S248130

SUPREME COURT NO. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE , Plaintiff and Respondent, v. Si H.Liu, Defendant and Petitioner.	Court of Appeal No. B279393 Superior Court No. GA090351

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

Honorable Robert P. Applegate, Judge

PETITION FOR REVIEW

AFTER THE PUBLISHED DECISION OF THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION EIGHT, AFFIRMING IN PART THE DENIAL OF PROPOSITION 47 RELIEF

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Si H. Liu respectfully asks for review of the published opinion of the California Court of Appeal, Second Appellate District, Division Eight, in *People v. Si H. Liu*, case number B279393, filed on March 9, 2019. (Exh. A.)

Issues Presented

1. This court held in *People v. Romanowski* (2017) 2 Cal.5th 903 [*Romanowski*] that theft of access card information under Penal Code section 484, subdivision (d)[1] is eligible for reclassification under Proposition 47 if the value of the card is $950 or less. Is the valuation of the card determined by its fair market value as stated by this court in *Romanowski*, or by the amount of money obtained from use of the card, as stated by the Court of Appeal?

2. May convictions for obtaining identifying information of 10 or more people (§ 530.5, subd. (c)) be reclassified as misdemeanors under Proposition 47 if the cards were obtained by theft?

Necessity for Review

A grant of review and resolution of both issues by this court is

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

necessary to settle important questions of law. (Cal. Rules of Court, rule 8.500(b)(1).) Review of the first issue is necessary to achieve uniformity of decision between the Court of Appeal and this court. (*Ibid.*)

Statement of the Case and Facts

For purposes of this petition, minor incorporates the Court of Appeal's factual and procedural background. (Ex. A, pp. 2-4.)

Argument

I. The Court of Appeal has established precedent conflicting with this court's decision in *People v. Romanowski* (2017) 2 Cal.5th 903 by valuing access cards based on the amount obtained rather than fair market value for Proposition 47 purposes.

In *Romanowski, supra,* 2 Cal.5th 903, this court held that valuation of an access card for Proposition 47 purposes is the same for theft, namely reasonable and fair market value. (*Id.* at p. 915.) "'[R]easonable and fair market value' requires courts to identify how much stolen access card information would sell for. (§ 484, subd. (a)" (*Ibid.*) The fair market value is the highest price a willing buyer will pay to a willing seller. (*Ibid.*) Because access cards are not sold legally, the court may look to evidence of illegal sales to establish value. (*Ibid.*) "Only in cases where stolen property would command no value on any

market (legal or illegal) can courts presume that the value of stolen access information is de minimis." (*Ibid.*)

This court explained:

> "But because we hold that section 490.2 reduces the punishment for theft of access card information valued at less than $950, we must answer a second question: how do courts determine whether the value of stolen access card information exceeds $950? After all, section 484e, subdivision (d) punishes the theft of an access card or access card information itself, not of whatever property a defendant may have obtained using a stolen access card or stolen information. Fraudulent *use* of access cards or account information is punished as a separate crime. (See § 484g.) This means a defendant can be convicted of violating section 484e, subdivision (d), even if he or she never uses the stolen account information to obtain any money or other property. So the $950 threshold for theft of access card information must reflect a reasonable approximation of the stolen information's value, rather than the value of what (if anything) a defendant obtained using that information."

(*Romanowski, supra,* 2 Cal.5th at p. 914, original italics.)

In the present case, the Court of Appeal noted that the *Romanowski* opinion did not state or imply that the defendant had used

the access card information to obtain property. (Ex. A, p. 6.) The court opined, "Where as here, the access card information was actually used to procure goods or services, common sense tells us that the unauthorized charges are proof of at least the minimum value of the access card information." (Ex. A, p. 6.)

The Court of Appeal's reasoning defies logic and conflicts with *Romanowski*. The appeals court overlooked this court's reasoning that "[S]ection 484e, subdivision (d) punishes the theft of an access card or access card information itself, not of whatever property a defendant may have obtained using a stolen access card or stolen information." (*Romanowski, supra,* 2 Cal.5th at p. 914.)

The Court of Appeal's notion that the value of a stolen access card is at least the amount of unauthorized charges makes no sense. A thief who purchased stolen cards for the maximum amount possible to extract from them would soon be out of business.

According to a report published by the McAfee, the cybersecurity company, stolen payment card numbers fetch between $5 and $30 on the black market in the United States, depending on the amount of data. (McAfee, *The Hidden Data Economy, The Marketplace for Stolen Digital Information* (Dec. 2015), p. 5, <https://www.mcafee.com/us/resources/reports/rp-hidden-data-economy.pdf#page=5> (as of April 10, 2018).) Online payment service

accounts fetch from $20 to $40 for online payment service account balances from $400 to $1,000; from $50 to$120 for balances of $1,000 to $2,500; $120 to $200 for balances of $2,500 to $5,000; and $200 to $300 for balances of $5,000 to $8,000. (*Id.* at p. 7.) Put another way, the black-market value of an online payment account ranges from about 3 to 5 percent of the available balance. It stands to reason that the street value of payment cards themselves will be similarly discounted.

The petitioner in this case was convicted of separate counts of grand theft for each theft exceeding $950 resulting from the use of a stolen card. Concededly, those offenses are not eligible for Proposition 47 relief. However, the Court of Appeal erred, and established bad precedent conflicting with *Romanowski* by holding that the convictions for theft of the access cards themselves did not qualify under Proposition 47 based on the amounts obtained.

II. Petitioner's conviction for multiple identifying information theft under section 530.5, subdivision (c)(3) should also be eligible for reclassification as a misdemeanor under Proposition 47.

Section 530.5, subdivision (c)(3) provides, "Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information, as defined in subdivision (b) of Section 530.5, of 10 or more other persons is guilty of a public offense,

and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170."

The offense of acquiring or retaining possession of personal identifying information of ten or more people merely requires proof that the defendant (1) acquired or kept the personal identifying information of ten or more other persons and (2) did so with the intent to defraud another person. (*People v. Thuy Le Truong* (2017) 10 Cal.App.5th 551, 561.) This court's decision in *Romanowski* provides guidance about the applicability of Proposition 47 to section 530.5, subdivision (c)(3).

In *Romanowski,* the Attorney General argued that section 484e, subdivision (d)[2] does not primarily define a theft crime even though it is punished as grand theft. (*Romanowski, supra,* 2 Cal.5th at p. 911.) The Attorney General also claimed that it was misleading to refer to the crime, as the Court of Appeal did, as "theft of access information." (*Ibid.*) The Attorney General wrote in its opening brief that section 484e, subdivision (d), does not "define a 'theft' crime" because the statute "is violated when someone *acquires or retains possession* of

[2] Section 484e, subdivision (d) provides, "Every person who acquires or retains possession of access card account information with respect to an access card validly issued to another person, without the cardholder's or issuer's consent, with the intent to use it fraudulently, is guilty of grand theft."

access card account information issued to another person (and with the intent to use it fraudulently)." (*Id.* at p. 912.) The reply brief reiterated that the statute "proscribes the acquisition or retention of access card information with the intent to use it fraudulently, which is different from a proscription against 'obtaining any property by theft.'" (*Ibid.*)

This court disagreed:

> "Both these glosses on the statute omit a crucial element. Theft of access card information requires 'acquir[ing] or retain[ing] possession of access card account information with respect to an access card validly issued to another person, *without the cardholder's or issuer's consent*.' (§ 484e, subd. (d), italics added.) This 'without ... consent' requirement confirms that theft of access card information is a 'theft' crime in the way the Penal Code defines 'theft.'"

(*Romanowski, supra,* 2 Cal.5th at p. 912.)

This court continued,

> "Even when a defendant is voluntarily entrusted someone else's access card information, any attempt to 'retain[ ] possession' of the information 'without the cardholder's or issuer's consent' and 'with the intent to use it fraudulently' (§ 484e, subd. (d)) would be a form of embezzlement, which is covered by Penal Code section

484's definition of 'theft.' (See §§ 503 ['Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted.'], 484 ['Every person ... who shall fraudulently appropriate property which has been entrusted to him or her ... is guilty of theft.']; see also *People v. Davis* (1998) 19 Cal.4th 301, 304 ['the formerly distinct offenses of larceny, embezzlement, and obtaining theft by false pretenses were consolidated in 1927 into the single crime of "'theft"' defined by Penal Code section 484'].) California's definition of 'theft' also includes theft by false pretenses, which 'unlike larceny has no requirement of asportation.' (*People v. Williams* (2013) 57 Cal.4th 776, 787; see also § 484 ['Every person...who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property ... is guilty of theft.'].) So even if we assume that section 490.2 only reduces punishment for crimes that require the definition set out in section 484, theft of access card information falls within that definition."

(*Romanowski, supra,* 2 Cal.5th at pp. 912-913.)

This court also observed that the Attorney General repeatedly used the terms "access card theft" and "theft of access card account information" in its petition for review, underscoring how this

terminology is hardly uncommon. (*Romanowski, supra,* 2 Cal.5th at p. 911.) This court noted that the Legislature chose to place section 484e in a chapter of the Penal Code titled "Theft." (*Id.* at p. 912.) Titles of acts, headnotes, and chapter and section headings may properly be considered in determining legislative intent. (*Ibid.*)

Section 530.5, subdivision (c)(3) resembles section 484e, subdivision (d) as a theft statute. Under section 484e, subdivision (d), "Every person who acquires or retains possession of access card account information with respect to an access card validly issued to another person, without the cardholder's or issuer's consent, with the intent to use it fraudulently, is guilty of grand theft." Under section 530.5, subdivision (c)(3), "Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information…is guilty of a public offense…"

The acquisition or retention of personal identifying information with intent to defraud under section 530.5, subdivision (c)(3) is analogous to the acquisition or retention of access card information with intent to defraud under section 484e, subdivision (d). Both are embezzlement and thus theft. (*Romanowski, supra,* 2 Cal.5th at pp. 912-913.)

This court should note that count 25 of the information charged appellant with "the crime of MULTIPLE IDENTIFYING

INFORMATION THEFT, in violation of PENAL CODE SECTION 530.5(c)(3)…." (Clerk's Transcript [CT] 11.) As was the case in Romanowski, the prosecution's terminology instructs that appellant was charged with a theft crime.

The Court of Appeal differentiated section 530.5, subdivision (c)(3) from section 484e because the Legislature defined it as a public offense rather than a theft crime. (Ex. A, pp. 9-10.) This court's decision in *People v. Page* (2017) 3 Cal.5th 1175 [*Page*] should put this distinction to rest. In *Page*, this court held that a felony violation of Vehicle Code section 10851, which also defines a public offense, is eligible for Proposition 47 relief if the crime was theft and the value of the vehicle was $950 or less. (*Id.* at p. 1187.) Obtaining an automobile worth $950 or less by theft constitutes petty theft under section 490.2 and is punishable only as a misdemeanor, regardless of the statutory section under which the theft was charged.[3] (*Ibid.*)

The decision in *Page* is instructive here. Vehicle Code section 10851 criminalizes both theft and non-theft offenses, namely the taking a vehicle with the intent to steal it, or by driving it with the intent only

[3] This court is considering in *People v. Bullard,* review granted, February 22, 2017, S239488, whether the absurd consequences doctrine or equal protection require that all offenses under Vehicle Code section 10851, whether or not committed by theft, be reclassified as misdemeanors under Proposition 47. The defendant's brief on the merits has been filed.

to temporarily deprive its owner of possession (i.e., joyriding). (*People v. Garza* (2005) 35 Cal.4th 866, 876.) Section 530.5, subdivision (c)(3) also criminalizes theft and non-theft activities. (See *People v. Thuy Le Truong, supra* 10 Cal.App.5th 551, 562 [There is no requirement under section 530.5, subdivision (c) that the information be stolen at all].) An identical Proposition 47 analysis for section 530.5, subdivision (c)(3) and Vehicle Code section 10851 should be applied. Such an analysis would comport the voters' intent that Proposition 47 be construed "broadly" and "liberally" to effectuate its purposes. (*Page, supra,* 3 Cal.5th at p. 1178.)

Conclusion

This court should grant review to achieve uniformity of decision and to settle the important question of law regarding the valuation of access cards for Proposition 47 purposes. It should grant review to settle the important question of law of whether a conviction for violating section 530.5, subdivision (c)(3) resulting from the theft of multiple access cards may qualify for resentencing under Proposition 47.

DATED: April 10, 2018

Respectfully Submitted,

David R. Greifinger
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By: _____
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Attorney for Petitioner

Certificate of Word Count

(Cal. Rules of Court, Rule 8.204(c)(1))

This opening brief contains approximately 2,403 words per a computer-generated word count.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 10, 2018, at Pacific Palisades, California

By: _____
David Greifinger

Ex. A

Filed 3/9/2018

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. SI H. LIU, Defendant and Appellant.	B279393 (Los Angeles County Super. Ct. No. GA090351)

APPEAL from an order of the Superior Court of Los Angeles County. Robert P. Applegate, Judge. Affirmed in part, and reversed and remanded in part.

David R. Greifinger, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Noah P. Hill and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * * * * *

This is the second time this case has been before us. In 2013, a jury convicted defendant Si H. Liu of 22 theft-related counts connected to her scam of offering loan services to immigrants. She took the victims' credit cards and identifying documents and made unauthorized purchases, or wrongfully retained copies of their documents. In our October 30, 2015 opinion, we reversed her conviction on one count, and modified her sentence to stay four other counts pursuant to Penal Code section 654.[1] (*People v. Liu* (B254655) [nonpub. opn.] (*Liu I*).)

Following resolution of her appeal, defendant applied under Proposition 47 (The Safe Neighborhoods and Schools Act; § 1170.18) to have six counts resentenced as misdemeanors (§ 484e, subd. (d); counts 2, 6, 14, 21, 23; § 530.5, subd. (c)(3); count 25).[2] The trial court denied her petitions, finding that "[the] defendant [is] not eligible." As to counts 2, 6, and 14, we affirm, finding the record amply demonstrates defendant's ineligibility for relief. We also find that defendant's conviction under section 530.5, subdivision (c) (count 25) does not qualify for resentencing under section 1170.18 as a matter of law. As to counts 21 and 23, we reverse and remand for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2013, a felony complaint was filed charging defendant with 23 counts, including fraudulent acquisition and retention of access card information (§ 484e, subd. (d)) and fraudulent acquisition and retention of personal identifying

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1 All statutory references are to the Penal Code, unless otherwise indicated.

2 An additional application for relief was rendered moot by our reversal of count 3 in defendant's earlier appeal.

information of 10 or more people (§ 530.5, subd. (c)(3)), among other charges not relevant here. She was convicted by jury, and was sentenced to a total term of 10 years in prison.

The following facts are drawn largely from our earlier opinion: As to count 2, defendant acquired the driver's license, social security card, and several credit cards belonging to Yuan Zhao, under the pretense that she would help Ms. Zhao obtain a loan to remodel her home. Ms. Zhao later noticed nearly $7,000 in fraudulent charges on her credit accounts. Following her conviction, defendant was ordered to make restitution of $6,665 to Ms. Zhao. (*Liu I, supra,* B254655.)

As to count 6, Mr. Ping Guo sought defendant's help to obtain a loan to pay for his brother's cancer treatments, and provided defendant with his driver's license and two credit cards. He noticed an unauthorized charge of $2,500 to one of his accounts. Defendant was ordered to pay over $7,000 in restitution to Mr. Guo. (*Liu I, supra,* B254655.)

As to count 14, defendant obtained credit cards, and other personal information, from Jenny You for the ostensible purpose of obtaining a loan for Ms. You. Ms. You discovered unauthorized charges totaling $8,000 to her cards. Defendant was ordered to pay Ms. You restitution of $2,816.50. (*Liu I, supra,* B254655.)

As to count 21, Mr. Chun Ouyang provided his driver's license and credit card to defendant to help his friend obtain a loan. Defendant opened a new line of credit in Mr. Ouyang's name, and purchased $500 in gift cards on the new line of credit. Defendant was ordered to pay restitution of $161.52 to Mr. Ouyang. (*Liu I, supra,* B254655.)

As to count 23, Mr. Ting Wei Sun gave defendant his debit card and driver's license. She opened a new line of credit at Walmart for Mr. Sun, and purchased $150 in gift cards. No

restitution was ordered as to Mr. Sun. (*Liu I, supra,* B254655.)

Count 25 was based on defendant's possession of driver's licenses, social security cards, business records, bank statements, and other documents belonging to 10 different victims. (*Liu I, supra,* B254655.)

On April 8, 2016, defendant, in propria persona, filed six petitions seeking to have her felony sentences recalled and resentenced as misdemeanors under section 1170.18, subdivision (a). She checked the box on the petitions indicating that "[t]he amount in question is not more than $950." She did not present any verification or other evidence in support of her petitions. On May 11, 2016, the court held a hearing on the petitions. The record before the trial court consisted of the felony information, the minute order for defendant's arraignment, minute orders reflecting the jury's verdict, sentencing minute orders, and the abstract of judgment. Defendant was not present or represented by counsel at the hearing. The People orally opposed the petitions, urging that "not one [count] qualify[ies] for relief." The court denied defendant's petitions, finding that "[d]efendant [is] not eligible." This appeal followed.

DISCUSSION

Proposition 47 reduced the penalties for certain drug- and theft-related offenses and reclassified those offenses as misdemeanors rather than felonies. (§ 1170.18; *People v. Sherow* (2015) 239 Cal.App.4th 875, 879; *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) Under section 1170.18, a person currently serving a felony sentence for an offense made a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. (§ 1170.18, subd. (a).) A person who satisfies section 1170.18's criteria shall have his or her

sentence recalled and be "resentenced to a misdemeanor . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." (*Id.*, subd. (b).) The applicant bears the burden of proving that he or she is eligible for Proposition 47 relief. (*Sherow*, at pp. 879-880.)

Relying on the recent Supreme Court decision, *People v. Romanowski* (2017) 2 Cal.5th 903 (*Romanowski*), defendant contends the trial court erroneously denied her petitions for resentencing of the section 484e, subdivision (d) counts because theft of access card information must be reclassified as a misdemeanor under Proposition 47 "if the fair-market value of the cards was $950 or less." She also contends that her section 530.5, subdivision (c) conviction is eligible for resentencing, reasoning section 530.5 is a theft crime and is subject to Proposition 47.

1. Counts 2, 6, 14, 21 & 23 (§ 484e, subd. (d))

Section 484e, subdivision (d) provides that "[e]very person who acquires or retains possession of access card account information with respect to an access card validly issued to another person, without the cardholder's or issuer's consent, with the intent to use it fraudulently, is guilty of grand theft." It is undisputed that theft of access card information qualifies for Proposition 47 relief where the value of the property taken does not exceed $950. (*Romanowski, supra*, 2 Cal.5th at p. 917.) Because the value of access card information is not an element of the crime, a defendant must establish eligibility for Proposition 47 relief by proving that the value of the property was $950 or less. (*Romanowski*, at pp. 910-914.) The *Romanowski* court provided guidance on the kinds of proof relevant to this showing. Acknowledging that stolen access card information is not always used to obtain property, the court concluded that courts may use the "reasonable and fair

market value" test, and may look to evidence of illegal sales to determine how much stolen access card information is worth. (*Id.* at pp. 914, 915.)

Defendant contends the only method of valuation of stolen access card information is the fair market value on the black market, and that remand is necessary because the record here contains no evidence of fair market value. We reject this contention. *Romanowski* does not establish that the only method for valuing access card information is the fair market value test. (*Romanowski*, *supra*, 2 Cal.5th at p. 914.) The defendant in *Romanowski* pled no contest to a felony violation of section 484e, subdivision (d), and the opinion does not state or imply that the defendant had used the access card information to obtain property. (*Id.* at p. 906.) Where, as here, the access card information was actually used to procure goods or services, common sense tells us that the unauthorized charges are proof of at least the minimum value of the access card information. (*Ibid.*)

Defendant relies heavily on the statement in *Romanowski* that: "[A] defendant can be convicted of violating section 484e, subdivision (d), even if he or she never uses the stolen account information to obtain any money or other property. So the $950 threshold for theft of access card information must reflect a reasonable approximation of the stolen information's value, rather than the value of what (if anything) a defendant obtained using that information." (*Romanowski*, *supra*, 2 Cal.5th at p. 914.) He also relies on the court's reasoning that the reference to "reasonable and fair market value" in section 484 (defining theft and providing guidance on the determination of the value of stolen property) "requires courts to identify how much stolen access card information would sell for." (*Romanowski*, at p. 915; see also § 484, subd. (a).) Defendant argues this means that, in the case of a defendant who *did* use the stolen account information, the value of

property the defendant obtained is irrelevant. Defendant's argument makes no sense. Surely, stolen access card information would sell for at least the value of the property obtained by a defendant who used the information, and in many cases, it would sell for much more.

As to counts 2, 6, and 14, the record amply supports denial of defendant's petitions, as more than $950 was charged to the victims' cards for these counts. The minute orders before the trial court demonstrated that thousands of dollars of restitution was ordered for each of the victims of these counts. Moreover, the evidence at trial established that defendant charged thousands of dollars to each of these victims' credit accounts. (*Liu I, supra,* B254655.)

As to counts 21 and 23, the record does not establish whether the value of the access card information exceeded $950. Restitution of only $161.52 was ordered for the victim of count 21, and no restitution was ordered for the victim of count 23. Moreover, the evidence at trial showed less than $950 was charged to the credit lines of these victims. (*Liu I, supra,* B254655.) Respondent concedes that remand for these counts is necessary. We therefore affirm the denial of defendant's petitions as to counts 2, 6, and 14, and reverse and remand for further proceedings as to counts 21 and 23.

2. Count 25 (§ 530.5, subd. (c))

Defendant contends that her conviction for obtaining the identifying information of 10 or more people under section 530.5, subdivision (c) qualifies for Proposition 47 relief. Respondent contends Proposition 47 does not apply to section 530.5. We agree with respondent.

Section 530.5 is not listed among the statutes reduced to misdemeanors by Proposition 47. (§ 1170.18, subds. (a), (b).)

Nevertheless, section 490.2, subdivision (a), which was added by Proposition 47, redefines all grand theft offenses as misdemeanors if they involve property valued at less than $950. (§ 490.2, subd. (a).) It provides that "[n]otwithstanding Section 487 [(defining grand theft)] or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars ($950) shall be considered petty theft and shall be punished as a misdemeanor . . . ."

We must decide whether section 530.5 constitutes "grand theft" or "obtaining any property by theft" within the meaning of section 490.2. " ' "In construing a statute, our task is to determine the Legislature's intent and purpose for the enactment. [Citation.] We look first to the plain meaning of the statutory language, giving the words their usual and ordinary meaning. [Citation.] If there is no ambiguity in the statutory language, its plain meaning controls; we presume the Legislature meant what it said. [Citation.] . . ." [Citations.] We examine the statutory language in the context in which it appears, and adopt the construction that best harmonizes the statute internally and with related statutes. [Citations.]' In addition, we may examine the statute's legislative history. [Citation.]" (*People v. Whitmer* (2014) 230 Cal.App.4th 906, 917.) We apply the same basic principles of statutory construction when interpreting a voter initiative. (*People v. Canty* (2004) 32 Cal.4th 1266, 1276; *People v. Rizo* (2000) 22 Cal.4th 681, 685.)

The subdivision defendant was convicted under, section 530.5, subdivision (c)(3), provides that: "Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information . . . of 10 or more other persons is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by

both a fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170." The statute also proscribes *use* of personal identifying information "for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information . . . ." (§ 530.5, subd. (a).) Personal identifying information includes the name, address, telephone number, health insurance number, driver's license or identification number, place of employment, date of birth, birth certificate, passport, account numbers, biometric data, and a host of other information. (§ 530.55, subd. (b).)

Defendant equates section 530.5 with section 484e, which, as discussed *ante*, the *Romanowski* court determined fell within the ambit of Proposition 47. (*Romanowski*, *supra*, 2 Cal.5th at p. 917.) However, section 484e explicitly defines theft of access card information as *grand theft*. (§ 484e, subd. (d) ["Every person who acquires or retains possession of access card account information with respect to an access card validly issued to another person, without the cardholder's or issuer's consent, with the intent to use it fraudulently, is guilty of grand theft."].) Therefore, it clearly constitutes "[o]ne of those 'other provision[s] of law defining grand theft' for which Proposition 47 reduced punishment." (*Romanowski*, at p. 908.)

Section 484e requires that the information be acquired or retained without the cardholder's consent. (§ 484e, subd. (d).) The *Romanowski* court concluded that the " 'without . . . consent' requirement confirms that theft of access card information is a 'theft' crime in the way the Penal Code defines 'theft.' " (*Romanowski*, *supra*, 2 Cal.5th at p. 912.)

Section 484e is placed in a chapter of the Penal Code titled theft. (*Romanowski*, *supra*, 2 Cal.5th at. pp. 911-912.) The

Legislature clearly intended that section 484e define a theft crime, which is within the ambit of Proposition 47.

In contrast, section 530.5 does not define its crimes as grand theft, but describes them as "public offense[s]." (§ 530.5.) Section 530.5 is placed in the chapter of the Penal Code defining "False Personation and Cheats," which includes crimes such as marriage by false pretenses (§ 528), and falsifying birth certifications and licenses (§§ 529a, 529.5). Section 530.5 also broadly proscribes the use of the information "for any unlawful purpose" with the intent to defraud, such as obtaining false driver's licenses, birth certificates, and passports, which could be used for a multitude of reasons unrelated to any pecuniary gain, such as avoiding warrants, no fly lists, and protective orders. (*Id.*, subd. (a).) It also broadly proscribes "intentional civil torts, including . . . invasion of privacy by means of intrusion into private affairs and public disclosure of private facts." (*People v. Bollaert* (2016) 248 Cal.App.4th 699, 711-712.)

Section 530.5, subdivision (c) has no requirement that the information be acquired or retained without the consent of its owner. (§ 530.5, subd. (c).)[3] By its plain terms, section 530.5 addresses harms much broader than theft.

At oral argument, defendant cited *People v. Page* (2017) 3 Cal.5th 1175 (*Page*), which was decided after briefing in this case was completed. In *Page*, the court considered whether Proposition 47 applies to violations of Vehicle Code section 10851, taking or driving a vehicle without the owner's consent. The Supreme Court

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[3] In contrast to section 530.5, subdivision (c), under which defendant was convicted, section 530.5, subdivision (a), punishing the *use* of personal identifying information, does require that the information be used without the consent of the person to whom the information belongs.

found that a violation of section 10851 may be eligible for resentencing under Proposition 47 if the conviction was based on theft of the vehicle rather than on posttheft driving or on a taking without the intent to permanently deprive the owner of possession. The court rejected the People's argument that a defendant convicted of section 10851 is presumptively ineligible for Proposition 47 resentencing simply because it is not expressly designated as a "grand theft" offense. The court reasoned that the conduct it criminalizes is theft, and it is obviously a form of grand (not petty) theft because it is punishable as a felony. (*Page*, at pp. 1186, 1187, 1188.)

We do not find that *Page* is helpful to our analysis here. *Page* simply reiterated the well-settled rule that a crime need not be explicitly defined as "grand theft" for Proposition 47 to apply. (See, e.g., *Romanowski*, *supra*, 2 Cal.5th at p. 910 [Prop. 47 applies to statutes defining " 'any . . . provision of law defining grand theft' " *and* statutes proscribing " 'obtaining . . . property by theft' "].) As discussed above, section 530.5 is not defined as grand theft, and does not proscribe "obtaining property by theft." Section 530.5 addresses harms much broader than theft; and section 530.5, subdivision (c) has no requirement that the information be acquired or retained without the consent of its owner, a hallmark requirement of a theft crime. (*Romanowski*, at p. 912; see also § 484, subd. (a).)

We also find that applying Proposition 47 to section 530.5 is inconsistent with the purpose of the initiative, to "ensure that prison spending is focused on violent and serious offenses, to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K-12 schools, victim services, and mental health and drug treatment." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70.) Section 530.5 seeks "to protect the

victims of identity fraud, who cannot protect themselves from fraudulent use of their identifying information once it is in the possession of another, because they cannot easily change their name, date of birth, Social Security number, or address." (*People v. Valenzuela* (2012) 205 Cal.App.4th 800, 807.) Identity fraud "creates ripples of harm to the victim that flow from the initial misappropriation." (*Ibid.*) We are not persuaded that section 530.5 defines a "nonserious" crime within the meaning of Proposition 47, given the far-reaching effects of the misuse of a victim's personal identifying information.

DISPOSITION

The order denying the petitions is affirmed as to counts 2, 6, 14, and 25, and reversed and remanded as to counts 21 and 23, for consideration of defendant's eligibility of Proposition 47 relief as to those counts.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is 15515 Sunset Blvd., No. 214, Pacific Palisades, California 90272.

On April 10, 2018, I served the following document(s) described as: **PETITION FOR REVIEW** on all interested parties to the action by transmitting a true copy by electronic mail or by placing a true copy enclosed in sealed envelope(s) addressed as indicated on the attached service list, in the United States Mail, first class postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 10, 2018, at Pacific Palisades, California.

David Greifinger

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Under an understanding with the Clerk of the Court of the Second Appellate District, petitioner served the Court of Appeal by filing this petition with the Supreme Court through True Filing.

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San Francisco, CA 94102-4738
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STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **People v. Si H. Liu**
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