In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,** **v.** **JULIAN MICAH BULLARD,** **Defendant and Appellant.**

Case No. S239488

Fourth Appellate District Division Two, Case No. E065918
San Bernardino County Superior Court, Case No. FVI1200894
The Honorable John Peter Vander Feer, Judge

ANSWERING BRIEF ON THE MERITS

XAVIER BECERRA
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
MICHAEL R. JOHNSEN
Deputy Solicitor General
*SAMUEL P. SIEGEL
Associate Deputy Solicitor General
State Bar No. 294404
1300 I Street
Sacramento, CA 95814
Telephone: (916) 210-6269
Sam.Siegel@doj.ca.gov
Attorneys for Respondent

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ISSUE PRESENTED

Does equal protection or the avoidance of absurd consequences require that misdemeanor sentencing under Penal Code Section 490.2 and 1170.18 extend not only to those convicted of violating Vehicle Code Section 10851 by theft, but also to those convicted of taking a vehicle without the intent to permanently deprive the owner of possession?

INTRODUCTION

For almost as long as cars have been on the road, it has been a felony to "drive or operate" another person's vehicle in California without the owner's consent, "with or without the intent to steal the same." (Former General Laws § 28, 1913.) In the early part of the twentieth century, the Legislature expanded that prohibition, making it illegal to either drive or take someone else's car without his or her consent. Today, that proscription is codified at section 10851(a) of the Vehicle Code. That statute criminalizes a wide range of conduct: it makes it unlawful to drive or take another's car, with the intent to either permanently or temporarily deprive the owner of possession, and with or without the intent to steal the vehicle. In practical terms, this means that a person can violate section 10851 by stealing a car, by driving one in the course of stealing it, by driving a car without the owner's permission after it has been stolen, or simply by joyriding.

Until 2014, any violation of section 10851—whether based on taking or driving—could be punished as a felony or a misdemeanor. That changed when the voters adopted Proposition 47, the Safe Neighborhoods and Schools Act, which reduced the punishment for certain theft- and drug-related offenses by making them punishable only as misdemeanors. And in *People v. Page* (2017) 3 Cal.5th 1175, this Court held that Proposition 47

applies to "some, though not all, section 10851" convictions—specifically, those based on the "theft" of a vehicle. (*Id.* at p. 1184.)

That decision, however, created an odd consequence. Theft is defined as taking property with the "intent to permanently deprive the owner of possession." (*Page*, *supra*, 3 Cal.5th at p. 1184.) But a person can violate section 10851 by taking a vehicle with the intent to only temporarily deprive the owner of possession. Thus, by limiting Proposition 47 to "theft" offenses, the electorate created the seemingly incongruous result that a person could be convicted of a felony for taking a car *without* the intent to permanently deprive the owner of possession, but only be convicted of a misdemeanor if he or she acted *with* the intent to permanently deprive the owner of possession. (*Id.* at p. 1188, fn. 5.) *Page* recognized that limiting Proposition 47 to the theft version of section 10851 produced this strange outcome. But that case afforded the Court no occasion to consider whether the Equal Protection Clause or the avoidance of absurd consequences doctrine requires extending Proposition 47 to section 10851 convictions based on the taking of a vehicle without the intent to permanently deprive the owner of possession. (*Ibid.*)

This case presents the question unanswered by *Page*. And as to the narrow issue reserved by that case, the People agree that the absurd consequences doctrine requires extending Proposition 47 to those convicted of section 10851 for *taking* a vehicle *without* the intent to permanently deprive the owner of possession. There appears to be no reasonable basis for refusing to extend Proposition 47's misdemeanor sentencing provisions to section 10851 convictions of that kind.

The People do not agree, however, that the absurdity canon or the Equal Protection Clause compels the conclusion that Proposition 47 should be applied to section 10851 convictions based on *driving*, as Bullard contends. This Court has repeatedly held that section 10851 prohibits

driving a vehicle separate and distinct from the act of taking one. The voters were presumably aware of that distinction when they passed Proposition 47; yet they chose not to extend the Act's misdemeanor sentencing provisions to section 10851 convictions based on unlawful driving.

There were good reasons for that choice. Driving is an inherently dangerous activity; driving a car without the owner's consent, more so. And whether a person drives a car with the intent to deprive the owner of possession permanently or only temporarily, unlawful driving necessarily poses a threat to the public's safety in a way that the mere taking of the same vehicle does not. Moreover, Bullard's position creates an anomalous result of its own. It would inevitably entangle this Court in the thorny business of deciding which crimes should be punished as misdemeanors and which should be punished as felonies. But this Court has routinely held that it is up to the Legislature to draw these kinds of lines—both in the context of Proposition 47 cases and elsewhere. Bullard presents no persuasive reason for departing from that practice now.

BACKGROUND

I. SECTION 10851 PROHIBITS BOTH THE DRIVING AND THE TAKING OF ANOTHER'S VEHICLE WITHOUT THE OWNER'S CONSENT

Since at least 1913, California law has made it a felony to "drive or operate" a car without the owner's permission, "with or without the intent to steal the same." (Former General Laws § 28, 1913.) In 1931, the Legislature amended that statute to proscribe not just the "driv[ing]" of another's vehicle without his or her consent, but also the "tak[ing]" of such automobiles. (Stats. 1931, ch. 1026, § 60, p. 2133.) That law, as amended, is the precursor to today's Vehicle Code Section 10851(a), which provides (in relevant part):

> Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle ... is guilty of a public offense.

(Vehicle Code § 10851, subd. (a).)

Section 10851 "proscribes a wide range of conduct." (*People v. Jaramillo* (1976) 16 Cal.3d 752, 757.) It prohibits "driving as separate and distinct from the act of taking." (*Id.* at p. 759, fn. 6.) As one Court of Appeal put it, section 10851 is best thought of as criminalizing "four separate kinds of offenses": pure theft, pure driving, driving theft, and posttheft driving. (*People v. Van Orden* (2017) 9 Cal.App.5th 1277, 1283, 1285.) These crimes fall on a "spectrum, with pure theft and pure driving at opposite ends and driving theft and posttheft driving in between." (*Id.* at p. 1285.) Pure theft occurs when a vehicle is taken without driving it—by, for example, conveying an automobile on a car carrier "directly into a public warehouse." (*People v. Cuevas* (1936) 18 Cal.App.2d 151, 153.) Pure driving, on the other hand, is joyriding: it occurs when a person drives a vehicle "'with the intent only to temporarily deprive its owner of possession.'" (*People v. Garza* (2005) 35 Cal.4th 866, 876.) The other two acts outlawed by section 10851 lie between these poles: driving theft is theft "accomplished by driving the vehicle away," and posttheft driving is "driving the vehicle after there has been a 'substantial break' from the theft." (*Van Orden*, *supra*, 9 Cal.App.5th at p. 1283; see also *id.* at pp. 1285-1286 [using scenes from the films Ferris Bueller's Day Off, Gone in 60 Seconds, and Bonnie and Clyde to highlight the distinctions between joyriding, driving theft, and posttheft driving].)

Before Proposition 47's adoption, each act proscribed by section 10851 could be punished as a felony or a misdemeanor; the crime was a wobbler. (*Page*, *supra*, 3 Cal.5th at p. 1181.) Prosecutors needed only

show that a defendant "took or drove someone else's vehicle without the owner's consent," and that the defendant meant to deprive the owner of possession or title for "any period" of time. (CALCRIM No. 1820.)

II. THIS COURT HOLDS IN *PAGE* THAT PROPOSITION 47 ALTERED WHICH SECTION 10851 CONVICTIONS MAY BE PUNISHED AS FELONIES

Proposition 47 changed the kinds of section 10851 convictions that may be punished as felonies. Adopted by the voters in 2014, the Act "reduced the punishment for certain theft- and drug-related offenses, making them punishable as misdemeanors rather than felonies." (*Page*, *supra*, 3 Cal.5th at p. 1179.) Relevant here, Proposition 47 added sections 490.2 and 1170.18 to the Penal Code. (*Ibid.*)[1] Section 490.2 defines the crime of "obtaining any property by theft" as petty theft, and—subject to exceptions not relevant here—limits the punishment for that conduct to a misdemeanor, if the value of the property taken is $950 or less. (§ 490.2, subd. (a).) Section 1170.18 is an ameliorative provision. It entitles persons who are currently serving felony sentences and "who would have been guilty of a misdemeanor" under Proposition 47 had the Act "been in effect at the time of the offense" to have their sentences recalled, and to be resentenced to misdemeanors unless the trial court finds that resentencing would pose an "unreasonable risk of danger to public safety." (§ 1170.18, subds. (a), (b).) Individuals who meet those criteria and have completed their sentences are similarly entitled to have their crimes redesignated as misdemeanors. (§ 1170.18, subds. (f), (g).)

After Proposition 47's passage, lower courts were divided over whether the Act's misdemeanor sentencing provisions applied to section

[1] Except for references to Vehicle Code Section 10851(a) (which this brief refers to as section 10851), and unless otherwise indicated, all statutory references in this brief are to the Penal Code.

10851 convictions.[2] In *Page*, this Court resolved that conflict, holding that Proposition 47 applied to "some, though not all, section 10851" convictions. (*Page*, *supra*, 3 Cal.5th at p. 1184.) It concluded that Proposition 47 applied to the crime of taking a vehicle worth $950 or less, if the defendant acted with the "intent to permanently deprive the owner of possession." (*Ibid.*) That conclusion followed from Proposition 47's plain language: "[b]y its terms," the Act applies to "theft" convictions where the value of the personal property is worth less than $950. (*Id.* at p. 1183.) An automobile is "personal property," and a person may be convicted under section 10851 for stealing a vehicle. (*Ibid.*) It therefore follows, the Court held, that Proposition 47's misdemeanor sentencing provisions apply to section 10851 convictions based on a taking of a vehicle worth $950 or less, if the defendant acted with the intent to permanently deprive the owner of possession. (*Id.* at p. 1188.)

Page also recognized, however, that its holding created an odd consequence. The taking of another's property without their permission is not a "theft" unless the defendant acts with the intent "to permanently deprive the owner of possession." (*Page*, *supra*, 3 Cal.5th at p. 1184.) And because Proposition 47 applies only to "thefts," *Page*'s conclusion meant that individuals convicted of section 10851 "for taking a vehicle *without* the intent to permanently deprive the owner of possession" could not take advantage of the Act's misdemeanor sentencing provisions. (*Id.* at p. 1188, fn. 5, original italics.) But this Court had "no occasion" in *Page* to consider whether "equal protection or the avoidance of absurd consequences"

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[2] Compare *Van Orden*, *supra*, 9 Cal.5th at p. 1289 [Proposition 47 applies to some kinds of section 10851 convictions] with *People v. Sauceda* (2016) 3 Cal.App.5th 635, 643, review granted Nov. 30, 2016, 384 P.3d 306, and matter transferred Mar. 21, 2018, 413 P.3d 676 [Proposition 47 does not apply to any section 10851 convictions].

required extending Proposition 47 to these crimes, because Page's counsel had not "expressly argue[d] for this position in his briefs," and because the record in that case did not indicate whether Page had been convicted of theft or the "mere[] temporary taking" of a car. (*Ibid.*) The Court left that question for a case "where it is squarely presented by the facts and the briefing." (*Ibid.*)

III. BULLARD'S CASE AND THE QUESTION UNANSWERED IN *PAGE*

This case presents the issue left open by *Page*. On the morning of April 11, 2012, Julian Micah Bullard got into his girlfriend's 1993 Lincoln Towncar and drove it off without her permission. (Opn. p. 2.) Bullard's girlfriend reported the vehicle stolen; a short time later, Bullard got in touch with her and agreed to return the vehicle. (*Ibid.*) When he did, the police were waiting for Bullard, and arrested him. (*Ibid.*) According to the police report, the car was worth about $500. (*Ibid.*; see also RT 11.)

On April 13, 2012, the San Bernardino County District Attorney filed a felony complaint, charging Bullard with one count of unlawfully driving or taking a vehicle, in violation of section 10851, and one count of receiving stolen property, in violation of section 496d(a). (CT 1-2.) On April 23, Bullard pleaded guilty to the section 10851 charge. (CT 3-5; RT 1-6.) The stolen property charge was dismissed, and Bullard was sentenced to county jail for the low term of 16 months. (CT 7; RT 10.) After the voters approved Proposition 47, and after Bullard had completed his sentence, he petitioned to have his section 10851 conviction redesignated a misdemeanor. (CT 8.) The trial court denied his petition, concluding that section 10851 was "not [a]ffected by Prop. 47." (RT 11.)

Bullard appealed, and the Court of Appeal affirmed in an unpublished decision. (Opn. p. 2.) It held that "all Vehicle Code Section 10851 convictions, including both theft- and nontheft-based convictions, are ineligible for reduction" under Proposition 47. (*Id.* at p. 6.) Judge Miller

disagreed with the majority's reasoning, but concurred with its result. (*Id.* at p. 10.) He interpreted Proposition 47 as applying to section 10851 convictions in which the "defendant takes a vehicle with the intent to permanently deprive the owner" of possession, if the vehicle is worth less than $950. (*Ibid.*) But he would have affirmed the trial court's decision to deny Bullard's petition, because Bullard had failed to show that the car was worth less than $950, and that he intended to permanently deprive the owner of possession of the car. (*Ibid.*)

This Court granted Bullard's petition for review and held it pending its decision in *Page*. After *Page* was decided, it ordered the parties to brief the question reserved by that decision.

ARGUMENT

I. THE ABSURDITY CANON PRECLUDES PUNISHING A CONVICTION FOR TAKING A VEHICLE WORTH LESS THAN $950 WITHOUT THE INTENT TO PERMANENTLY DEPRIVE THE OWNER OF POSSESSION AS A FELONY

The question presented by this case is a narrow one. The interplay between section 10851 and Proposition 47 requires this Court to consider two aspects of section 10851. The first is the acts proscribed by section 10851: driving a vehicle or taking it. The second is the intent that will sustain a section 10851 conviction. A defendant violates section 10851 by acting with the intent to either (1) permanently deprive the owner of possession of the vehicle or (2) deprive the owner of possession for some lesser period of time. These features of section 10851—and what they mean for defendants convicted of violating that statute in light of Proposition 47's passage—can be thought of as creating a two-by-two matrix, with the relevant act on one axis and the relevant intent on another:

Which Section 10851 Convictions Does Proposition 47 Apply To?

	***Taking* a vehicle worth $950 or less...**	***Driving* a vehicle...**
***with* the intent to permanently deprive owner of possession**	Eligible for Proposition 47's misdemeanor sentencing provisions (*Page*, *supra*, 3 Cal.5th at p. 1184)	Not eligible for Proposition 47's misdemeanor sentencing provisions (*Page*, *supra*, 3 Cal.5th at p. 1184)
***without* the intent to permanently deprive owner of possession**	Question presented in this case (*Page*, *supra*, 3 Cal.5th at p. 1188, fn. 5.)	Not eligible for Proposition 47's misdemeanor sentencing provisions (*Page*, *supra*, 3 Cal.5th at p. 1184)

As discussed, in *Page* this Court held that Proposition 47 applies to only one species of section 10851 convictions: those based on "taking a vehicle" where the defendant had the intent to "permanently deprive the owner." (*Page*, *supra*, 3 Cal.5th at p. 1184.) But *Page* also specifically reserved the question of whether Proposition 47's misdemeanor sentencing provisions should be extended to those convicted of taking a vehicle for some lesser period of time. (*Id.* at p. 1188, fn. 5.)

This final question is the one the People understand to be presented in this case. And as to that narrow issue, the People agree that the absurdity canon requires extending Proposition 47's misdemeanor sentencing provisions to individuals convicted of taking of a vehicle worth less than $950 without the intent to permanently deprive the owner of possession. The People can think of no plausible reason for treating section 10851 convictions for taking a vehicle without the intent to permanently deprive the owner of possession more harshly than those for taking a vehicle with the intent to permanently deprive the owner of possession. Indeed, this

prohibition applies to a very narrow range of conduct. One can imagine a prankster towing a car as part of an elaborate hoax, for example.[3] The tricksters in that scenario would "take" the vehicle without driving it and without the intent to permanently deprive the owner of possession. Outside of these rather unusual circumstances, however, it is hard to envision a scenario in which a person will take, but not drive, a car without the intent to permanently deprive the owner of possession.

II. NEITHER THE ABSURDITY CANON NOR THE EQUAL PROTECTION CLAUSE REQUIRES EXTENDING PROPOSITION 47 TO SECTION 10851 CONVICTIONS BASED ON THE DRIVING OF A VEHICLE WITHOUT THE OWNER'S CONSENT

While the People agree that the absurdity doctrine requires extending Proposition 47 to section 10851 convictions based on taking a vehicle without the intent to permanently deprive the owner of possession, the People do not agree with Bullard's further contention that Proposition 47 also applies to section 10851 convictions based on *driving* a vehicle. There is nothing absurd or irrational about punishing the act of driving a vehicle without the owner's consent more harshly than the taking that same car.

A. It Is Not Absurd to Punish the Driving of Another's Car Without the Owner's Permission More Harshly Than the Taking of the Same Car

Bullard asserts that it is "patently absurd" to preclude those convicted under section 10851 for "only driving the vehicle" from availing themselves of Proposition 47's misdemeanor sentencing provisions. (Appellant's Opening Brief on the Merits (OBM) 20.) Not so.

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[3] This was the premise of an episode of the MTV show "Punk'd," in which "Keeping Up with the Kardashians" star Scott Disick found himself in the role of the unsuspecting car owner. (See MTV International, *Dude, Where's Scott's Car – Punk'd*, YouTube <https://www.youtube.com/watch?v=KzgivvnmbLA> [as of June 18, 2018].)

1. The absurdity canon applies only in those "'rare cases'" where a statute's "'literal meaning ... would result in absurd consequences which the Legislature did not intend.'" (*Miklosy v. Regents of Univ. of California* (2008) 44 Cal.4th 876, 897-898; see also *Barnhart v. Sigmon Coal Co.* (2002) 534 U.S. 438, 459 [U.S. Supreme Court "rarely invokes" the absurdity test to "override unambiguous legislation"].) That a particular result of the literal reading of a statute "may seem odd" does not make it "absurd." (*Exxon Mobil Corp. v. Allapattah Servs., Inc.* (2005) 545 U.S. 546, 565.) Indeed, an expansive understanding of the absurdity canon "can be a slippery slope." (Scalia & Garner, Reading Law: The Interpretation of Legal Texts (2012) p. 237.) It may lead to "judicial revision of public and private texts" based solely on a judge's view of what is "more reasonable." (*Ibid.*; see also *California School Employees Ass'n v. Governing Board of South Orange County Community College Distr.* (2004) 124 Cal.App.4th 574, 588 ["We must exercise caution using the 'absurd result' rule; otherwise, the judiciary risks acting as a '"super-Legislature"' by rewriting statutes to find an unexpressed legislative intent"].)

There is nothing absurd about penalizing the act of driving a vehicle without the owner's consent more harshly than the taking of that same car. Driving is an inherently dangerous activity. In 2016—the most recent year for which national data are available—37,461 people died in car crashes across the United States, including 3,623 people in California.[4] And driving a vehicle without the owner's permission poses a heightened threat to public safety. Drivers who have commandeered another person's car are more likely to be distracted by the possibility that they might get caught,

[4] See National Highway Traffic Safety Administration, Traffic Safety Facts (Oct. 2017) p. 1, 9 <https://www.nhtsa.gov/press-releases/usdot-releases-2016-fatal-traffic-crash-data> [as of June 18, 2018].

and are more likely to lead law enforcement on high-speed pursuits in the event that they are. (See, e.g., *People v. Montoya* (2004) 33 Cal.4th 1031, 1033-1034 [after taking car, defendant led officers on "high-speed chase into Los Angeles County"]; *People v. Pater* (1968) 267 Cal.App.2d 921, 922 [similar].) And that is true whether they intend to permanently deprive the owner of possession or not.[5] Drivers may also use these cars to commit other crimes—including violent ones. (See, e.g., *People v. Linares* (2003) 105 Cal.App.4th 1196, 1197-1198 [defendant used own car to attempt to murder another person].)

Proposition 47's distinction between section 10851 driving convictions and taking convictions, then, is entirely sensible. And that is true whether the unlawful driving occurs as part of the act of stealing the car, or after the theft has been completed, or while joyriding.[6] The relevant inquiry is whether a section 10851 conviction is predicated on the *driving* of another's car without the owner's permission. "By its terms," Proposition 47 does not apply to convictions based on that conduct. (*Page*, *supra*, 3 Cal.5th at p. 1183; see also *ibid.* [Proposition 47 applies only to the "theft form of the Vehicle Code section 10851 offense"].)

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[5] Anecdotal accounts support this common-sense conclusion. (See, e.g., Knoll & Vives, *Joy Ride in Fontana Ends Deadly for 3 Boys*, Los Angeles Times (January 30, 2009) <http://articles.latimes.com/2009/jan/30/local/me-kids-chase30> [as of June 18, 2018]; Delgado, *Joyride Death Plunge: 1 Killed, 2 Badly Injured When Car Skids Off Road in Oakland Hills*, SF Gate (June 12, 2002) <https://www.sfgate.com/news/article/Joyride-death-plunge-1-killed-2-badly-injured-2810443.php> [as of June 18, 2018].

[6] Cf. *People v. Solis* (2016) 200 Cal.Rptr.3d 463, 475-476, review granted June 8, 2016, 371 P.3d 241, and matter transferred Mar. 21, 2018, 413 P.3d 677 (conc. opn. of Aldrich, P.J.) [disputing the suggestion that joyriders and posttheft drivers are more dangerous than individuals who drive a car to complete a theft].

In practice, this means that if a section 10851 offense is based on "pure theft," it cannot be charged as a felony (where the value of the vehicle is $950 or less). And when a section 10851 offense is based on either posttheft driving or joyriding, it may be charged as a felony: these crimes can only be committed by driving. (See *Van Orden*, *supra*, 9 Cal.App.5th at p. 1286 [posttheft driving and joyriding are not theft convictions].)

Whether driving theft—driving a vehicle to complete a theft—may be punished as a felony will depend on the theory that the prosecution decides to pursue. Although that crime is often characterized as a theft offense, prosecutors are not required to charge it as one. Rather, a defendant who drives a vehicle away to complete a theft may be charged with a violation of section 10851 based on *either* the decision to drive the car *or* the act of taking it. (See, e.g., *People v. Austell* (1990) 223 Cal.App.3d 1249, 1252 [recognizing that prosecutors may prosecute a section 10851 violation based solely on a driving theory].)[7] If the prosecution decides to proceed on a theft theory, Proposition 47 applies "[b]y its terms," and the prosecution may not charge a defendant with a felony (unless the car is worth more than $950). (*Page*, *supra*, 3 Cal.5th at p. 1183.) But if it elects to proceed on a driving theory, neither section 10851 nor Proposition 47 prevents the prosecution from charging a defendant with a felony; those

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[7] Of course, a defendant who has stolen a vehicle by driving it away may not be punished for both stealing the vehicle and driving it—unless the driving conviction is based on driving that occurs once there has been a "'substantial break'" from the initial theft. (*Page*, *supra*, 3 Cal.5th at p. 1188.) That is because section 654 prohibits the State from doubly punishing the same act or omission, a rule that applies "'not only where there is one act in the ordinary sense, but when there is a course of conduct that constitutes an indivisible transaction.'" (*Pater*, *supra*, 267 Cal.App.2d at pp. 925-926 [discussing section 654].)

convictions "fall outside the scope of Proposition 47." (*Van Orden*, *supra*, 9 Cal.App.5th at p. 1286.) And while this may leave a driving thief's fate in the hands of a prosecutor, there is nothing absurd about that. To the contrary, criminal justice regimes often punish the same conduct under separate statutory provisions, "one of which can give rise to harsher penalties upon conviction," and leave it to the prosecutor to decide which charge to pursue. (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 570; see also *United States v. Batchelder* (1979) 442 U.S. 114, 124-152; *People v. Wilkinson* (2004) 33 Cal.4th 821, 838; *Davis v. Municipal Court* (1988) 46 Cal.3d 64, 87.)[8]

Nor is this conclusion undermined by those authorities that suggest that driving thefts should be construed as theft offenses in certain circumstances. (See, e.g., *Garza*, *supra*, 35 Cal.4th at pp. 877-878, 880 & fn. 2; *People v. Strong* (1994) 30 Cal.App.4th 366, 373-374.) The question presented in those cases was whether a defendant's section 10851 conviction barred him from being convicted of receiving stolen property in violation of section 496(a) when (1) the prosecutor presented both theft and driving theories of section 10851 to the jury, (2) the evidence at trial supported the section 10851 conviction on either theory, (3) the trial court's instructions did not require the jury to choose between them, and (4) the jury's guilty verdict did not disclose which section 10851 theory it convicted the defendant of. (*Garza*, *supra*, 35 Cal.4th at p. 871; *Strong*, *supra*, 30 Cal.App.4th at pp. 373-374.) Under those facts, courts have suggested that if the "evidence showed only one continuous violation of

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[8] These authorities address situations in which two separate statutes impose different penalties for the same criminal conduct. That does not, however, make them distinguishable. Section 10851 is one statute, but it "prohibits driving as separate and distinct from the act of taking." (*Jaramillo*, *supra*, 16 Cal.3d at p. 759, fn. 6.)

section 10851, in which the driving was part and parcel of the taking, then a conviction for driving *or* taking" under section 10851 should be considered a theft conviction. (*Strong*, *supra*, 30 Cal.App.4th at p. 374, original italics; *Garza*, *supra*, 35 Cal.4th at pp. 877-878 [similar].)

Nothing in these cases displaces the normal rule that district attorneys may choose which theory of a case to pursue when prosecuting criminal conduct that can be charged under multiple statutes that impose different punishments. (See *Manduley*, *supra*, 27 Cal.4th at p. 570.) At most, they suggest that under the narrow circumstances described above, courts should construe section 10851 convictions as theft offenses for purposes of section 496(a)'s bar on convicting a person for stealing and receiving the same property, if the evidence at trial demonstrates that a defendant only drove a car as "part and parcel" of his crime of stealing of the same. (*Strong*, *supra*, 30 Cal.App.4th at p. 374.) Even that conclusion is only implied; neither court held as much, because the evidence introduced at trial indisputably established that the defendant had driven the vehicle after the original theft was complete. (*Garza*, *supra*, 35 Cal.4th at p. 882; *Strong*, *supra*, 30 Cal.App.4th at pp. 375-376.)

In any event, even if driving theft must be prosecuted as a theft offense under the circumstances described above, that does not mean that it was absurd for the voters to limit Proposition 47's misdemeanor sentencing provisions to section 10851 crimes based on the taking of a vehicle. That a literal reading of a statute yields an "odd" consequence does not make the law "absurd." (*Exxon Mobil Corp.*, *supra*, 545 U.S. at p. 565.) This Court has repeatedly stressed that section 10851 prohibits "driving as separate and distinct from the act of taking." (*Jaramillo*, *supra*, 16 Cal.3d at p. 759, fn. 6; *Garza*, *supra*, 35 Cal.4th at p. 876 [same]; *People v. Barrick* (1982) 33 Cal.3d 115, 135 [same].) And the electorate deliberately chose not to extend Proposition 47's misdemeanor sentencing provisions to section

10851 convictions based on unlawful driving. (See *post*, pp. 28-30.) Thus, even assuming that Proposition 47 applies to driving theft under certain scenarios, the voters' decision to limit the Act in this way was not absurd. Any person who drives a car without the owner's consent presents heightened public safety risks. And the voters may adopt measures that make "California a safer place, even if only marginally and incrementally." (*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 491.)

2. Accepting Bullard's argument would produce an anomalous result of its own. It would inevitably draw the courts into the debate over which crimes should be punished as misdemeanors, and which should be punished as felonies. Section 10851 penalizes two acts—driving a vehicle or taking one. It does so, however, only because of a historical happenstance. Originally, California law only made it a felony to "drive or operate" another's car without the owner's permission. (Former General Laws § 28, 1913.) In 1931, the Legislature amended that statute by adding the words "or take." (Stats. 1931, ch. 1026, § 60, p. 2133; see also *ante*, p. 10 [describing the history of section 10851's precursors].) But the Legislature could have taken a different course and adopted a second statute, one that made it a felony to take another's car without his or her consent. Had the Legislature done so, Proposition 47 would only apply to that hypothetical taking statute. (See *Page*, *supra*, 3 Cal.5th at p. 1184 [Proposition 47 applies only to section 10851 convictions based on "taking a vehicle"].)

That scenario would cast Bullard's claim in a much different—and much less favorable—light. It would invite absurdity or equal protection challenges to any Penal Code provision that imposes a felony sentence, and require courts to sift through those provisions and decide whether it was absurd for the Legislature to punish any particular crime as a felony in light of the electorate's decision to reduce the punishment for illegally taking a vehicle to a misdemeanor. This Court, however, has "routinely decline[d]

to intrude upon" the Legislature's decisions to "define degrees of culpability and punishment, and to distinguish between crimes in this regard." (*People v. Turnage* (2012) 55 Cal.4th 62, 74.) It is the "prerogative and the duty" of the Legislature to make choices of that kind, and this Court rarely second-guesses the "'broad discretion' [that] such policy judgments entail." (*Ibid.*) Bullard provides no good reason for departing from that practice here.

3. Proposition 47's distinction between section 10851 theft offenses and section 10851 driving offenses is also no more absurd than other lines drawn by the Act. For example, Proposition 47 creates a disparity similar to the one at issue here between the crimes of shoplifting and burglary. Under the Act, a person who "enters a commercial establishment with intent to commit larceny" and takes (or intends to take) property worth less than $950 when the establishment is "open during regular business hours" is guilty of shoplifting, a crime punishable only as a misdemeanor. (§ 459.5, subd. (a).) But Proposition 47 also specifies that "[a]ny other entry into a commercial establishment with intent to commit larceny is burglary," a crime punishable as a felony. (*Ibid.*; see also *People v. Gonzales* (2017) 2 Cal.5th 858, 875 [burglary is a wobbler].) As a result, an employee who enters the business where she works with the intent to steal from her employer a minute before the store officially opens may be convicted of a felony, but her co-worker who enters with the same intent sixty seconds later can only be convicted of a misdemeanor. (*Gonzales*, *supra*, 2 Cal.5th at p. 873.) While that distinction may seem unfair, this Court rejected the argument that it was absurd. (*Ibid.*) To the contrary, it explained, the voters could have reasonably concluded that "entering an open business to commit a minor theft is less dangerous and more likely to be ferreted out than an entry when the business is closed." (*Ibid.*)

This Court recognized that Proposition 47 drew a similar line in *People v. Martinez* (2018) 4 Cal.5th 647. There, it held that the Act does not extend to Health and Safety Code Section 11379 convictions—the unlawful transportation of controlled substances—even though it applies to several closely-related crimes of drug possession. (*Id.* at pp. 653-655; see also *id.* at p. 654 [noting that it is "reasonable to treat drug transportation as a more serious crime than drug possession"].) And it reached that conclusion even though it created a "striking" outcome for defendants like the one in that case. (*Id.* at p. 656 (conc. opn. of Liu, J.).) At the time of Martinez's conviction, section 11379 prohibited the unlawful transportation of drugs for any reason. (*Id.* at p. 650 (maj. opn. of Liu, J.).) But in 2013, the Legislature narrowed the statute to proscribe only the transportation of drugs with the intent to sell. (*Id.* at p. 651.) That change "made it unnecessary for the voters to consider whether section 11379 convictions should be included within the scope" of Proposition 47 because, at the time the Act was adopted, the "transportation of drugs without intent to sell could no longer be charged under section 11379." (*Id.* at p. 656 (conc. opn. of Liu, J.).) Because Proposition 47 applies only to those persons convicted of "nonserious, nonviolent drug possession crimes with no intent to sell," however, it left defendants like Martinez "out of luck." (*Ibid.*) Though that choice may have been an "oversight," all members of this Court recognized that a "faithful application of Proposition 47's text" precluded it from extending the Act to section 11379 convictions. (*Ibid.*)

The distinction that Proposition 47 makes between section 10851 offenses based on driving and those based on taking is no different from the lines this Court endorsed in *Gonzales* and *Martinez*. Just as it was sensible for the voters to subject employees to different punishments depending on the time at which they enter their place of employment, it was reasonable for the electorate to punish illegal driving more harshly than illegal taking.

(*Gonzales*, *supra*, 2 Cal.4th at p. 873; see also *ante*, pp. 18-19 [driving is an inherently dangerous activity].) And while Proposition 47 may leave persons convicted under section 10851 based on driving "out of luck," there is even less reason to believe that that choice was an "oversight." (*Martinez*, *supra*, 4 Cal.5th at p. 656 (conc. opn. of Liu, J.).) Rather, as discussed below, the distinction between section 10851 driving convictions and section 10851 taking convictions is a longstanding feature of California law—one that the voters were presumably aware of when they adopted Proposition 47. (See *post*, pp. 29-30.)

4. In support of his absurdity argument, Bullard relies on three cases from this Court. (See OBM 17-20.) But none used the absurdity canon to override a reasonable distinction like the one drawn here. In *Younger v. Superior Court* (1978) 21 Cal.3d 102, this Court held that a statute requiring the California Department of Justice to destroy certain marijuana arrest or conviction records did not violate the separation of powers doctrine. (*Id.* at p. 118.) In resolving that question, the Court first interpreted the statute as applying "only to persons who have completed their punishment." (*Id.* at p. 113.) It reasoned that construing the statute otherwise would defeat the Legislature's intent in adopting the law—to minimize the social stigma of marijuana convictions once the offender has "paid his prescribed debt to society." (*Ibid.*) It further noted that allowing records to be destroyed while a conviction was on appeal (or while a defendant was still in prison) would permit defendants to escape punishment by compelling the Department to destroy "the very records on which" the prison term was based—an "'absurd'" result that the "'Legislature did not intend.'" (*Ibid.*)

Younger has no application here. There is nothing absurd about limiting Proposition 47's misdemeanor sentencing provisions to section 10851 convictions based on taking. (See *ante*, pp. 18-19.) And construing

Proposition 47 in that manner does not create a result that the voters "'did not intend.'" (*Younger*, *supra*, 21 Cal.3d at p. 113.) To the contrary, it is the outcome that best effectuates the voters' intent in adopting the Act. (See *post*, pp. 28-30.)

Bullard's reliance on *People v. Pieters* (1991) 52 Cal.3d 894 and *Brown v. Superior Court* (1984) 37 Cal.3d 477 is similarly misplaced. In *Pieters*, this Court held that the rule limiting the maximum term that defendants can serve in cases involving multiple sentences to twice the number of years imposed as the base term under section 1170(b) did not apply to "drug quantity enhancements," because that result would have undermined the Legislature's intent of "punishing more severely 'those persons [dealing] in large quantities of narcotics.'" (52 Cal.3d at p. 901, 902, fn. 5.) And in *Brown*, it held that the special venue provisions of the California Fair Employment and Housing Act (FEHA) controlled over general venue provisions in cases alleging both FEHA and non-FEHA claims, in part because concluding otherwise would have frustrated FEHA's intent by leading to the "absurd result[]" of forcing plaintiffs to choose between the Act's favorable venue provisions and pursuing additional, non-statutory causes of action. (*Id.* at pp. 486-487.) Like *Younger*, these authorities are inapposite. They do not address any question similar to the one presented here—whether it was reasonable for the voters to distinguish between section 10851 driving and taking convictions. And unlike those cases, here it would not frustrate the voters' intent in adopting Proposition 47 to limit its misdemeanor sentencing provisions to section 10851 convictions based on the taking of a vehicle. (See *post*, pp. 28-30.)[9]

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[9] Nor does this case involve a "draftsman's error" of the type considered by this Court in *People v. Jackson* (1985) 37 Cal.3d 826. (See OBM 19, fn. 2.)

B. Limiting Proposition 47 to Section 10851 Convictions Based on Taking a Vehicle Best Effectuates the Voters' Intent in Passing the Act

Allowing section 10851 convictions based on driving to be punished more harshly than those based on taking is not only reasonable, it also best effectuates the electorate's intent in adopting Proposition 47. That it does so is further proof that Proposition 47's distinction between these two kinds of section 10851 convictions is not absurd. (Cf. *Miklosy*, *supra*, 44 Cal.4th at p. 897 [absurdity cannon applies only when literal reading of statute creates a consequence that the "'Legislature did not intend'"].)

Proposition 47 carefully limits the universe of crimes affected to theft of property worth less than $950, shoplifting, receiving stolen property, writing bad checks, check forgery, and drug possession. (See Prop. 47, as approved by voters, Gen. Elec. (Nov. 4, 2014) §§ 5-9, 11-13.) Absent from that list is any mention of driving crimes. And in construing statutes, this Court "may not broaden or narrow the scope of the provision by reading into it language that does not appear" on its face. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 545.) Instead, this Court's task is "'"simply to ascertain and declare" what is in the relevant statutes.'" (*Ibid.*) Proposition 47 makes no mention of section 10851 driving convictions. This Court should refuse to '"insert what has been omitted"'" accordingly. (*Ibid.*)

Other contextual clues buttress this conclusion. In a section declaring its "Purpose and Intent," Proposition 47 emphasizes that its misdemeanor sentencing provisions are limited to "nonserious, nonviolent crimes like petty theft and drug possession." (Prop. 47, as approved by voters, Gen. Elec. (Nov. 4, 2014) § 3(3).) The ballot materials explaining Proposition 47 to the voters repeatedly make the same point. (See Voter Information Guide, Gen. Elec. (Nov. 4, 2014), argument in favor of Prop. 47, p. 38

[Proposition 47 would change "low-level nonviolent crimes, such as simple drug possession and petty theft from felonies to misdemeanors"]; see also *id.*, analysis of Proposition 47 by the Legislative Analyst, pp. 34-37 [similar].) To the extent that the text of Proposition 47 is ambiguous about the question presented in this case, these materials are further evidence that the electorate did not intend the Act to apply to section 10851 driving convictions. (See *People v. Morales* (2016) 63 Cal.4th 399, 406 [courts may refer to analyses and arguments contained in official ballot pamphlet when construing initiatives].)

The text of Proposition 47 provides further support. It specifies that certain persons who are convicted of petty theft may be sent to county jail or state prison for one year if they have served a prior prison term for "*auto theft* under Section 10851 of the Vehicle Code." (Prop. 47, as approved by voters, Gen. Elec. (Nov. 4, 2014) § 10, italics added.) This pointed reference to the theft version of section 10851 bolsters the conclusion that the voters consciously decided not to extend the Act's misdemeanor sentencing provisions to the driving version of that crime.

Nor is the electorate's choice surprising. The difference between section 10851 driving and taking convictions is a well-established feature of California law. This Court has recognized it on at least five occasions. (See *Jaramillo*, *supra*, 16 Cal.3d at p. 759, fn. 6 [section 10851 "prohibits driving as separate and distinct from the act of taking"]; *Barrick*, *supra*, 33 Cal.3d at p. 135 [same]; *Garza*, *supra*, 35 Cal.4th at pp. 875-876 [same]; *People v. Allen* (1999) 21 Cal.4th 846, 851-852 [similar]; *People v. Kehoe* (1949) 33 Cal.2d 711, 715-716 [similar].) And it is equally well established that persons convicted of section 10851 for illegally driving a vehicle can face more serious consequences than persons convicted of illegally taking the same car. A defendant convicted of section 10851 for unlawful driving can also be convicted of receiving the same vehicle as

stolen property, while a defendant convicted of section 10851 for unlawful taking a vehicle may not. (See *Garza*, *supra*, 35 Cal.4th at p. 871.) And a defendant may be punished for both unlawfully driving a car in violation of section 10851 and for grand theft of the same car in violation of section 487, but a defendant convicted of section 10851 for taking that vehicle may not. (See *People v. Malamut* (1971) 16 Cal.App.3d 237, 241-244.) The voters were presumably aware of these authorities when they adopted Proposition 47. (See *In re Lance W.* (1985) 37 Cal.3d 873, 890, fn. 11.) Had they intended the initiative to apply to both species of section 10851 convictions, they would have said so.

Bullard takes the opposite view, arguing that extending Proposition 47 to section 10851 predicated on illegal driving furthers the Act's purposes of "sav[ing] money by keeping non-serious, non-violent offenders out of State prison." (OBM 23; see also OBM 32-33.) But "no legislation pursues its purposes at all costs." (*Rodriguez v. United States* (1987) 480 U.S. 522, 525-526.) And Proposition 47's money-saving purpose does not mean that this Court "should interpret the statute in every way that might maximize any monetary savings." (*Morales*, *supra*, 63 Cal.4th at p. 407.) To the contrary, this Court should not interpret Proposition 47 "'"in a way that the electorate did not contemplate: the voters should get what they enacted, not more and not less."'" (*Ibid.*) Proposition 47 clearly applies to "theft" offenses. (*Page*, *supra*, 3 Cal.5th at p. 1183.) There is no suggestion, however, that the voters also meant for it to apply to driving ones.

C. Limiting Proposition 47 to Section 10851 Convictions Based on Taking Another's Vehicle Does Not Violate the Equal Protection Clause

For the same reasons that distinguishing section 10851 driving convictions from section 10851 taking convictions is not absurd, it does not violate equal protection principles.

1. The Equal Protection Clause requires that "persons similarly situated regarding the legitimate purpose of the law should receive like treatment." (*Morales*, *supra*, 63 Cal.4th at p. 408.) To prevail on an equal protection claim, the challenger must first show that the "state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner." (*Ibid.*, original italics.) That inquiry does not ask whether persons are "similarly situated for all purposes," but only whether they are "similarly situated for purposes of the law challenged." (*Ibid.*) If the groups at issue are "similarly situated in all material respects," this Court then considers whether the challenged classification "bears a rational relationship to a legitimate state purpose." (*People v. Chatman* (2018) 4 Cal.5th 277, 289.) The latter inquiry is a deferential one; this Court presumes that statutes are "rational until the challenger shows that no rational basis for the unequal treatment is reasonably conceivable." (*Ibid.*) The underlying rationale for the classification "need not have been 'ever actually articulated,'" nor "'empirically substantiated.'" (*Ibid.*) The logic behind a potential justification for the grouping does not need to be "persuasive or sensible." (*Ibid.*) Instead, it must simply be "rational." (*Ibid.*) And this standard applies where, as here, a defendant argues that "statutory distinctions in the consequences of different offenses" violate equal protection. (*Johnson v. Dep't of Justice* (2015) 60 Cal.4th 871, 897.) Indeed, "[i]t is both the prerogative and the duty of the Legislature to define degrees of culpability and punishment," and "[c]ourts routinely decline to

intrude upon the 'broad discretion' such policy judgments entail." (*Turnage*, *supra*, 55 Cal.4th at p. 74.)

Bullard disputes this standard of review, arguing that because this case implicates the "fundamental interest" of "personal liberty," his equal protection challenge should be evaluated under strict scrutiny. (OBM 28.) But "[a] defendant ... 'does not have a fundamental interest in a specific term of imprisonment or in the designation a particular crime receives.'" (*Wilkinson*, *supra*, 33 Cal.4th at p. 837.) And this Court's decision in *People v. Olivas* (1976) 17 Cal.3d 236 does not establish that strict scrutiny is the proper standard of review here. (See OBM 28-30.) That case applied heightened scrutiny in the extraordinary context of a statutory scheme that allowed juvenile offenders to be committed to custody or parole terms that were up to 28 times the maximum incarceration that an adult offender could have received for the same offense. As this Court later observed, however, a "close reading" of *Olivas* does not merit a "'highly intrusive judicial reexamination of legislative classifications.'" (*Wilkinson*, *supra*, 33 Cal.4th at p. 837.) That is because applying strict scrutiny to claims of this type "would be incompatible with the broad discretion the Legislature traditionally has been understood to exercise in defining crimes and specifying punishment." (*Id.* at p. 838.) And this Court has repeatedly used rational basis to evaluate equal protection challenges to "statutory distinctions in the consequences of different offenses" since *Olivas* was decided. (*Johnson*, *supra*, 60 Cal.4th at 897; see also *id.* at p. 881 [applying rational basis review to equal protection challenge regarding requirement to register as sex offender]; *Wilkinson*, *supra*, 33 Cal.4th at pp. 839-841 [applying rational basis review to equal protection challenge regarding punishment for battery of custodial officer without injury].)

2. The decision to continue to allow section 10851 driving convictions to be punished as felonies while reserving misdemeanor

punishment for section 10851 taking convictions easily passes rational basis review. Even assuming that persons convicted of section 10851 for illegally driving a car are "similarly situated" to those convicted of illegally taking a vehicle, Bullard cannot show that their different treatment is irrational. Driving is an inherently dangerous activity; driving a car without the owner's permission, more so. (See *ante*, pp. 18-19.) And the distinction between the possible sentences for driving another person's car without the owner's permission and taking that same car is at least as rational as other statutory distinctions in the consequences of different offenses that this Court has upheld. (See, e.g., *Wilkinson*, *supra*, 33 Cal.4th at pp. 839-841 [rational for Legislature to punish battery on a custodial officer *without* injury more harshly than battery of a custodial officer *with* injury]; *People v. Romo* (1975) 14 Cal.3d 189, 196-197 [rational for Legislature to punish assault more severely than assault with intent to commit murder].)

III. BULLARD'S CASE SHOULD BE REMANDED TO GIVE HIM AN OPPORTUNITY TO ESTABLISH ELIGIBILITY FOR PROPOSITION 47'S MISDEMEANOR SENTENCING PROVISIONS

Bullard asks that if this Court rejects his absurdity and equal protection arguments, it remand his case so that the trial court can make a "factual determination as to whether Bullard took his girlfriend's car with the intent to permanently deprive her of ownership." (OBM 35.) The People agree that this case should be remanded. The proper inquiry, however, is whether Bullard was convicted for taking his girlfriend's car or for driving it.

A defendant seeking resentencing under section 1170.18 "bears the burden of establishing his or her eligibility, including by providing in the petition a statement of personally known facts necessary to eligibility." (*Page*, *supra*, 3 Cal.5th at p. 1188.) Under the rule advanced by the People

here, a defendant can prove eligibility for resentencing by demonstrating that his or her section 10851 conviction was based on taking the vehicle, rather than driving the vehicle, and that the vehicle was worth $950 or less. In many cases, it will be apparent from the record of conviction—including charging documents, trial testimony, a prosecutor's arguments to the jury, the trial court's jury instructions, or the factual basis documentation for a negotiated plea—whether a defendant was convicted of taking or driving a vehicle. (See, e.g., *Van Orden*, *supra*, 9 Cal.App.5th at p. 1288 [section 10851 conviction was a taking conviction where record disclosed that defendant stole victim's car, drove it to a reservoir, and left it there]; *Austell*, *supra*, 223 Cal.App.3d at p. 1252 [section 10851 conviction was for driving where prosecution conceded that there was no evidence that defendant partook in the initial theft of the vehicle and expressly told the jury that the prosecution was based on the driving element of section 10851].) In other cases, however, it will not be clear whether the section 10851 conviction was based on taking or driving. In those circumstances, defendants are "due an opportunity to prove their eligibility" for Proposition 47. (*Page*, *supra*, 3 Cal.5th at p. 1189.) And they may do so by alleging and—"where possible"—providing evidence of the facts necessary to establish that they are eligible for resentencing under section 1170.18. (*Ibid.*)

Bullard's case falls into this latter category. The record here shows that Bullard took his girlfriend's car without her permission, drove it for several hours, and then returned it later the same day. (See Opn. p. 2.) The felony complaint charged Bullard with unlawfully "driving or taking a vehicle, in violation of Vehicle Code Section 10851(a)," and alleged that Bullard "did unlawfully drive and take a certain vehicle." (CT 1.) The plea agreement provides that Bullard violated section 10851 by "tak[ing] or driv[ing]" his girlfriend's car. (CT 3.) At the plea hearing, Bullard pleaded

guilty to "taking or driving a vehicle either temporary [*sic*] or permanently." (RT 6.) It is not clear from this record whether Bullard was convicted of taking his girlfriend's car or driving it. Accordingly, he is entitled to an opportunity to prove his eligibility for redesignation of his felony under Proposition 47. To establish that eligibility, however, Bullard must show that his conviction was based on the taking of his girlfriend's car, and not for driving it. And if he can show that his conviction was for taking the vehicle, he also must prove that the car was worth $950 or less.

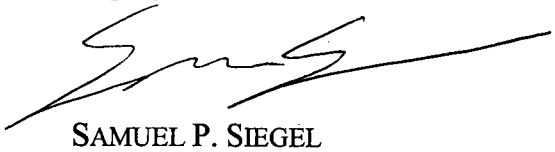
CONCLUSION

The judgment of the Court of Appeal should be reversed, and this case should be remanded to the trial court to afford Bullard the opportunity to establish that his section 10851 conviction was for the taking of a vehicle, and not the driving of a vehicle, and that the vehicle was worth $950 or less.

Dated: June 21, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
MICHAEL R. JOHNSEN
Deputy Solicitor General



SAMUEL P. SIEGEL
Associate Deputy Solicitor General
Attorneys for Respondent

CERTIFICATE OF COMPLIANCE

I certify that the attached Answering Brief on the Merits uses a 13-point Times New Roman font and contains 8,673 words as counted by the Microsoft Word word-processing program, excluding the parts of the brief exclude by California Rule of Court, rule 8.520(c)(3).

Dated: June 21, 2018

XAVIER BECERRA
Attorney General of California

SAMUEL P. SIEGEL
Associate Deputy Solicitor General
Attorneys for Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Julian Micah Bullard**
No.: **S239488**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 21, 2018, I served the attached **ANSWERING BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Richard L. Fitzer
Attorney at Law
6285 East Spring Street, #276N
Long Beach, CA 90808

Michael Dawd
District Attorney's Office
316 North Mt. View Avenue
San Bernardino, CA 92501

Appellate Defenders, Inc.
555 West Beech Street, Suite 300
San Diego, CA 92101

Phyllis Morris
Public Defender's Office
14455 Civic Drive, Suite 600
Victorville, CA 92392

Hon. John R. Vander Feer
San Bernardino County Superior Court
Department #V-8
14455 Civic Drive
Victorville, CA 92501

Clerk of the Court of Appeal
Fourth Appellate District
Division Two
3389 12th Street
Riverside, CA 92501

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 21, 2018, at Sacramento, California.

Ann-Marie Doersch
Declarant

Signature

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