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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-1373**

State of Minnesota,  
Respondent,

vs.

Paulette Martinique Rogers,  
Appellant.

**Filed August 6, 2018  
Reversed and remanded  
Florey, Judge**

Hennepin County District Court  
File No. 27-CR-16-16581

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Peterson, Judge; and Rodenberg, Judge.

**UNPUBLISHED OPINION**

**FLOREY**, Judge

Appellant was convicted of both check forgery and offering a forged check. In this direct appeal, she asserts that Minn. Stat. § 609.04 (2014) bars one of the convictions.

Because both convictions arose under different sections of the same criminal statute, and both convictions are based on acts committed during a single behavioral incident, we agree that section 609.04 bars one of the convictions. We therefore reverse and remand.

### **FACTS**

In November 2015, appellant Paulette Martinique Rogers entered a bank and attempted to cash a \$3,200 check payable to appellant and drawn on the account of M.A. Appellant had worked for M.A. as a personal-care attendant, taken a check from his house, and filled in and signed the check in M.A.'s name without his permission.

Appellant was charged with both check forgery and offering a forged check with intent to defraud. In April 2017, she pleaded guilty to both counts. In June 2017, the district court entered judgment of conviction for both counts and stayed imposition of sentence for both counts. This appeal followed.

### **DECISION**

Appellant asserts that she should not have been convicted of and sentenced for both check forgery and offering a forged check. She argues that Minn. Stat. § 609.04 allows for only one of the convictions because the convictions are based upon a single behavioral incident and arise under different subdivisions of the same criminal statute.<sup>1</sup> The state

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<sup>1</sup> Although appellant pleaded guilty to the charges and did not raise her multiple-conviction argument before the district court, the parties agree that appellant did not forfeit the argument, and it is properly before this court. *See Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007) (stating that “an appellant does not waive claims of multiple convictions or sentences by failing to raise the issue at the time of sentencing”); *see also* Minn. R. Crim. P. 27.03, subd. 9 (stating that unauthorized sentences may be corrected at any time).

concedes as much and does not oppose appellant's request that one of the convictions be vacated.

“Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1. Section 609.04 has been interpreted to bar “multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident.” *State v. Jackson*, 363 N.W.2d 758, 760 (Minn. 1985).

Appellant was convicted of falsely making or altering a check “so that it purports to have been made by another or by the maker under an assumed or fictitious name, or at another time, or with different provisions, or by the authority of one who did not give authority.” Minn. Stat. § 609.631, subd. 2(1) (2014). Appellant was also convicted of offering, or possessing with intent to offer, a forged check, with intent to defraud. Minn. Stat. § 609.631, subd. 3 (2014). Both crimes arise under the same criminal statute. *See Jackson*, 363 N.W.2d at 760-61 n.1 (reversing so that a conviction could be vacated where defendant was charged with both forgery and uttering a forged instrument, and both crimes arose under different subdivisions of the same statute).

Determining whether two intentional crimes are part of a single behavioral incident requires consideration of the time and place of the crimes and whether the criminal conduct was motivated by a single criminal objective. *State v. Bauer*, 792 N.W.2d 825, 828 (Minn. 2011). The state has the burden of proving that crimes were not part of a single behavioral incident. *State v. Zuehlke*, 320 N.W.2d 79, 82 (Minn. 1982). The state concedes that the

crimes were part of a single behavioral incident. The crimes were committed at the same time and place, and involved the same check and criminal objective.

Because section 609.04 bars appellant's multiple convictions, we reverse and remand for the district court to vacate one of appellant's convictions and sentences.

**Reversed and remanded.**