to anticipate how the uncertainty would be resolved and therefore failing to object. Moreover, it was not reasonably probable that defendant would not have been convicted if the questions had not been asked because the evidence was overwhelming that a rental truck did not enter a distribution

center before defendant came on duty as a security guard and that the truck could not have entered, taken a position at the loading dock, and been loaded with stolen batteries without defendant's knowledge and assistance. *People v. Foster* (2003, Cal App 2d Dist) 111 Cal App 4th 379, 3 Cal Rptr 3d 535, 2003 Cal App LEXIS 1249, review denied (2003, Cal) 2003 Cal LEXIS 8711.

33. Questions of Law and Fact

It was for jurors to determine whether defendant charged with theft of automobile complied with agreement entitling him to possession for limited time only, and it was for them to determine his intent from evidence that he failed to return vehicle on expiration of such time and paid owner nothing. *People v. Gerundo* (1952, Cal App) 112 Cal App 2d 797, 247 P2d 374, 1952 Cal App LEXIS 1104, cert den (1953) 344 US 936, 73 S Ct 507, 97 L Ed 720, 1953 US LEXIS 2420.

In prosecution of union officers for grand theft by embezzlement, based on paying union less than they received from automobile dealer for sales of used cars of union, whether defendants were purchasers or trustees was question of fact, as was issue whether they appropriated property "openly and avowedly, and under claim of title preferred in good faith." *People v. Clancy* (1960, Cal App 1st Dist) 184 Cal App 2d 403, 7 Cal Rptr 532, 1960 Cal App LEXIS 1887.

In prosecution for grand theft by false pretenses, intent to defraud is question of fact to be determined from all circumstances of case, and it may be, and usually must be, inferred circumstantially. *Perry v. Superior Court of Los Angeles County* (1962) 57 Cal 2d 276, 19 Cal Rptr 1, 368 P2d 529, 1962 Cal LEXIS 172.

Intent to commit grand theft is question of fact that may be inferred from circumstances. *People v. Rosson* (1962, Cal App 2d Dist) 202 Cal App 2d 480, 20 Cal Rptr 833, 1962 Cal App LEXIS 2505.

In a prosecution for grand theft on theory defendant obtained money by false pretenses, defendant's intent to defraud is question of fact to be determined from all facts and circumstances of case. *People v. Causey* (1963, Cal App 2d Dist) 220 Cal App 2d 641, 34 Cal Rptr 43, 1963 Cal App LEXIS 2297, cert den (1964) 376 US 959, 11 L Ed 2d 976, 84 S Ct 981, 1964 US LEXIS 1649.

In prosecution for grand theft, any conflict or ambiguity in testimony by prosecution witness that around eight suits were stolen, followed by affirmation when asked if eight suits were there, was properly resolved by trier of fact. *People v. Cook* (1965, Cal App 2d Dist) 233 Cal App 2d 435, 43 Cal Rptr 646, 1965 Cal App LEXIS 1377.

In a prosecution for grand theft where the defense was that there was no intent to steal because defendant had permission to take the items under an agreement with their owner, the nature of the agreement and defendant's intent when he took the items were questions of fact; the trier of fact had the exclusive province to determine the credibility of the witnesses and resolve the conflicts in the evidence. *People v. Holmes* (1970, Cal App 2d Dist) 5 Cal App 3d 21, 84 Cal Rptr 889, 1970 Cal App LEXIS 1408.

In a prosecution for grand theft (*Pen C* § 487, subd. 1) of airplane parts, the question as to whether a witness who received the stolen parts and testified against defendant was an accomplice was a question of fact, and the court's finding that he was not an accomplice was supported by the record where it appeared from the witness' testimony and the reasonable inferences drawn therefrom that all conversations between defendant and the witness prior to the theft were vague and unspecific; that no agreement as to the time and place of the delivery of the parts, or as to their price, were reached until after the theft; and that generally no firm arrangements between defendant and the witness existed prior to the theft. *People v. Smith* (1972, Cal App 2d Dist) 26 Cal App 3d 404, 102 Cal Rptr 625, 1972 Cal App LEXIS 952.

In a prosecution of an attorney for issuing a check without sufficient funds with intent to defraud, and for grand theft, in which it appeared that the attorney, whose account with a brokerage firm had been garnished, subsequently opened a new account with an out-of-town check, then closed the account and received and cashed the brokerage firm's

check therefor, which was in an amount approximately equal to the garnished account, after which payment on the out-of-town check was stopped, the attorney's acquittal on the check charge was not res judicata on the issue of his guilt for grand theft, where the trial court, as trier of fact, concluded on sufficient evidence that the intent to defraud was formed in the attorney's mind after the out-of-town check was delivered to the brokerage firm, but on or before the date on which he obtained and cashed the brokerage firm's check closing out his new account. *People v. Silver* (1975, Cal App 2d Dist) 47 Cal App 3d 837, 121 Cal Rptr 153, 1975 Cal App LEXIS 1071.

34. Instructions

Where prosecuting witness testified that on day after larceny he found, in possession of defendant, certain pieces of cow's hide and her horns, and court subsequently instructed jury in language of statute that "all persons slaughtering cattle must keep hides, with ears attached, for fifteen days, and all persons having such hides in their possession must exhibit same for examination, on demand being made by any person," instruction was erroneous in that its effect was to invoke against defendant commission of another crime for purpose of establishing his guilt of larceny. *People v. Tipton* (1887) 73 Cal 405, 14 P 894, 1887 Cal LEXIS 686.

Instruction to effect that if defendant, accused of grand larceny in stealing and carrying away steer, did not kill it, but, after it was killed by another person, feloniously assisted to take and carry it away with intent to deprive owner of it, he was guilty, was erroneous in that it disregarded requirement as to value of property taken. *People v. Smith* (1896) 112 Cal 333, 44 P 663, 1896 Cal LEXIS 685.

It was sufficient for court to give correctly definition of offense of grand larceny in taking property from person of another, in general terms of statute, unless requested by defendant to give more particular charge as to what constituted taking from person, within meaning of statute, in which case it was duty of court to give such instruction. *People v. Appleton* (1898) 120 Cal 250, 52 P 582, 1898 Cal LEXIS 744.

Ordinarily it is not misleading and erroneous for the trial court to instruct the jury on grand larceny by using the language in the statute. *People v. Ruiz* (1904) 144 Cal 251, 77 P 907, 1904 Cal LEXIS 681.

In prosecution for grand theft of automobile, instructions may be sufficient without telling jury that automobile must be feloniously driven away "with intent to permanently deprive the owner thereof." *People v. Israel* (1949, Cal App) 91 Cal App 2d 773, 206 P2d 62, 1949 Cal App LEXIS 1300, cert den (1949) 338 US 838, 70 S Ct 50, 94 L Ed 512, 1949 US LEXIS 2059, rehearing denied (1949) 338 US 882, 70 S Ct 150, 94 L Ed 541, 1949 US LEXIS 1730.

Where jury contrary to explicit instructions, returns verdict of guilty of two offenses on a single count, under this section and Veh C § 503, the action of the court in further instructing the jury to make a choice between the two verdicts already reached cannot be construed as reflecting a feeling of hostility toward the defendant or as a remark operating to his prejudice. *People v. Wissenfeld* (1951) 36 Cal 2d 758, 227 P2d 833, 1951 Cal LEXIS 225.

In prosecution for theft of county welfare funds, where it appeared defendant was guilty of theft by false pretenses, but that she obtained number of payments, each less than \$200 but aggregating more than that sum, it was proper to instruct jury that if several acts of taking are done pursuant to initial design to obtain from owner property having value exceeding \$200 and if value of property taken exceeds \$200, there is one crime of grand theft, but that if there is no such initial design, the taking of any property having value not exceeding \$200 is petty theft. *People v. Bailey* (1961) 55 Cal 2d 514, 11 Cal Rptr 543, 360 P2d 39, 1961 Cal LEXIS 231.

In prosecution for grand theft and for conspiracy to commit grand theft through fraudulent receipt of child welfare payments, instruction that Welfare Department was justified in relying on material information given by defendants respecting income received or changes in relationship did not tell jury that defendants had in fact misrepresented their income or relationship, and ultimate question of presence or absence of felonious intent in giving information or making unkept promises to department was left for jury determination. *People v. Wood* (1963, Cal App 4th Dist) 214 Cal App

2d 298, 29 Cal Rptr 444, 1963 Cal App LEXIS 2607.

Though evidence failed to show any money or property was actually taken from victims, trial court did not err in giving an instruction, in prosecution for attempted grand theft, on when property is taken from person, this instruction having been given to indicate that there is no requirement in law that certain sum of money be taken to constitute grand theft from person. *People v. Twiggs* (1963, Cal App 2d Dist) 223 Cal App 2d 455, 35 Cal Rptr 859, 1963 Cal App LEXIS 1554.

In prosecution for attempted grand theft from person, it was proper to instruct jury on abandonment of attempt, such instruction being given to explain to jury that, once an accused has committed sufficient acts to constitute attempt, he has committed crime of attempt, and that he cannot avoid responsibility for attempt by abandoning his purpose to commit substantive crime. *People v. Twiggs* (1963, Cal App 2d Dist) 223 Cal App 2d 455, 35 Cal Rptr 859, 1963 Cal App LEXIS 1554.

Though conviction of taking automobile for temporary use without owner's consent (*Pen C § 499b*) after trial on charges of grand theft auto (*Pen Code § 487*, subd 3) and taking automobile without owner's consent (*Veh Code § 10851*) was conviction of offense not necessarily included in grand theft auto, reversal of defendant's conviction was not required where evidence supported finding of guilty on two felonies charged as well as misdemeanor of which defendant was convicted. *People v. Powell* (1965, Cal App 2d Dist) 236 Cal App 2d 884, 46 Cal Rptr 417, 1965 Cal App LEXIS 887.

In a prosecution for conspiracy to commit grand theft, and for grand theft based on misrepresentations in the sale of trust indentures, two sales of similar trust indentures to third parties other than the victims properly formed the basis for an instruction on other offenses, where there was evidence that the purchasers relied to some extent on written and oral representations made by defendants, where, although they may have relied exclusively on advice of persons other than defendants, the evidence of defendants' false representations was sufficient to show the commission of attempted grand theft which may be committed even though the intended victim does not rely on the false representations, and where the sales to the third persons were similar in all material respects to those forming the basis for the grand theft counts and were relevant to show intent as well as to corroborate the evidence of false representations. *People v. Lynam* (1968, Cal App 4th Dist) 261 Cal App 2d 490, 68 Cal Rptr 202, 1968 Cal App LEXIS 1769.

In a prosecution for grand theft by false pretenses the trial court properly instructed the jury on intent to defraud, where, though the instructions did not state that the intent to defraud must have existed at the very time the alleged false representation was made in order that the offense charged be proved, the instructions did, in substance, set forth that the offense included the element that defendant must have intended to defraud the victim, and that the act complained of must have been accompanied by a specific intent by defendant to defraud the victim, and that the specific intent to defraud must have existed in the mind of defendant, without which the crime charged was not committed. *People v. Hedrick* (1968, Cal App 2d Dist) 265 Cal App 2d 392, 71 Cal Rptr 352, 1968 Cal App LEXIS 1632.

In a prosecution for a grand theft of an automobile (*Pen C § 487*, subd. 3), it was proper for the trial court to instruct the jury that a presumption of embezzlement arises by statute whenever a person intentionally or wilfully fails to return a leased vehicle within five days after the rental agreement has expired (*Veh Code, § 10855*), where, though defendant was not charged with a violation of § 10855, that section merely establishing a rule of evidence to be applied when embezzlement is charged, the information charged embezzlement as included in the term "theft," and the evidence was consistent with the theory of embezzlement. *People v. Washburn* (1968, Cal App 2d Dist) 265 Cal App 2d 665, 71 Cal Rptr 577, 1968 Cal App LEXIS 1663.

In a prosecution for grand theft from the person, the trial court's instruction to the jury on the limited purpose for which evidence of other crimes was received could not be said to be so broad, vague, and uncertain as to permit the jurors to consider the evidence for any purpose they saw fit, where, although the instruction was not a model to be followed, it nevertheless explained that such evidence was not admitted to show defendant's criminal disposition and

made it reasonably clear that evidence of other thefts was received for the sole purpose of establishing defendant's identity as the person who committed the thefts charged, that he was familiar with and had the means to commit the offenses, and that all of the crimes were part of a common plan, scheme, or design; in any event, if defendant believed that the instruction was too broad and vague, he should have tendered his own instruction containing clearer and more restrictive language. *People v. Henley* (1969, Cal App 5th Dist) 269 Cal App 2d 263, 74 Cal Rptr 611, 1969 Cal App LEXIS 1643.

In a prosecution for grand theft from the person, the trial court's instruction to the jury on the limited purpose for which evidence of other crimes was received could not be construed as permitting the jury to consider defendant's prior felony convictions for the purposes stated in the instruction, where the instruction did not refer to convictions, but to evidence of commission of other crimes, where the jury was told to weigh such evidence in the same manner as other evidence, and where the court also instructed the jury that defendant's prior felony convictions could be considered only for the purpose of determining his credibility. *People v. Henley* (1969, Cal App 5th Dist) 269 Cal App 2d 263, 74 Cal Rptr 611, 1969 Cal App LEXIS 1643.

In a prosecution for attempted theft by false pretenses the trial court's instruction on the specific intent required for theft was sufficient where, although the trial court's instruction was merely a reading of the definition of the crime of theft by false pretenses, it clearly distinguished the two elements of the crime, and it was clear from the instruction that intent to defraud was an essential element of the crime which had to be proved apart from proof of the falsity of the alleged pretense. *People v. Fujita* (1974, Cal App 4th Dist) 43 Cal App 3d 454, 117 Cal Rptr 757, 1974 Cal App LEXIS 1330, cert den (1975) 421 US 964, 95 S Ct 1952, 44 L Ed 2d 451, 1975 US LEXIS 1569.

In a prosecution for theft based on defendant's appropriation to his own use of securities which he allegedly knew secured his loan from a bank but which accidentally came into his possession, he was not prejudiced by the giving of inapplicable instructions and failure to give an instruction on the embezzlement theory justified by the evidence, where the only factual issue was his knowledge of the bank's right to possession, where the jurors had resolved this issue against him, and therefore would necessarily have convicted him even if more completely instructed. *People v. Newman* (1975, Cal App 2d Dist) 49 Cal App 3d 426, 122 Cal Rptr 455, 1975 Cal App LEXIS 1224.

In a prosecution of defendant for grand theft (*Pen C* §§ 484 and 487, subd. (1)), arising out of the theft of two leather jackets, the trial court did not commit error in instructing the jury that the fair market value of the stolen property is the highest price in terms of money for which the property would have sold in the open market at the time and place of the theft, since the phrase "highest price" was defined in terms of what the articles would be sold for in the open market if neither buyer nor seller was under an urgent necessity to either buy or sell them, and where the instruction did not require that the jury accept whatever value was placed on the article either by its owner or by an expert, but left the question of valuation to the jury's determination. *People v. Pena* (1977, Cal App 1st Dist) 68 Cal App 3d 100, 135 Cal Rptr 602, 1977 Cal App LEXIS 1302.

In a prosecution for grand theft (*Pen C* § 487, subd. 1), the jury was properly instructed as to asportation as a necessary element of the offense of theft by larceny. With respect to the element of asportation, the jury was instructed that "in order to constitute a carrying away, the property need not be actually removed from the premises of the owner. Any removal of the property from the place where it was kept or placed by the owner, done with the specific intent to deprive the owner permanently of his property...whereby the perpetrator obtains possession and control of the property for any period of time, is sufficient to constitute the element of carrying away." *People v. Houry* (1980, Cal App Dep't Super Ct) 108 Cal App 3d Supp 1, 166 Cal Rptr 705, 1980 Cal App LEXIS 2104.

In a grand theft prosecution, instructions to the jury with respect to the charges against defendants were proper, where the jury was instructed on theft by trick and device, theft by false pretenses, and embezzlement and there was sufficient evidence to support their conviction of at least one of those types of theft. It was unnecessary that the jury agree on which category of theft was committed, so long as there was sufficient evidence of at least one of the types of theft. The trial court was not required to instruct on its own motion on attempted grand theft, where the evidence

showed that if guilty at all, defendants were guilty of the substantive offense. The trial court did not err in failing to instruct on its own motion that a defendant's belief in good faith he is authorized to take money entrusted to him is a defense to embezzlement, where the jury was instructed that embezzlement consists of the fraudulent appropriation of money, and that an act committed or an omission made under an ignorance or mistake of fact that disproves any criminal intent is not a crime. *People v. Ramirez* (1980, Cal App 2d Dist) 109 Cal App 3d 529, 167 Cal Rptr 174, 1980 Cal App LEXIS 2183.

In a grand theft prosecution, the court did not err in instructing the jury to the effect that if they found defendant failed to deny evidence against him he could reasonably be expected to deny or explain, because of information within his knowledge, they could consider such failure as tending to indicate the truth of such evidence and as tending to support inferences unfavorable to defendant, where the record showed huge material gaps in the explanation offered by defendant in defense of the charges against him. The record showed he was never able to explain how a \$1.5 million loan for a restaurant in South America was made payable to him although he signed no loan papers, had no collateral, and had never met the alleged loan broker, and that he was unable to explain how the alleged loan for such a large amount could have no strings attached and could permit him to spend many thousand dollars from it for his own personal use. Even conceding submission of the instruction could have been erroneous, any such error would have been harmless in light of the incredibility of defendant's uncorroborated story. *People v. Ramirez* (1980, Cal App 2d Dist) 109 Cal App 3d 529, 167 Cal Rptr 174, 1980 Cal App LEXIS 2183.

In a prosecution for grand theft, the court did not err in submitting to the jury an instruction relating to flight of a person immediately after the commission of a crime as evidence of his guilt, where the instruction left it to the jury as to whether defendant's conduct constituted flight. The record showed that seven days before defendant was arrested boarding a flight for another country, a large sum of money had been credited into his account with a savings and loan association as the result of a fictitious wire transfer of funds from a bank supposed to have been "Union Bank." During the next several days funds from the account were used to obtain cashier's checks for thousands of dollars from the association and from other banks payable to defendant and to other payees specified by him. On the day before defendant's arrest funds from the account were used to obtain another cashier's check from the association for several hundred thousand dollars payable to defendant's brother, a codefendant. Under such circumstances a jury could infer a flight by defendant immediately after the commission of a crime. *People v. Ramirez* (1980, Cal App 2d Dist) 109 Cal App 3d 529, 167 Cal Rptr 174, 1980 Cal App LEXIS 2183.

Defendant was properly convicted of theft by false pretenses to obtain workers' compensation benefits under *Ins C* § 1871.4(a)(1), and grand theft by false pretenses. The trial court did not have to instruct the jury sua sponte on the difference between a statement of fact and of opinion. Even if defendant's statements to the insurance company, the doctor, and the WCAB were statements of opinion rather than fact, the jury impliedly determined that the statements were false because defendant did not honestly hold those opinions. The trial court had no duty to distinguish between the two categories because, under either category, the statements at issue were sufficient to support the crimes alleged. *People v. Webb* (1999, Cal App 2d Dist) 74 Cal App 4th 688, 88 Cal Rptr 2d 259, 1999 Cal App LEXIS 791, review denied (1999, Cal) 1999 Cal LEXIS 8438.

Where defendant promised to obtain software licenses for his employers and actually took the purchase money from one but never obtained the licenses for either employer, he was guilty of larceny by trick or device and attempted larceny by trick or device, not theft by false pretenses, because no title to the employers' money passed, and the fact that the jury was instructed; hence, the fact that the jury was instructed on theft by false pretenses as the theory of theft was merely a technical error which was harmless error because the People merely proved an additional element over what was required under the theory of larceny by trick or device. *People v. Traster* (2003, Cal App 2d Dist) 111 Cal App 4th 1377, 4 Cal Rptr 3d 680, 2003 Cal App LEXIS 1424, rehearing denied (2003, Cal App 2d Dist) 2003 Cal App LEXIS 1544, review denied (2003, Cal) 2003 Cal LEXIS 9694.

Trial court's adoption of the California Civil Code definition of undue influence and subsequent jury instruction that undue influence existed where a defendant took an unfair advantage of another's weakness of mind was error

because the undue influence instructions rendered persuasion short of coercion or misrepresentation sufficient to prove a theft, even where the victim did not lack the mental capacity to consent, and created a substantial risk of conviction whenever an accused benefited so greatly from a transaction that the jury was convinced that the victim acted unreasonably in entering into it. Subsequent instructions did not cure the problem because they incorporated the faulty definition of consent, and, because there was a reasonable probability that defendant's convictions for theft against an elder, in violation of *Pen C § 368(d)*, and grand theft, in violation of *Pen C § 487(a)*, were based on the legally insupportable theory that the victim's consent to the property transfers was undermined by defendant's exercise of undue influence, the instructional error was prejudicial. *People v. Brock* (2006, *Cal App 1st Dist*) 143 *Cal App 4th* 1266, 49 *Cal Rptr 3d* 879, 2006 *Cal App LEXIS* 1575, modified, rehearing denied (2006) 2006 *Cal. App. LEXIS* 1766.

35. Failure or Refusal To Instruct

In prosecution for grand larceny, defendant could not be prejudiced by refusal of requested instruction distinguishing between grand larceny and robbery. *People v. Clark* (1905) 145 *Cal* 727, 79 *P* 434, 1905 *Cal LEXIS* 614.

Where defendant and another were jointly charged with grand larceny, and evidence tended to show that larceny was result of their joint efforts, it was proper to refuse requested instruction to effect that unless jury were satisfied beyond reasonable doubt that defendant, and not someone else, took and carried away money from person of prosecuting witness, as alleged in information, they could not find defendant guilty. *People v. Clark* (1905) 145 *Cal* 727, 79 *P* 434, 1905 *Cal LEXIS* 614.

There is no error in failing to instruct the jury that they must agree on the method by which the theft was committed. *People v. Nor Woods* (1951) 37 *Cal 2d* 584, 233 *P2d* 897, 1951 *Cal LEXIS* 312, cert den (1952) 344 *US* 860, 73 *S Ct* 101, 97 *L Ed* 667, 1952 *US LEXIS* 1713.

Instructions negating embezzlement if defendant and prosecuting witness were engaged in joint enterprise when witness gave defendant money and property in question or if they were partners or joint owners at time he used money were properly refused in prosecution for grand theft where there was no substantial evidence to support defense theories of partnership, joint enterprise, or any other kind of joint ownership of property. *People v. Renkin* (1965, *Cal App 2d Dist*) 232 *Cal App 2d* 328, 42 *Cal Rptr* 657, 1965 *Cal App LEXIS* 1468.

Where defendants, aluminum siding salesmen, falsely represented to their victims that the contractual obligations to pay for the siding would be unsecured, when in fact the victims were duped into signing trust deeds, and the contractual promises to pay (which are "property" within the meaning of *Pen C § 487*, defining grand theft) all exceeded the sum of \$200, defendants were guilty, if at all, of grand theft, and an instruction on a lesser and included offense was properly excluded. *People v. Parker* (1967, *Cal App 2d Dist*) 255 *Cal App 2d* 664, 63 *Cal Rptr* 413, 1967 *Cal App LEXIS* 1326.

In a prosecution for conspiracy to commit grand theft and forgery, whereby defendants obtained loans from various lending institutions by passing fraudulent stocks off as genuine, there was no error in the court's failure to instruct the jury sua sponte that "wilful ignorance" of the victims constituted consent where ignorance or negligence is no defense to theft by false pretenses, and where there was no evidence that the lending institutions consented to use fraudulent stocks as security for their loans, but rather ample evidence that such institutions relied on the representations made by defendant that the stock was that of a Delaware corporation listed on the American Exchange and where there was also evidence that the banks would not have made the loans if they had known that the stock was not genuine. *People v. Katzman* (1968, *Cal App 1st Dist*) 258 *Cal App 2d* 777, 66 *Cal Rptr* 319, 1968 *Cal App LEXIS* 2474, overruled *Rhinehart v. Municipal Court* (1984) 35 *Cal 3d* 772, 200 *Cal Rptr* 916, 677 *P2d* 1206, 1984 *Cal LEXIS* 164, overruled in part as stated *Perryman v. Superior Court* (2006, *Cal App 2d Dist*) 141 *Cal App 4th* 767, 46 *Cal Rptr 3d* 306, 2006 *Cal App LEXIS* 1135.

In a prosecution for grand theft (*Pen C § 487*, subd. (1)), based on defendant's scheme to defraud his girlfriend's elderly parents of their life savings, the failure of the court to instruct sua sponte on the law of accomplices in regard to

the girlfriend's testimony was not error where there was no evidence that the girlfriend had the specific intent to permanently deprive her parents of their savings, but believed that defendant was acting in her parents' behalf in regard to the assets entrusted to him. *People v. Kageler* (1973, *Cal App 2d Dist*) 32 *Cal App 3d* 738, 108 *Cal Rptr* 235, 1973 *Cal App LEXIS* 1014.

The fact that a victim was apparently dead from a bullet fired by defendant at the time defendant took his money moments after the shooting, did not alter the character of the theft as theft from the person, and in a prosecution of defendant the trial court properly refused an instruction that defendant could be convicted of the offense of theft of articles from dead bodies (*Pen C* § 642), and defendant was properly convicted of the crime of grand theft person (*Pen C* § 487, subd. (2)). It is sufficient for purposes of robbery or grand theft from the person that the murder and taking be part of one continuous transaction. *People v. McGrath* (1976, *Cal App 3d Dist*) 62 *Cal App 3d* 82, 133 *Cal Rptr* 27, 1976 *Cal App LEXIS* 1882.

36. Verdict and Judgment

Where information charged defendant with grand larceny in taking property from person of another, verdict of guilty was sufficient. *People v. Price* (1885) 67 *Cal* 350, 7 *P* 745, 1885 *Cal LEXIS* 641.

In prosecution for grand larceny, verdict finding defendant "guilty as charged" is sufficient. *People v. Manners* (1886) 70 *Cal* 428, 11 *P* 643, 1886 *Cal LEXIS* 807.

Error in adjudging defendant guilty of two counts of grand theft, where there is only one theft is not cured by the fact that the sentences are ordered to run concurrently. *People v. Nor Woods* (1951) 37 *Cal 2d* 584, 233 *P2d* 897, 1951 *Cal LEXIS* 312, cert den (1952) 344 *US* 860, 73 *S Ct* 101, 97 *L Ed* 667, 1952 *US LEXIS* 1713.

In prosecution for forgery and for grand theft by false pretenses, though charges arising out of same transactions, fact that defendant was acquitted of forgery charge and found guilty of grand theft did not make conviction improper, since verdicts may be sustained even if they are inconsistent in fact. *People v. Caruso* (1959, *Cal App 2d Dist*) 176 *Cal App 2d* 272, 1 *Cal Rptr* 428, 1959 *Cal App LEXIS* 1480, cert den (1960) 363 *US* 819, 4 *L Ed 2d* 1517, 80 *S Ct* 1259, 1960 *US LEXIS* 977.

If court believed that criminal intent to defraud prosecuting witness of his money was formed before defendant obtained money, conviction of grand theft was proper under theory of larceny by trick and device, but if court believed that defendant did not form such intent until after he obtained money, it could find him guilty of grand theft on theory of embezzlement. *People v. Murdock* (1960, *Cal App 2d Dist*) 183 *Cal App 2d* 861, 7 *Cal Rptr* 293, 1960 *Cal App LEXIS* 1842.

Judgment convicting defendant on three counts of attempted grand theft from person was not void for uncertainty on ground that the People's evidence showed four offenses while information and ultimate conviction related to only three offenses where, though the People presented evidence of defendant's act in touching clasp of woman's purse as well as his acts in picking three men's pockets, the information charged crimes against three John Does, and prosecutor made it clear to jury in his closing argument that the three crimes defendant was charged with were his acts against the three men; evidence of defendant's act relating to the woman was properly admitted as evidence tending to show defendant's intent as it related to acts allegedly directed against *John Does*. *People v. Twiggs* (1963, *Cal App 2d Dist*) 223 *Cal App 2d* 455, 35 *Cal Rptr* 859, 1963 *Cal App LEXIS* 1554.

In a prosecution for grand theft based on obtaining county aid by false pretenses, a conviction of petty theft was an acquittal of grand theft and was either a mere compromise verdict or an indication that no more than one of the county's monthly payments was paid and received as a result of defendant's false pretenses. *People v. Samuel* (1966, *Cal App 1st Dist*) 245 *Cal App 2d* 210, 53 *Cal Rptr* 887, 1966 *Cal App LEXIS* 1457.

In a prosecution for grand theft (*Pen C* § 487) and forgery (*Pen C* § 470), on conviction thereof the sentencing

procedure of the trial court was proper and did not violate the spirit of *Pen C § 654*, proscribing double punishment, where the judgment stated that execution of sentence on grand theft was stayed pending any appeal and during service of any sentence of the Adult Authority pronounced in connection with the forgery conviction, and that at the completion of the service of the forgery sentence, the stay was to become permanent. *People v. Kagan* (1968, Cal App 1st Dist) 264 Cal App 2d 648, 70 Cal Rptr 732, 1968 Cal App LEXIS 2129, cert den (1969) 394 US 911, 89 S Ct 1027, 22 L Ed 2d 224, 1969 US LEXIS 2364.

In a prosecution for grand theft of an automobile (*Pen C § 487* subd 3), which defendant rented before the offense was committed, defendant was not convicted of a crime other than charged or than supported by the evidence, and thus, the judgment of conviction was proper, where, though an instruction erroneously denominated that crime as "larceny," and defendant gained possession of the automobile by consent, and the verdict found defendant guilty of larceny, defendant was properly charged with grand theft in the information, the instruction properly defined the elements of theft, the jury was not confused and must have made a finding of theft as charged in the information and as defined in the instruction, and the offense of theft included common-law larceny, as well as larceny by trick and device and embezzlement (*Pen C §§ 484, 490a*). *People v. Washburn* (1968, Cal App 2d Dist) 265 Cal App 2d 665, 71 Cal Rptr 577, 1968 Cal App LEXIS 1663.

In a prosecution for grand theft-auto (*Pen C § 487*, subd. (3)) and taking or driving a vehicle without the owner's consent (*Veh Code, § 10851*), it was error to enter judgment for both offenses where, although the two counts of the information did not purport to cover the same offense, the offense of grand theft was alleged to have occurred when the automobile was taken from a dealer's lot, and the taking and driving was allegedly the act of defendant in driving the same stolen vehicle on the day he was arrested, where the same evidence was relied upon to prove both counts, where all of the elements of *Veh Code, § 10851*, were included within grand theft-auto, and where defendant's taking of the automobile and retaining dominion over it until he was arrested constituted but one continuous, indivisible, inseparable act or course of conduct; thus the taking or driving was a lesser included offense under the charge of grand theft-auto, which need not have been pleaded as a separate count and could not be transferred into a separate, severable offense by doing so. *People v. Pater* (1968, Cal App 3d Dist) 267 Cal App 2d 921, 73 Cal Rptr 823, 1968 Cal App LEXIS 1471.

A judgment of conviction had to be modified, where defendant was convicted of conspiracy to commit grand theft and of nine separate counts of grand theft, and was sentenced to state prison for concurrent terms on each count, and where the objective of the conspiracy was the commission of the acts of grand theft of which defendant was convicted; thus, the sentences, as so imposed, violated the prohibition against multiple punishment set forth in *Pen C § 654*. *People v. Cohen* (1970, Cal App 2d Dist) 12 Cal App 3d 298, 90 Cal Rptr 612, 1970 Cal App LEXIS 1629.

Imposition, pursuant to *Pen C §§ 487*, subd. 2, 489, of a state prison term for the taking of property of a value of less than \$200 from the person did not violate constitutional proscriptions against cruel and unusual punishment, where it could not be said that the maximum prison term provided in *Pen C § 489*, is so disproportionate to the crime as to shock the conscience and offend notions of human dignity, and where the nature of defendant's offense and his prior history justified a severe penalty. *People v. Smith* (1974, Cal App 2d Dist) 42 Cal App 3d 706, 117 Cal Rptr 88, 1974 Cal App LEXIS 1259.

A defendant who pleaded guilty to a charge of grand theft (*Pen C § 487*), and who admitted two prior convictions properly had two one-year enhancements added to the middle base term of two years, where the original complaint alleged a 1976 burglary conviction and where the amended complaint specifically charged that defendant had served separate prison terms for the additional alleged prior convictions. By admitting a second prior felony, as alleged in the amended complaint, defendant admitted that he had served a separate term therefor, thus satisfying the requirement for prior separate prison terms for each sentence enhancement imposed (*Pen C § 667.5* subd (b)). *People v. Welge* (1980, Cal App 4th Dist) 101 Cal App 3d 616, 161 Cal Rptr 686, 1980 Cal App LEXIS 1427.

The trial court, in denying probation to a defendant convicted of grand theft and in imposing as its sentence choice the upper prison term for that offense, did not err with respect to its sentence choice, where it adequately stated its

reasons for denying probation and for imposing the upper prison term for the grand theft conviction. The record showed that the planning and sophistication with which the crime was carried out indicated premeditation, and defendant had two other convictions involving fraud on restaurants where he had worked. The trial record supported the inference of defendant's heavy involvement in planning and carrying out the crime. *People v. Ramirez* (1980, Cal App 2d Dist) 109 Cal App 3d 529, 167 Cal Rptr 174, 1980 Cal App LEXIS 2183.

In a criminal prosecution, it was erroneous to convict defendant of both second degree robbery under *Pen C* § 211, and grand theft of an automobile under former *Pen C* § 487, subd. 3, (see now *Pen C* § 487(d)(1)), former *Pen C* § 487h, subd. (a), at time of offense. Defendant had ordered the victim at gunpoint to leave the victim's automobile, defendant took the victim's wallet and keys, and defendant and a companion drove the automobile away. Count 1 of the information alleged the robbery of the victim and count 2 alleged grand theft of a motor vehicle of the same victim, both of which occurred on the same date. The pleading contained no further recitation of a connection between the offenses; however, the evidence at the preliminary hearing and at trial unequivocally established that the automobile was part of the loot stolen in the robbery. The specific language of the pleading alleged the automobile theft as a lesser, necessarily included offense within the charged robbery, since the offenses involved the same victim on the same date. A defendant committed only one robbery no matter how many items he or she stole from a single victim pursuant to a single plan or intent. *People v. Rush* (1993, Cal App 2d Dist) 16 Cal App 4th 20, 20 Cal Rptr 2d 15, 1993 Cal App LEXIS 563, review denied (1993, Cal) 1993 Cal LEXIS 4430, overruled *People v. Montoya* (2004) 33 Cal 4th 1031, 16 Cal Rptr 3d 902, 94 P3d 1098, 2004 Cal LEXIS 7234.

In a prosecution for a series of Medi-Cal fraud (*W & I C* § 14107), and grand theft (*Pen C* § 487, former subd. 1, now subd. (a)) offenses committed by a physician, conviction for all of the separate offenses was proper, as aggregation of all of them into a single offense was not appropriate. The doctrine that provides for the aggregation of a series of misdemeanor petty thefts for the purpose of charging and convicting a defendant of one count of felony grand theft does not apply to aggregate either multiple instances of Medi-Cal fraud or a grand theft offense with a Medi-Cal fraud offense. It is the act of a physician intentionally submitting a false or fraudulent claim that constitutes the Medi-Cal fraud offense rather than the amount of money obtained through the fraudulent act; thus, the essence of that offense is the "means," not the "ends" of the offense. Furthermore, the essence of the grand theft offense, the taking by false pretenses of an amount exceeding \$400, is different from the essence of the Medi-Cal fraud offense. *People v. Drake* (1996, Cal App 4th Dist) 42 Cal App 4th 592, 49 Cal Rptr 2d 765, 1996 Cal App LEXIS 107, review denied (1996, Cal) 1996 Cal LEXIS 2032.

Upper-term sentences for conspiracy to commit grand theft and commercial burglary did not violate the constitutional prohibition against punishment increased by the use of facts other than those based solely on a jury verdict or a plea. Defendants had waived their right to a jury trial and agreed to allow the court to decide their guilt or innocence as well as their sentences; in its capacity as fact-finder, the court occupied the same position as the jury and was similarly able to decide whether aggravating circumstances existed beyond a reasonable doubt. *People v. Fernandez* (2004, Cal App 4th Dist) 123 Cal App 4th 137, 20 Cal Rptr 3d 54, 2004 Cal App LEXIS 1737, review gr, depublished (2005) 23 Cal. Rptr. 3d 695, 105 P.3d 116, 2005 Cal. LEXIS 847, review dismissed (2005) 34 Cal. Rptr. 3d 193, 119 P.3d 958, 2005 Cal. LEXIS 9967, 2005 D.A.R. 11115.

E. REVIEW

37. In General

In prosecution in which defendants were charged, in one count, with crime of robbery and, in second count, with crime of grand larceny, objection that two offenses were not properly joined in same information, in that alleged crimes were not connected together in their commission and were not of same class of crimes, could and should have been raised by demurrer, and where objection was not so raised it could not be considered by appellate court. *People v. Palumbo* (1932, Cal App) 127 Cal App 703, 16 P2d 316, 1932 Cal App LEXIS 330.

In prosecution for grand theft of automobile, fact that body of accusation charged greater degree of crime, and did not include lesser offense of which defendants might have been convicted, was not subject of appeal, and designation of offense charged was within discretion of grand jury or prosecuting officer, and thereafter could be controlled by trial judge. *People v. Deininger* (1940, Cal App) 36 Cal App 2d 649, 98 P2d 526, 1940 Cal App LEXIS 766.

Where defendant, in prosecution for grand theft, was fully apprised of exact nature of offense with which she was charged, she could not claim prejudice on appeal on ground that she should have been charged with embezzlement of public funds. *People v. Coe* (1959, Cal App 2d Dist) 171 Cal App 2d 786, 342 P2d 43, 1959 Cal App LEXIS 1897.

On appeal from conviction of grand theft of county welfare funds by false pretenses, it was too late for defendant to object for first time that testimony of investigator for district attorney relating to investigation he had made in Mexico was inadmissible because investigator did not have permission required by laws of that country; in addition there was no showing that investigator did not have such permission nor was any evidence respecting laws of Mexico introduced on which court could base judicial notice of requirements thereof. *People v. De Casaus* (1961, Cal App 4th Dist) 194 Cal App 2d 666, 15 Cal Rptr 521, 1961 Cal App LEXIS 1863.

The propriety of an information charging defendant with three counts of attempted grand theft from the person (*Pen C* §§ 487, 664, subd. 2), after the magistrate had dismissed the first two counts and held defendant to answer on the third count only, could not be considered on appeal, even assuming that the first two attempts were not sufficiently related to the "transaction" in the third count to be included in the information, where no motion pursuant to *Pen C* § 995, to set aside the information, or any part of it, was made in the trial court (*Pen C* § 996). *People v. Euell* (1968, Cal App 2d Dist) 260 Cal App 2d 441, 67 Cal Rptr 148, 1968 Cal App LEXIS 1874.

On appeal after a conviction of grand theft, defendant could not successfully assert error by the trial judge in putting questions to the "shower" at a jury view of the premises where the alleged offense was committed, and the silence of defendant's counsel constituted a waiver where defendant made no objection to the procedure, and his counsel did not refer to any essential factor of the jury's visit in subsequent cross-examination of the "shower." *People v. Walther* (1968, Cal App 5th Dist) 263 Cal App 2d 310, 69 Cal Rptr 434, 1968 Cal App LEXIS 2209.

In a prosecution for grand theft, the admission by the court of prosecutrix' hearsay testimony, without objection by defendant, for the purpose of showing her state of mind in advancing funds to defendant, and the court's comment in admitting the testimony that this testimony was filling in the picture and was not binding on the defendant was not prejudicial, where there was no reference by the court that this testimony bore on the crime of embezzlement. *People v. Kagan* (1968, Cal App 1st Dist) 264 Cal App 2d 648, 70 Cal Rptr 732, 1968 Cal App LEXIS 2129, cert den (1969) 394 US 911, 89 S Ct 1027, 22 L Ed 2d 224, 1969 US LEXIS 2364.

In a prosecution for grand theft (*Pen C* § 487), a remark by the trial judge made in chambers that embezzlement was a possibility, being made out of the jury's presence, could not have been prejudicial to defendant or constitute misconduct. *People v. Kagan* (1968, Cal App 1st Dist) 264 Cal App 2d 648, 70 Cal Rptr 732, 1968 Cal App LEXIS 2129, cert den (1969) 394 US 911, 89 S Ct 1027, 22 L Ed 2d 224, 1969 US LEXIS 2364.

On appeal from a conviction of grand theft and burglary, no consideration could be given to defendant's claim of ineffective assistance of counsel based on a failure to request an instruction on the defense of claim of right to the property involved; under the circumstances of the case the question was one of tactics. *People v. Stevens* (1969, Cal App 2d Dist) 269 Cal App 2d 470, 75 Cal Rptr 118, 1969 Cal App LEXIS 1664.

A judgment convicting defendant of grand theft (*Pen C* § 487 subd. 1), required reversal where, although he was prosecuted for obtaining unemployment benefits under fictitious names for nonexistent former employments, another case had ruled, during the pendency of defendant's appeal, that a felony prosecution for grand theft is foreclosed when the act charged comes under a misdemeanor statute requiring that the victim "actually parted with value," thus requiring defendant in the instant case to be prosecuted for the misdemeanor offense under *Unempl. Ins. Code*, § 2101. *People v.*

Koch (1970, Cal App 2d Dist) 4 Cal App 3d 270, 84 Cal Rptr 629, 1970 Cal App LEXIS 1526.

Reversal of convictions of grand theft (*Pen C § 487(1)*) was compelled, where the thefts charged arose from fraudulent representations made to the Department of Employment of the State of California, and where, thus, the offenses, should have been charged as misdemeanors under the special provision of *Unemp. Ins. Code, § 2101*. *People v. Bogart (1970, Cal App 2d Dist) 7 Cal App 3d 257, 86 Cal Rptr 737, 1970 Cal App LEXIS 2158.*

In a prosecution for grand theft in a purse snatching in violation of *Pen C § 487*, subd. 2, it was an abuse of discretion and reversible error for the trial judge to deny defendant's motion for a mistrial on the grounds that four of the jurors, after having been impaneled but before the taking of testimony began, read a newspaper story which had identified the case by name and related that a codefendant had pleaded guilty and had been sentenced. Defendant's motion for a mistrial called for the court to weigh the danger of prejudice to the defense against the practicability of reducing or eliminating that danger by choosing a new jury. The likelihood of prejudicial effect on the minds of the four jurors who saw the article was obviously substantial, and the fact that eight jurors had not seen the article at all indicated there would have been no difficulty, if a mistrial had been granted, in selecting a new jury free of any improper influence. *People v. Thomas (1975, Cal App 1st Dist) 47 Cal App 3d 178, 120 Cal Rptr 637, 1975 Cal App LEXIS 1009.*

On appeal by an attorney from his conviction of grand theft arising out of his obtaining by false representation and trickery a check from a brokerage firm in an amount approximately equal to funds of the attorney being held by the brokerage firm under a writ of garnishment, the fact that the writ of garnishment was subsequently determined to be void would not be relevant evidence that such fact figured in the attorney's state of mind on the date when he obtained the firm's check, where the attorney did not mention that fact in any of his conversations with the brokerage firm or in his testimony in the trial court. *People v. Silver (1975, Cal App 2d Dist) 47 Cal App 3d 837, 121 Cal Rptr 153, 1975 Cal App LEXIS 1071.*

Defendant convicted of grand theft waived his right to object on appeal from his conviction to the probation report submitted for the trial court's consideration in determining its sentence choice for defendant, where he had failed to raise that objection prior to his appeal. There was no showing in the record that defendant lacked adequate notice of the report or the circumstances specified therein that could be relied on by the court in support of its imposition of the upper prison term as its sentence choice, or that defendant was deprived of the effective assistance of counsel by the omission of trial counsel to raise the objection. *People v. Ramirez (1980, Cal App 2d Dist) 109 Cal App 3d 529, 167 Cal Rptr 174, 1980 Cal App LEXIS 2183.*

The question of intent to defraud under *Pen C § 487* (grand theft) is one of fact. Thus, an appellate court will leave undisturbed the findings of the jury on the issue of the specific intent necessary for a conviction of grand theft where conflicting inferences might reasonably be drawn from the evidence. (Per Newsom, J., with Racanelli, P. J., and Grodin, J., concurring in the result only.) *People v. Gonda (1981, Cal App 1st Dist) 119 Cal App 3d 67, 173 Cal Rptr 398, 1981 Cal App LEXIS 1729.*

38. Evidence

Where one was convicted of grand theft, and the evidence clearly disclosed the felonious taking but was insufficient to show that the value of the property was over \$200, a new trial was not necessary, the appellate court being authorized to reduce the offense to that of petty theft. *People v. Simpson (1938, Cal App) 26 Cal App 2d 223, 79 P2d 119, 1938 Cal App LEXIS 1023.*

Where the record is silent as to whether or not the value of the property taken is over \$200, an appellate court must reverse a conviction of grand theft based thereon. *People v. Coon (1940, Cal App) 38 Cal App 2d 512, 101 P2d 565, 1940 Cal App LEXIS 675.*

Alleged errors in giving and refusal of instructions in a grand theft case do not warrant reversal of a judgment of

conviction, where the evidence sustains the verdict of guilty on each count charging such offense and there has not been a miscarriage of justice. *People v. Scott* (1952, Cal App) 112 Cal App 2d 350, 246 P2d 122, 1952 Cal App LEXIS 1031, overruled *People v. Bailey* (1961) 55 Cal 2d 514, 11 Cal Rptr 543, 360 P2d 39, 1961 Cal LEXIS 231.

Appellate court cannot reweigh evidence in grand theft case and accept defendant's testimony that there was loan of money in question to him by prosecuting witness. *People v. Murdock* (1960, Cal App 2d Dist) 183 Cal App 2d 861, 7 Cal Rptr 293, 1960 Cal App LEXIS 1842.

On appeal from judgment of conviction of grand theft, defendant could not argue that money obtained from victims was result of loans where loans were not mentioned in negotiations, money having been given to defendant for investment for victims, and where defendant did not present evidence during trial that he had borrowed money and that victims understood they were loaning it to him. *People v. Kovach* (1961, Cal App 2d Dist) 197 Cal App 2d 80, 16 Cal Rptr 876, 1961 Cal App LEXIS 1314.

In a prosecution for grand theft, testimony of the People's witnesses that they did not know that they were signing trust deeds, though they could read, and that the witnesses wrote letters referring to trust deeds at defendant's direction after the contracts were consummated, and that no complaint was made until the witnesses were contacted by the police six months later, is not evidence which can be said to be unbelievable per se or inherently improbable and the jury finding as to the credibility of these witnesses is binding on appeal. *People v. Bresin* (1966, Cal App 2d Dist) 245 Cal App 2d 232, 53 Cal Rptr 687, 1966 Cal App LEXIS 1458, vacated (1968) 68 Cal 2d 822, 69 Cal Rptr 321, 442 P2d 377, 1968 Cal LEXIS 210.

In a prosecution of three defendants for conspiracy to commit grand theft, and for grand theft, based on misrepresentations in the sale of trust indentures, defendants could not properly complain on appeal that evidence of orders in a civil injunction suit, otherwise properly admissible, was prejudicial in that the jurors might infer that the injunction suit was a criminal prosecution, where there was nothing in the documents read to the jury suggesting that the suit was a criminal prosecution nor did the People so intimate, and where defendant did not request the court to caution the jury against drawing such an inference so that an appropriate statement from the court could have eliminated any possible confusion in the minds of the jurors. *People v. Lynam* (1968, Cal App 4th Dist) 261 Cal App 2d 490, 68 Cal Rptr 202, 1968 Cal App LEXIS 1769.

On appeal from a conviction of grand theft from the person, no consideration could be given to defendant's contention that testimony of identification witnesses was so uncertain that it should have been excluded, where no objection or motion to strike the testimony was made on that ground in the trial court, and where, in any event, defendant's argument went to the weight, not the admissibility of the testimony. *People v. Henley* (1969, Cal App 5th Dist) 269 Cal App 2d 263, 74 Cal Rptr 611, 1969 Cal App LEXIS 1643.

In a prosecution for grand theft involving a variation of the "Jamaican Switch," the trial court erred prejudicially in admitting modus operandi evidence of defendant's participation in another crime involving theft, where many dissimilarities in the commission of the two offenses negated the existence of sufficient distinctive or common features, where those common features which appeared to be distinctive lost that quality considering that all who commit the type of scheme involved follow approximately the same script and use similar props, and where defendant presented alibi evidence and it was thus reasonably probable that a result more favorable to him would have been reached had the evidence not been admitted. *People v. Weathers* (1969, Cal App 2d Dist) 274 Cal App 2d 232, 79 Cal Rptr 127, 1969 Cal App LEXIS 2043.

In a grand theft prosecution, the issue of the propriety of defendant's in-court identification by the victim could not be presented for the first time on appeal where no objection was raised thereto below. *People v. Hardy* (1969, Cal App 2d Dist) 275 Cal App 2d 469, 79 Cal Rptr 801, 1969 Cal App LEXIS 1937.

In a theft prosecution, defendant was deprived of his constitutional right to have the jury determine every material

issue presented by the evidence, and reversal of his conviction was required, where defendant was stopped by a security officer when he walked from an outside sale area at a department store carrying merchandise which he had not paid for, where the evidence that defendant intended to keep and not pay for the article was purely circumstantial and was contradicted by defendant's direct testimony concerning his intent, and where the court gave no instruction that to be guilty of theft defendant had to intend to keep the article, nor any instruction that defendant would be guilty of theft only if he did not intend to pay for it. *People v. Jaso* (1970, Cal App 2d Dist) 4 Cal App 3d 767, 84 Cal Rptr 567, 1970 Cal App LEXIS 1576.

Even assuming error, in a prosecution for larceny arising from the fraudulent sale by defendants of a horse boarded with them, in the admission of post litem motam handwriting exemplars, obtained from the horse's owner after the controversy and litigation had begun and introduced for the purpose of rebutting the testimony of one of the defendants that such owner was responsible for forged bills of sale and a statement of loss used to effect the sale, the judgment of conviction could not be reversed, where evidence of defendants' guilt was overwhelming and their explanation of what transpired was completely unconvincing. *People v. Hess* (1970, Cal App 4th Dist) 10 Cal App 3d 1071, 90 Cal Rptr 268, 1970 Cal App LEXIS 1918, 43 ALR3d 643.

In a multiple prosecution for conspiracy to commit grand theft by false pretenses and grand theft by false pretenses based on defendants' representations to the public that participants in their trust-foundation plan would receive certain tax advantages, there was no merit to defendants' contentions on appeal that expert testimony to the contrary was insufficient to support defendants' convictions by reason of the alleged fact that it was based on trust forms that could have been changed and that were assertedly to be referred to attorneys for drafting to conform to the law, where the expert witnesses were, in fact, asked numerous hypotheticals based on assumed changes in the forms, where, furthermore, although one of the experts testified that tax benefits could be gained on the basis of major changes, there was no substantial evidence that such changes were intended, either by defendants or by their attorney, and where, in any event, the trust and trust forms constituted only a part of the overall scheme presented and sold to the victims. *People v. Fahy* (1970, Cal App 4th Dist) 13 Cal App 3d 808, 92 Cal Rptr 451, 1970 Cal App LEXIS 1289, cert den (1971) 404 US 966, 92 S Ct 341, 30 L Ed 2d 285, 1971 US LEXIS 373.

In a prosecution for attempted grand theft, in violation of *Pen C* §§ 487, subd. 3, and 664, based on defendant's removal of a chain fastening the victim's vehicle to a trash can, a reversal of a conviction, apparently grounded on the theory of included offenses, of violation of *Veh C* § 10852, prohibiting breaking or removing vehicle parts without the owner's consent, was not required by the fact that the Vehicle Code offense may, possibly, not be included in the charged Pen Code offenses, where the case had been submitted on the preliminary hearing transcript, and where, in so submitting, defendants could not have rationally anticipated anything except a determination of guilt of some offense. *People v. Dorsey* (1972, Cal App 2d Dist) 25 Cal App 3d 366, 101 Cal Rptr 826, 1972 Cal App LEXIS 1038, modified *Kanovitz v. Bloodgood* (1972, Cal App 2d Dist) 26 Cal App 3d 205, 103 Cal Rptr 27, 1972 Cal App LEXIS 933.

In a prosecution of defendant for grand theft (*Pen C* § 487, subd. (1)), of jewelry missing from a woman's apartment while defendant was spending the night there, testimony by the victim of statements made by defendant, in the presence of the victim and deputy sheriffs, that he had ways of finding out the location of the stolen jewelry if anybody tried to sell it, and of a telephone call in which defendant told the person he was calling he wanted to be informed if the jewelry was sold, was not admissible under the personal admission exception to the hearsay rule (*Ev C* § 1220), as such statements did not constitute an implied admission of defendant that he had stolen the jewelry, and an inference to that effect was too speculative and unreasonable to meet the test of relevancy. Moreover, the danger of the use of the evidence by the jury as prohibited character-trait evidence (*Ev C* §§ 1101, 1102) was so prejudicial that the trial court's refusal to exclude it under *Ev C* § 352, constituted an abuse of discretion, and the error, in combination with other error, was cause for reversal of defendant's conviction, where the evidence against defendant was all circumstantial and not particularly compelling. *People v. Allen* (1976, Cal App 2d Dist) 65 Cal App 3d 426, 135 Cal Rptr 276, 1976 Cal App LEXIS 2224.

In a prosecution for grand theft (*Pen C* § 487), there was substantial evidence to support the jury's finding that

defendant was not entrapped, where a videotape of defendant's encounter with a police officer posing as a fence indicated that while defendant was watching a transaction between another person and the officer, the officer had been asked what he was prepared to purchase and, upon his reply that he would purchase anything that could be resold, defendant asked whether he was prepared to purchase a motorcycle and a sewing machine belonging to defendant's girl friend, and where the officer had stated that he was not telling anyone to steal but was merely offering to buy whatever they had to sell. *People v. Jackson* (1978, Cal App 5th Dist) 78 Cal App 3d 533, 144 Cal Rptr 199, 1978 Cal App LEXIS 1325.

39. Instructions

Instruction that "Grand larceny is the stealing, taking, or carrying away the personal property of another," etc., was erroneous in omitting word felonious. *People v. Cheong Foon Ark* (1882) 61 Cal 527, 1882 Cal LEXIS 658.

In prosecution for grand larceny, in which defendant was charged with having stolen from house various articles of personal property of aggregate value of more than former statutory minimum, it was error for court to refuse to instruct jury of their right to convict of petty larceny, where evidence only traced into or through possession of defendants certain of stolen articles, of aggregate value of less than said minimum, and circumstances of case were such that other articles might have been stolen by some other criminal acting independently of him. *People v. Comyns* (1896) 114 Cal 107, 45 P 1034, 1896 Cal LEXIS 864.

Defendant could not complain of omission to give jury form of verdict permitting them to find him guilty of petty larceny where he did not request instruction that he might be so convicted, and where it appeared that he was guilty of grand larceny from person, if he was guilty of anything. *People v. Clark* (1905) 145 Cal 727, 79 P 434, 1905 Cal LEXIS 614.

A defendant convicted of grand theft of an automobile could not, for the first time on appeal, assert that the court should have instructed on the lesser offense, described in former Veh C § 503, of taking an automobile without the owner's consent, particularly where it did not appear that defendant returned or intended to return the automobile to its owner. *People v. Chessman* (1951) 38 Cal 2d 166, 238 P2d 1001, 1951 Cal LEXIS 198, cert den (1952) 343 US 915, 96 L Ed 1330, 72 S Ct 650, 1952 US LEXIS 2269, overruled *People v. Daniels* (1969) 71 Cal 2d 1119, 80 Cal Rptr 897, 459 P2d 225, 1969 Cal LEXIS 307, 43 ALR3d 677.

Although evidence in prosecution for grand theft shows that type of theft, if any, was that of obtaining property by false pretenses, defendant was not prejudiced by an instruction relating to larceny by trick and device where he requested instructions relating to both larceny by trick and device and obtaining property by false pretenses, and where his defense was not based on distinctions between title and possession but on contention that there was no unlawful taking of any sort. *People v. Ashley* (1954) 42 Cal 2d 246, 267 P2d 271, 1954 Cal LEXIS 171, cert den (1954) 348 US 900, 75 S Ct 222, 99 L Ed 707, 1954 US LEXIS 1437.

It was not error to refuse to give instructions relative to accomplice's testimony, where both defendant and his codefendant were charged with grand theft and forgery of fictitious name, each testified in his own behalf, and neither was called as witness for or against other. *People v. Green* (1960, Cal App 2d Dist) 181 Cal App 2d 747, 5 Cal Rptr 525, 1960 Cal App LEXIS 2052.

Though, in prosecution for burglary and grand theft, instruction relating to defendant's possession of stolen property was not worded as clearly as would have been desirable with respect to consideration of defendant's silence on questioning by police, there was no miscarriage of justice where defendant was not in position to complain of portion of instruction to effect that unexplained possession of recently stolen property cannot, without more, warrant conviction, such understanding of the law being favorable to defendant, where construction of instruction to mean that defendant's possession of stolen property could permit inference of guilt was correct statement of law applicable under circumstances, and where instruction was correct to extent that it dealt with incriminating effect of false explanations

and statements constituting admissions, such conduct on defendant's part having been shown to be present as to every count relating to possession except one. *People v. McFarland* (1962) 58 Cal 2d 748, 26 Cal Rptr 473, 376 P2d 449, 1962 Cal LEXIS 305, superseded by statute as stated in *People v. Burns* (1984, Cal App 1st Dist) 157 Cal App 3d 185, 203 Cal Rptr 594, 1984 Cal App LEXIS 2190.

Where jury requested that court reread particular instruction, but judge, although using language of parts, did not reread all of that instruction and, instead, gave jurors factual illustrations of three types of theft with which instruction was concerned, there was no prejudice shown as it was not incumbent upon judge to repeat other, prior instructions concerning elements of three types of theft, what has to be present to find those elements, presumption of innocence and doctrine of reasonable doubt. *People v. Pierce* (1962, Cal App 2d Dist) 207 Cal App 2d 526, 24 Cal Rptr 499, 1962 Cal App LEXIS 1937.

In prosecution for grand theft and for conspiracy to commit grand theft, though neither defendant testified for state, giving of instruction requested by defendant's codefendant concerning corroboration of accomplice's testimony did not constitute prejudicial error, where before giving instruction court stated that neither defendant had testified for state, and that rule or corroboration applied to defendant only insofar as one's testimony might tend to incriminate other. *People v. Wood* (1963, Cal App 4th Dist) 214 Cal App 2d 298, 29 Cal Rptr 444, 1963 Cal App LEXIS 2607.

Court's failure to include word "attempted" before words "grand theft from the person" in its instruction concerning specific intent did not constitute prejudicial error, since intent to commit crime of attempted grand theft from person is basically same intent required to commit substantive crime and instructions on grand theft were followed by instruction defining "attempt to commit crime." *People v. Twiggs* (1963, Cal App 2d Dist) 223 Cal App 2d 455, 35 Cal Rptr 859, 1963 Cal App LEXIS 1554.

In prosecution of parents for theft of welfare moneys paid to wife to aid their children, instruction that jury might find father was as responsible for concealing from Department of Public Welfare his relation to children as his wife was, regardless of whether any public assistance money was given to him by wife, was tantamount to, and equally as prejudicial as, formula instruction failing to mention element of intent required. *People v. Gibson* (1965, Cal App 4th Dist) 235 Cal App 2d 667, 45 Cal Rptr 382, 1965 Cal App LEXIS 967.

In a prosecution in three counts resulting in defendant's conviction of receiving stolen property, grand theft, and burglary, reversing convictions of the lesser crimes would not suffice to cure prejudice from the court's failure to instruct the jury properly, and reversal of the entire judgment was required to afford defendant the benefits of a new trial, with proper instructions, where, even though the evidence was sufficient to support a conviction for either grand theft or receiving stolen property, the court failed to instruct the jury that a guilty verdict could be returned upon either of such counts, but not on both. *People v. Morales* (1968, Cal App 4th Dist) 263 Cal App 2d 211, 69 Cal Rptr 553, 1968 Cal App LEXIS 2200, overruled *People v. Allen* (1999) 21 Cal 4th 846, 89 Cal Rptr 2d 279, 984 P2d 486, 1999 Cal LEXIS 6463.

In a prosecution for grand theft, the trial judge did not err in failing to instruct the jury sua sponte on embezzlement, even if the district attorney could be said to have argued the theory to the jury, where such an instruction would not have been responsive to the evidence, where defendant withdrew his request for such an instruction, and where the district attorney's remarks taken in full context did not amount to arguing embezzlement. *People v. Hesbon* (1968, Cal App 5th Dist) 264 Cal App 2d 846, 70 Cal Rptr 885, 1968 Cal App LEXIS 2153.

In a prosecution for grand theft of an automobile (*Pen C* § 487, subd 3), which defendant rented before the offense was committed, defendant was not convicted of a crime other than charged or than supported by the evidence, and thus, the judgment of conviction was proper, where, though an instruction erroneously denominated the crime as "larceny," and defendant gained possession of the automobile by consent, and the verdict found defendant guilty of larceny, defendant was properly charged with grand theft in the information, the instruction properly defined the elements of theft, the jury was not confused and must have made a finding of theft as charged in the information and as defined in

the instruction, and the offense of theft included common-law larceny, as well as larceny by trick and device and embezzlement (*Pen C* §§ 484, 490a). *People v. Washburn* (1968, *Cal App 2d Dist*) 265 *Cal App 2d* 665, 71 *Cal Rptr* 577, 1968 *Cal App LEXIS* 1663.

The giving of a poorly framed instruction on specific intent did not require reversal of defendant's conviction of grand theft-auto (*Pen C* § 487, subd 3), although the instruction, read monotonically, could have given the jury the impression that it could find defendant guilty of the offense of grand theft-auto, even if it found that he had only the intent to temporarily deprive the owner of the vehicle of his title or possession (*Veh Code*, § 10851), where it could be assumed that the instruction was read with proper inflections and suitable pauses so that the jury would get the proper impression, where considering the charge to the jury as a whole, and leaving the objected to instruction in context, the charge was accurate and fair, and where it was inconceivable that the jury, absent the error (if it be deemed error), could have reached a result more favorable to defendant. *People v. Pater* (1968, *Cal App 3d Dist*) 267 *Cal App 2d* 921, 73 *Cal Rptr* 823, 1968 *Cal App LEXIS* 1471.

In a prosecution for grand theft and burglary, the trial court did not err in failing to instruct the jury sua sponte to the effect that if defendant's otherwise criminal acts were done under a good-faith claim of right to the property involved he could not be guilty, where the defense of claim of right was incompatible with the defense actually put forth of a taking with express consent of the victim, and where such an instruction concerned a specific point developed at the trial rather than a general principle of law governing the case. *People v. Stevens* (1969, *Cal App 2d Dist*) 269 *Cal App 2d* 470, 75 *Cal Rptr* 118, 1969 *Cal App LEXIS* 1664.

In a prosecution for grand theft by defendant of funds advanced to him by coadventurers to pay the expenses of additional drilling of an oil well venture, the court erred in not instructing on its own motion the joint venture defense to theft, which was closely and openly connected with the facts before the court; and the error was prejudicial in depriving defendant of his right to have the jury determine every material issue presented by the evidence. *People v. Oehler* (1970, *Cal App 4th Dist*) 7 *Cal App 3d* 685, 86 *Cal Rptr* 703, 1970 *Cal App LEXIS* 2205, overruled in part (1978, *Cal App 4th Dist*) 86 *Cal App 3d* 987, 150 *Cal Rptr* 577, 1978 *Cal App LEXIS* 2146.

Defendants convicted of grand theft (*Pen C* § 487(1)) for selling a horse which they falsely represented to be an Arabian, were not entitled to offset the actual value of the spurious animal used to accomplish the fraud against the sum obtained from the victims to reduce the crime to petty theft, and it followed that the trial court did not err in refusing to give an instruction that the jury must return a verdict of petty theft if they were unable to agree whether defendants committed grand theft or petty theft. *People v. Hess* (1970, *Cal App 4th Dist*) 10 *Cal App 3d* 1071, 90 *Cal Rptr* 268, 1970 *Cal App LEXIS* 1918, 43 *ALR3d* 643.

In a prosecution for grand theft and unlawful driving or taking an automobile, the trial court erred in instructing the jury on the presumption of *Veh C* § 10855, that a person is presumed to have embezzled a rented vehicle if he wilfully and intentionally fails to return it within five days after the rental agreement has expired, where defendant testified she did not intend to embezzle the property and failed to return it only because the tires were bad and the car was unsafe to drive, and where a witness testified that, on defendant's request, she informed the lessor where the vehicle was located on more than one occasion; such evidence, if believed, would support a finding defendant lacked the fraudulent intent to embezzle necessary to deprive the owner of his property. *People v. Hemmer* (1971, *Cal App 4th Dist*) 19 *Cal App 3d* 1052, 97 *Cal Rptr* 516, 1971 *Cal App LEXIS* 1352.

In a prosecution for grand theft of two calves in violation of *Pen C* § 487, subd. (3), the trial court did not err in denying defendant's request that the jury be instructed as to petty theft as a lesser included offense. The Legislature by *Pen C* § 487, clearly defines the theft of specified items, regardless of the value of the item taken. *People v. Thomas* (1974, *Cal App 1st Dist*) 43 *Cal App 3d* 862, 118 *Cal Rptr* 226, 1974 *Cal App LEXIS* 1362.

In a prosecution for robbery and first degree felony-murder arising out of a purse-snatching incident and the subsequent death of the victim allegedly resulting from her having been pushed by defendant, the trial court erred

reversibly in refusing to instruct on the lesser included offense of grand theft from the person, where the only witness who actually observed the purse-snatching was located across a four-lane boulevard from the crime scene, was preoccupied at the time with other matters, and was unable to remember details, where, though she testified that defendant approached the victim from behind and pushed her with one hand while grabbing the purse with the other, the evidence showed that the victim fell backwards, and where defendant's alleged use of force served not merely to raise the theft offense to a robbery, but was also the sole basis for imputing to him the malice necessary for first degree murder. *People v. Morales* (1975, Cal App 4th Dist) 49 Cal App 3d 134, 122 Cal Rptr 157, 1975 Cal App LEXIS 1191.

The trial court erred in its jury instruction in a criminal prosecution that instructed the jury that "the flight of a person immediately after the commission of a crime, or after he is accused of a crime that has been committed, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in the light of all other proved facts in deciding the question of his guilt or innocence...", insofar as concerned the inclusion in the instruction of the words "or after he is accused of a crime that has been committed," in that defendant had not been charged with a crime at the time of his conduct that gave rise to the instruction on flight, although a crime had been committed which he was subsequently charged with having perpetrated. In light of the circumstances, however, the error was harmless. *People v. Ramirez* (1980, Cal App 2d Dist) 109 Cal App 3d 529, 167 Cal Rptr 174, 1980 Cal App LEXIS 2183.

Any error by the trial court in instructing the jury in a grand theft prosecution as to both theft by trick and theft by false pretenses, and in failing to define title, within the context of the requirement for theft by false pretenses, of the necessity of a passing of title to the victim's property to the perpetrator of the offense, was harmless, where defendant's defense did not really hinge on whether or not there was a passing of title to the property obtained from the victim. *People v. Ramirez* (1980, Cal App 2d Dist) 109 Cal App 3d 529, 167 Cal Rptr 174, 1980 Cal App LEXIS 2183.

In a prosecution for unlawfully offering and selling franchises without prior registration (*Corp. Code, § 31110*), selling franchises by means of untrue statements (*Corp. Code, § 31201*), and grand theft by false pretenses (*Pen C § 487*), the trial court's instructions to the jury that when the evidence shows that a person voluntarily did that which the law declares to be a crime, it is no defense that he did not know that his act was unlawful or that he believed it to be lawful, were prejudicially confusing and constituted reversible error. The court had first read the instruction as applying only to the franchise offenses without distinguishing between the counts involving fraud, to which it was applicable, and those not involving fraud, to which it was not applicable. It had then reread the instructions as applicable to the grand theft counts and not to the counts alleging franchise fraud. Under the bewilderingly complex circumstances of the case, the instruction was not merely inapposite, but also must inevitably have confused and probably misled the jurors; its tendency was to lead them to suppose that the various crimes charged involved the same acts, but different mental states, when, in fact, the intent to defraud was necessary whether what was sold was or was not a franchise. In a prosecution for grand theft, the jury must find both the intent to sell securities and the intent to defraud in order to convict, and the evidence regarding intent to defraud was feeble and indecisive. (Per Newsom, J., with Racanelli, P. J., and Grodin, J., concurring in the result only.) *People v. Gonda* (1981, Cal App 1st Dist) 119 Cal App 3d 67, 173 Cal Rptr 398, 1981 Cal App LEXIS 1729.