

**CERTIFIED FOR PARTIAL PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**THE PEOPLE,**

**Plaintiff and Respondent,**

**v.**

**CLENARD CEBRON WADE,**

**Defendant and Appellant.**

**A126393**

**(Contra Costa County  
Super. Ct. No. 05-080361-9)**

**ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the opinion filed April 9, 2012, be modified as follows:

1. On page 13, the first full paragraph, beginning “In their brief on appeal,” is deleted and the following paragraph is inserted in it’s place:

In their brief on appeal, the People do not address the merits of defendant’s argument that the amendment to section 487 applies retroactively. Instead, the People argue that, even if the theft of \$700 is no longer a legal basis for the conviction for grand theft, the conviction need not be reversed because the evidence showed that defendant took the purse from Jane Doe II’s person, which is an alternate basis to sustain the grand theft conviction. However, the evidence on that issue was equivocal. After some difficulty remembering and after reviewing the police report, Jane Doe II testified on direct examination that she grabbed the purse while it was on the ground and defendant pulled it away from her. On cross-examination, she testified that she “had it,” but she admitted she did not remember how she had it.

2. At the end of the first partial paragraph on page 14, after the sentence ending “trial court for resentencing,” add as footnote 5 the following footnote:

<sup>5</sup> Because there was sufficient evidence at trial to support the grand theft conviction on the valid theory, the People are entitled to retry defendant on the charge, should they so choose. (See *People v. Edwards* (1985) 39 Cal.3d 107, 118; see also *People v. Brooks* (1986) 185 Cal.App.3d 687, 697.) Our disposition will preserve that option.

3. On page 14, the second full paragraph, beginning “The judgment on count 1,” is deleted and the following paragraph is inserted in its place:

The judgment on count 1 is reversed with directions as follows: If the People do not bring the defendant to trial within 60 days after the filing of the remittitur in the trial court pursuant to Penal Code section 1382, the trial court shall proceed as if the remittitur constituted a modification of the judgment to reflect a conviction of petty theft (§§ 484, 488) and shall resentence the defendant accordingly, including the determination of presentence conduct credits. (See *People v. Edwards, supra*, 39 Cal.3d at p. 118.) Following resentencing, the trial court is directed to send an amended abstract of judgment to the California Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

This modification changes the judgment.

Appellant’s petition for rehearing is denied.

Simons, Acting P. J.