In the Supreme Court of the State of California

SUPREME COURT
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Deputy

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

ERNEST L. OROZCO,

Defendant and Appellant.

Case No. S249495

Fourth Appellate District Division One, Case No. D067313
San Diego County Superior Court, Case No. SCN335521
Honorable Michael Popkins, Judge

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ISSUE PRESENTED

Is a conviction for receiving a stolen vehicle under Penal Code section 496d reducible to a misdemeanor under Proposition 47, if the automobile was worth $950 or less and the other requirements are met?

INTRODUCTION

Appellant's conviction for receiving a stolen vehicle is not subject to Proposition 47 relief. Proposition 47 relief is available for offenses added or amended by Proposition 47, and offenses that would be misdemeanors under the current state of the law. Appellant's conviction for receiving a stolen vehicle under Penal Code section 496d was not added or amended by Proposition 47, nor is it presently a misdemeanor.

Although Proposition 47 amended the general crime of receiving stolen property under Penal Code section 496, it left receiving stolen vehicles under Penal Code section 496d untouched. Because receiving a stolen vehicle is a distinct crime with a specific legislative purpose, the Proposition 47 amendment of the general crime of Penal Code section 496 had no effect on Penal Code section 496d. Furthermore, receiving stolen property is not a theft crime, so Proposition 47's broad-sweeping changes to the definition of grand theft with the creation of Penal Code section 490.2 do not apply either.

Finally, there are reasonable grounds for excluding those guilty of receiving stolen vehicles from mandatory misdemeanor treatment, such as discouraging the industry of buying and selling stolen cars. Indeed, this was one of the very reasons Penal Code section 496d was enacted as a separate crime in the first place.

STATEMENT OF THE CASE AND FACTS

Appellant was stopped by police while driving a stolen Honda on El Norte Parkway in Escondido. (CT 13.) He was the sole occupant of the

car. (CT 13.) The vehicle had a broken ignition and remained running without a key. (CT 13.) Appellant later pled guilty to unlawfully taking and driving a vehicle (count 1; Veh. Code, § 10851, subd. (a)) and receiving a stolen vehicle (count 2; Pen. Code[1], § 496d). He also admitted to having three previous felony convictions for vehicle theft (Veh. Code, § 10851; § 666.5, subd. (a)), and eight prison prior convictions (§§ 667.5, subd. (b), 668). (CT 1-11, 59; 1 RT 11-13.)

After appellant's plea but before his sentencing, the voters approved Proposition 47, the "Safe Neighborhoods and Schools Act." Proposition 47 added to the Penal Code section 459.5 (defining a new misdemeanor offense of "shoplifting"), section 490.2 (defining petty theft), and section 1170.18 (adding resentencing provisions). It also amended existing Penal Code provisions, such as section 473 (forgery), section 476a (writing bad checks), section 496 (receiving stolen property), and section 666 (petty theft with a prior), and Health and Safety Code sections 11350, 11357, and 11377 to reflect those crimes' new status as misdemeanors.[2] (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.)

Proposition 47 included a resentencing provision (§ 1170.18) establishing a procedure under which an individual currently serving a sentence for a felony conviction may petition to recall the conviction and be resentenced to a misdemeanor if the individual "'would have been guilty of

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

[2] As relevant here, section 496, addressing stolen property generally, was amended by Proposition 47 to mandate misdemeanor punishment for an eligible defendant "who buys or receives any property that has been stolen" if the value of the property does not exceed $950. (§ 496, subd. (a).) Proposition 47 did not amend section 496d for buying or receiving a stolen vehicle, and it remains a "wobbler," meaning that it can be charged either as a felony or misdemeanor.

a misdemeanor under [Proposition 47] had this act been in effect at the time of the offense.'" (*People v. Page* (2017) 3 Cal.5th 1175, 1179; § 1170.18, subd. (a).)

Appellant filed a Proposition 47 petition to reduce his felony charges for unlawfully taking and driving a vehicle (Veh. Code, § 10851, subd. (a)) and receiving a stolen vehicle (§ 496d), to misdemeanors. (CT 33-44.) Attached to his petition was an arrest report listing the value of the stolen vehicle at $301. (CT 36, 43-44.)

Following a hearing, the trial court denied the petition, finding there was no legal basis to reduce the felonies under Proposition 47 because the criminal offenses—unlawfully taking and driving a vehicle and receiving a stolen vehicle—were not included in the list of crimes the new law applied to. (RT 17-18.) The trial court sentenced appellant to one year in custody and three years of mandatory supervision. (CT 45-47, 61; 2 RT 24-25.)

Appellant appealed, arguing that Proposition 47 applies to Vehicle Code section 10851 and section 496d for receiving a stolen vehicle. The Court of Appeal affirmed. It held that Vehicle Code section 10851 covers conduct that does not meet section 490.2's definition of petty theft. Since appellant did not necessarily intend to steal the car, he was not entitled to Proposition 47 relief. Also, the Court of Appeal recognized that unlike section 496, section 496d was not amended or added by Proposition 47, showing that it was purposefully left out of Proposition 47's reach. (D067313.)

This Court granted review pending disposition of *People v. Page*, *supra*, 3 Cal.5th 1175. In *Page*, the Court held that a Vehicle Code section 10851 conviction may be eligible for resentencing under Proposition 47 if the defendant can show he or she was convicted for theft of the vehicle, as opposed to another form of the offense, and the vehicle was worth $950 or less. (*Id.* at p. 1180.)

On remand following *Page*, the Court of Appeal again affirmed the trial court's denial of the petition, this time without prejudice to presenting a new petition demonstrating as to the Vehicle Code section 10851 conviction that appellant committed a theft and the vehicle was worth $950 or less. As to the section 496d conviction, the Court of Appeal again held that Proposition 47 did not apply to that offense. (D067313.)

This Court granted review.

ARGUMENT

I. THE SUPERIOR COURT PROPERLY DENIED APPELLANT'S PETITION FOR RESENTENCING AS TO HIS PENAL CODE SECTION 496D CONVICTION FOR RECEIVING A STOLEN VEHICLE BECAUSE PROPOSITION 47 DOES NOT APPLY TO THAT OFFENSE

Appellant contends that a section 496d felony conviction for receiving a stolen vehicle that is valued at $950 or less may be recalled and resentenced as a misdemeanor under Proposition 47. (AOB 5.) He reasons that Proposition 47 reduced receiving any stolen property worth $950 or less to a misdemeanor, and a vehicle is considered property, so Proposition 47 should be read to cover the more specific offense of receiving a stolen vehicle even though it was not enumerated. (AOB 7-14.) Appellant cannot have his section 496d felony conviction recalled and resentenced to a misdemeanor because section 496d is not subject to Proposition 47 relief.

A. General Principles of Statutory Construction

The "interpretation of a ballot initiative is governed by the same rules that apply in construing a statute enacted by the Legislature." (*People v. Park* (2013) 56 Cal.4th 782, 796, citing *People v. Superior Court* (*Pearson*) (2010) 48 Cal.4th 564, 571.) "We first consider the initiative's language, giving the words their ordinary meaning and construing this language in the context of the statute and initiative as a whole. If the language is not

ambiguous, we presume the voters intended the meaning apparent from that language, and we may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language." (*Pearson, supra*, 48 Cal.4th at p. 571.)

If the language is ambiguous, courts refer to other indicia of the voters' intent such as the analyses and arguments contained in the official ballot pamphlet. (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 901.) "In other words, our 'task is simply to interpret and apply the initiative's language so as to effectuate the electorate's intent.' [Citation.]" (*Ibid.*) In so doing, the courts "deem voters to have been aware of existing laws and judicial constructions in effect at the time Proposition 47 was enacted." (*People v. Bunyard* (2017) 9 Cal.App.5th 1237, 1243, citing *People v. Weidert* (1985) 39 Cal.3d 836, 844.) "If—but only if—two reasonable interpretations of the statute stand in relative equipoise, we resolve an ambiguity in favor of lenity, giving the defendant the benefit of every reasonable doubt." (*People v. Bunyard, supra*, 9 Cal.App.5th at p. 1243, quoting *People v. Soria* (2010) 48 Cal.4th 58, 65, internal quotations omitted.)

B. Proposition 47's Amendment of the General Receiving Stolen Property Statute, Penal Code Section 496, Did Not Affect Receiving a Stolen Vehicle Under Penal Code Section 496d Because They Are Independent Statutes That Define Different Offenses

Proposition 47 provides that a petitioner may request resentencing in accordance with the misdemeanors listed in section 1170.18, "Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, *as those sections have been amended or added by this act*." (§ 1170.18, subd. (a), italics added.)

Appellant was prosecuted under section 496d for receiving a stolen vehicle. (CT 1, 8.) Section 496d makes it unlawful for any person to buy

or receive a motor vehicle, special construction equipment, trailer, or vessel, that has been stolen, or conceal, sell, withhold, or aid in concealing, selling, or withholding any motor vehicle, trailer, special construction equipment, or vessel from the owner, knowing the property to be so stolen. (§ 496d, subd. (a).) Proposition 47 did not directly amend or add section 496d. Nor did it do so by any indirect or implied means.

Proposition 47 amended the crime of receiving stolen property to treat receipt of stolen property valued at $950 or less as a misdemeanor. That amendment did not affect receiving a stolen vehicle because the two are independent statutes that define different offenses. First, the Legislature enacted section 496d, proscribing receiving stolen vehicles, as a specific statute distinct from the already existing section 496, addressing stolen property generally, to target criminal conduct perpetuating the business of stolen vehicles.[3] Second, the separate structures of the two statutes—each self-contained with separate elements and punishments—further show they were meant to be independent offenses. Accordingly, Proposition 47's amendment of section 496 did not affect section 496d.

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[3] Section 496 addresses stolen property generally, "Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, if the value of the property does not exceed nine hundred fifty dollars ($950), the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year, if such person has no prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290." (§ 496, subd. (a).)

1. The Legislature enacted Penal Code section 496d as a separate and distinct crime to Penal Code section 496 with the purpose of combating the business of stolen vehicles

In 1998 the Legislature added section 496d to the Penal Code to provide "additional tools to law enforcement for utilization in combating vehicle theft and prosecuting vehicle thieves. Incarcerating vehicle thieves provides safer streets and saves Californians millions of dollars. These proposals target persons involved in the business of vehicle theft and would identify persons having prior felony convictions for the receiving of stolen vehicles for enhanced sentences." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2390 (1997-1998 Reg. Sess.) as amended June 23, 1998.)[4]

Section 496d added a much needed "section to the Penal Code to encompass only motor vehicles related to the receiving of stolen property. Existing law provides penalties for the receiving of stolen property, but is not specific to vehicle theft. This proposal would allow persons convicted of this section to be identified along with vehicle thieves for the purposes of establishing priors, for statistical purposes and/or to target those persons involved in vehicle theft." (Sen. Com. on Public Safety, analysis of Assem. Bill No. 2390 (1997-1998 Reg. Sess.) June 16, 1998.)[5]

Section 496d was not enacted for the singular purpose of tracking statistics on receiving stolen vehicles. (AOB 10.) Creating a separate offense for receiving stolen vehicles permitted such criminal conduct to be

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[4] http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_2351-2400/ab_2390_cfa_19980819_232541_sen_floor.html

[5] http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_2351-2400/ab_2390_cfa_19980616_165814_sen_comm.html

joined with other crimes involving the business of stolen cars and more effectively prosecute repeat offenders. For instance, when section 496d was enacted, it was simultaneously added to section 666.5. "Section 666.5 is an alternate punishment scheme that prescribes an elevated sentencing triad for recidivist car thieves who have a prior felony conviction for car theft or related conduct." (*People v. Lee* (2017) 16 Cal.App.5th 861, 869.) Section 666.5 provides increased penalties for those with prior felony convictions involving vehicles. Therefore, repeat offenders for vehicle related crimes including receiving a stolen vehicle could be punished more severely. The Legislature was concerned about combating conduct that perpetuated the vehicle theft business from all angles, and did not merely enact section 496d to maintain statistics on stolen cars.

Notably, the Legislature's enactment of the specific crime of receiving a stolen vehicle under section 496d created an exception to the general crime of receiving stolen property under section 496. As this Court has explained, "[u]nder the *Williamson* rule, if a general statute includes the same conduct as a special statute, the court infers that the Legislature intended that conduct to be prosecuted exclusively under the special statute. In effect, the special statute is interpreted as creating an exception to the general statute for conduct that otherwise could be prosecuted under either statute." (*People v. Murphy* (2011) 52 Cal.4th 81, 86, citing *In re Williamson* (1954) 43 Cal.2d 651, 654.) "In adopting a specific statute, the Legislature has focused its attention on a particular type of conduct and has identified that conduct as deserving a particular punishment. Consequently, we infer that the Legislature intended that such conduct should be punished under the special statute and not under a more general statute which, although broad enough to include such conduct, was adopted without particular consideration of such conduct." (*Murphy*, *supra*, at p. 91; see also *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940,

960-961 ["[T]he rule that specific provisions take precedence over more general ones trumps the rule that later-enacted statutes have precedence"].)

Accordingly, a person who receives a stolen vehicle must be prosecuted under the specially created provision of section 496d, not under the general provision of section 496 pertaining to the receipt of "any property." Contrary to appellant's argument, sections 496 and 496d are not identical crimes, and the act of receiving a stolen vehicle is governed by section 496d, not the more general statute section 496. (AOB 10-12.)

2. Penal Code sections 496 and 496d are independent offenses as each is self-contained and sets forth all the elements of a crime and a specific punishment

When the Legislature chose to distinguish receiving a stolen vehicle from the general crime of receiving stolen property, it did so by adding an entirely new section to the Penal Code. This further shows the Legislature's intent to define section 496d as a separate and independent offense from section 496.

As this Court explained in *People v. Gonzalez* (2014) 60 Cal.4th 533, whether two Penal Code provisions describe different offenses is a matter of legislative intent. In addition to the clear legislative intent outlined above, the text and structure of the statutes themselves reveal that they describe different offenses. Under *Gonzalez*, courts look at whether each provision is self-contained and sets forth all the elements of the crime and punishment. (*Gonzalez*, *supra*, 60 Cal.4th at p. 539.) Sections 496 and 496d meet that text. Each sets forth all of the elements and the punishment for the corresponding crimes. Notably, section 496 is punishable as a wobbler with a maximum exposure of 16 months, or two or three years (§ 496; see also § 18), whereas section 496d prescribes a similar punishment with the additional possibility of a fine of up to $10,000 (§ 496d).

The fact section 496d was drafted to be self-contained supports the view that it describes an independent offense from section 496. (See *Gonzalez, supra*, 60 Cal.4th at p. 539.)

3. Proposition 47's amendments to Penal Code section 496, pertaining to receiving stolen property generally, do not supersede section Penal Code 496d, which specifically punishes receiving a stolen vehicle

Proposition 47 amended section 496 by changing the punishment for receiving stolen property valued at $950 or less from a wobbler to a misdemeanor. The drafters considered the crime of receiving stolen property generally, and presumably the other three statutes criminalizing receiving specific types of property, yet made no changes to those sections, which includes section 496d at issue here.[6] (See *People v. Licas* (2007) 41 Cal.4th 362, 367 ["Where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed"].) This suggests the drafters did not want Proposition 47 to apply to section 496d, or at the very least that the electorate did not agree to that change.

This is further supported by Proposition 47's amendment of section 496, subdivision (b). Section 496, subdivision (b) defines a type of receiving stolen property specific to swap meet vendors. (See § 496, subd.

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[6] There are two additional provisions for receiving certain stolen property: property used in transportation or public utility service (§ 496a) and second hand books (§ 496b). All four of the provisions (§§ 496, 496a, 496b, and 496d) identify a means of receiving or buying stolen property and are self-contained in that they include the elements of the crime and punishment. The receiving stolen property provisions are completely independent of each other.

(b).) Just as it did for section 496, subdivision (a), which defines the general offense of receiving stolen property, Proposition 47 specifically amended subdivision (b) to prescribe misdemeanor treatment for receiving stolen property by swap-meet vendors valued at $950 or less. This shows the Proposition 47 drafters knew how to include specific forms of receiving stolen property when they wished to do so. As just discussed, no similar amendment was made to section 496d.

While Proposition 47 changed some of the punishment provisions for violations of section 496, the language describing the conduct criminalized by that section remained unchanged after the proposition's passage. (See Stats. 2011, ch. 15, § 372; § 496.) Because the amendment did not change the scope of the conduct covered by section 496, the passage of Proposition 47 did not cause the general language of section 496 to supersede the provisions of section 496d specifically proscribing receiving stolen vehicles. (*Brailsford v. Blue* (1962) 57 Cal.2d 335, 339 ["Parts of an amended statute not affected by the amendment will be given the same construction that they received before the amendment"].) And, as discussed above, the *Williamson* rule belies appellant's contention that his conduct in this case could also have resulted in a misdemeanor violation of section 496 instead of the conviction he received under section 496d.

In sum, the Legislature's adoption of 496d shows that it was particularly concerned with punishing receiving stolen vehicles over other forms of property. Since its enactment 20 years ago, section 496d has remained unchanged. The corpus has always been a vehicle, it has been prosecuted as a wobbler, and in addition to custody it includes a possible fine of up to $10,000. At the same time, section 496 has always been predicated on the value of the property, which has increased over time, and it too was prosecuted as a wobbler until amended by Proposition 47. The drafters and the electorate are presumed to be aware of the distinctions

between these two offenses, and the fact that Proposition 47 did not alter section 496d suggests they wished it to remain unchanged.

C. Receiving A Stolen Vehicle Is Not a Theft Crime That Is Subject to Proposition 47's General Reform of Grand Theft Offenses

Receiving a stolen vehicle is not a theft crime as appellant suggests. (AOB 12.) Proposition 47 created a new definition of petty theft, section 490.2, that greatly changed the scope of the conduct the electorate deemed to be misdemeanor petty theft. The language used in section 490.2 makes it clear the drafters intended that section to apply broadly and supersede other theft offenses. But section 490.2 has no application to section 496d, which is not a theft offense. Moreover, there is no analogous statute like section 490.2 that applies generally to receiving stolen property.

1. Penal Code section 490.2 does not apply to penal code section 496d because that section only applies to theft

Penal Code section 490.2 provides: "Notwithstanding Section 487 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. . . ." (§ 490.2, subd. (a).)

Appellant was convicted of violating section 496d, to which section 490.2 does not apply. As *Page* made clear, section 490.2 pertains to theft. (§ 490.2, subd. (a); *Page*, *supra*, 2 Cal.5th at pp. 1182-1183.) Section 496d is not a theft statute. Nor do its provisions "define grand theft." Rather, the statute criminalizes buying, receiving, concealing, selling, withholding, or aiding in concealing, selling or withholding, vehicles that have been stolen or obtained by theft. Indeed, a person convicted of receiving a stolen vehicle has not been convicted of stealing the vehicle because one cannot

be convicted of both stealing and receiving the same property. (*People v Garza* (2005) 35 Cal.4th. 866 at p.875)

Accordingly, section 490.2 has no application to this case.

2. *Page*'s determination that proposition 47 applies to Vehicle Code section 10851 does not extend to receiving a stolen vehicle

In *Page*, this Court acknowledged that section 490.2's "central ameliorative provision" broadly encompasses "'obtaining any property [worth $950 or less] by theft'" and that nothing in the language of that statute "suggests an intent to restrict the universe of covered theft offenses to those offenses that were expressly designated as 'grand theft' offenses before the passage of Proposition 47." (*Page*, *supra*, 2 Cal.5th at p. 1186.) In addressing whether Proposition 47 applied to a violation of Vehicle Code section 10851, this Court noted in *Page* that although section 1170.18 does not expressly refer to Vehicle Code section 10851, it permits reducing theft of property worth $950 or less under section 490.2 to a misdemeanor. (*Page*, *supra*, at p. 1180.) The Court further observed that *People v. Garza*, *supra*, 35 Cal.4th at page 871, made clear that Vehicle Code section 10851 may be violated in several ways, including by stealing the vehicle. (*Page*, at p. 1180.) The Court reasoned, "By its terms, Proposition 47's new petty theft provision, section 490.2, covers the theft form of the Vehicle Code section 10851 offense. As noted, section 490.2, subdivision (a), mandates misdemeanor punishment for a defendant who 'obtain[ed] any property by theft' where the property is worth no more than $950. An automobile is personal property. 'As a result, after the passage of Proposition 47, an offender who obtains a car valued at less than $950 by theft must be charged with petty theft and may not be charged as a felon under any other criminal provision.'" (*Id.* at p. 1183.)

As just discussed, section 490.2 does not apply to receiving stolen property, so *Page* does not apply here. But to the extent *Page* is instructive in this case, it highlighted the distinction between actual theft and non-theft conduct. Specifically, this Court made clear that not all violations of Vehicle Code section 10851 are eligible for Proposition 47 relief. (*Page*, *supra*, at p. 1182.) The Court observed that Vehicle Code section 10851's "prohibitions sweep more broadly than 'theft,' as the term is traditionally understood. Vehicle Code section 10851 punishes not only taking a vehicle, but also driving it without the owner's consent, 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.' [Citation.] Theft, in contrast, requires a taking with intent to steal the property—that is, the intent to permanently deprive the owner of its possession." (*Id.* at p. 1182.) The Court explained that a "'defendant convicted under [Vehicle Code] section 10851[, subdivision (a),] of unlawfully taking a vehicle with the intent to permanently deprive the owner of possession' has been convicted of stealing the vehicle. It follows that Proposition 47 makes some, though not all, [Vehicle Code] section 10851 defendants eligible for resentencing . . . ." (*Id.* at p. 1184.)

Page's reasoning makes clear that "obtaining any property by theft" involves the criminal act of stealing property—i.e., taking property with "the intent to permanently deprive the owner of possession"—not other conduct such as buying or receiving property that has been stolen. If anything, *Page* holds that the application of section 490.2 is limited to offenses involving the legal definition of theft. Accordingly, it does not apply to receiving stolen property.

3. The Court of Appeal's decision in *Williams* misapplied *Romanowski* and was incorrectly decided

Appellant relies on the appellate court's reasoning in *Williams*, a decision holding that section 496d is reducible under section 490.2 because receiving a stolen vehicle is "obtaining property by theft" and there is no logical basis not to find convictions under section 496d eligible. (AOB 13-14; *People v. Williams* (2018) 23 Cal.App.5th 641, 649-650.) The *Williams* court concluded that there is no logical basis to distinguish between receipt of stolen property and receipt of a stolen vehicle under Proposition 47 in light of *Page*'s observation that an automobile is personal property. (*Id.* at p. 649.) Relying on this Court's decision in *People v. Romanowski* (2017) 2 Cal.5th 903, *Williams* then analogized section 496d to section 484e and found them both to be theft statutes because they were located in the "Larceny" chapter of the Penal Code. (*Williams, supra*, at pp. 649-650.)

The reasoning of *Williams* is flawed in several respects. *Williams* failed to acknowledge that section 484e is expressly defined as "grand theft" and that alone made it eligible under section 490.2. [7] Unlike section

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[7] Penal Code section 484e provides:

(a) Every person who, with intent to defraud, sells, transfers, or conveys, an access card, without the cardholder's or issuer's consent, is guilty of grand theft.

(b) Every person, other than the issuer, who within any consecutive 12-month period, acquires access cards issued in the names of four or more persons which he or she has reason to know were taken or retained under circumstances which constitute a violation of subdivision (a), (c), or (d) is guilty of grand theft.

(c) Every person who, with the intent to defraud, acquires or retains possession of an access card without the cardholder's or issuer's consent,

(continued...)

484e, section 496d does not define a form of grand theft subject to section 490.2. Moreover, the theft-related crime of receiving stolen property is not analogous to the crime of theft of access card account information. (*Williams, supra*, at p. 650; see *Romanowski, supra*, at p. 912 ["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*.' (Pen. Code, § 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'"].) Also absent from *Williams* is any consideration of the legislative history of section 496d, which provides a logical basis for voters to have distinguished between section 496 and section 496d. (*Williams, supra*, at p. 649.)

Further, while *Williams* cites *Page*, the decision does not explain how the broad application of section 490.2 to receiving stolen property crimes can be harmonized with this Court's acknowledgement in *Page* that "unlawful driving of a vehicle is not a form of theft when the driving occurs or continues after the theft is complete." (*Page, supra*, at p. 1183, quoting *People v. Garza, supra*, 35 Cal.4th 871.) Likewise, when a person receives property that has been stolen, the crime of theft is already complete. Therefore, receiving stolen property is not a form of theft.

(...continued)
with intent to use, sell, or transfer it to a person other than the cardholder or issuer is guilty of petty theft.

(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.

While receiving stolen property is a theft-related offense, *Page* and *Romanowski* do not suggest that section 490.2 should apply to all theft-related offenses. Rather, in those decisions, this Court concluded that, despite its broad language, section 490.2 only applies to theft crimes. Section 496d does not fit that definition.

4. There is no analogous broad-sweeping provision like Penal Code section 490.2 that applies to receiving stolen property

The language of section 490.2 reflected the drafter's intent that the provision supersede all statutes criminalizing theft by including the phrase, "Notwithstanding Section 487 or any other provision of law defining grand theft." The drafters included no such key distinguishing language when amending any of the receiving stolen property offenses in section 496. The absence of similar language in section 496 signals the drafters' intent that section 496 not supersede other provisions dealing with receiving stolen property, including section 496d. A contrary interpretation of section 496 would require inserting additional language into the statute, violating "the cardinal rule of statutory construction that courts must not add provisions to statutes." (*People v. Guzman supra* 35 Cal.4th 577, 587, internal quotation marks omitted.)

Because there is no broad-sweeping provision redefining receiving stolen property generally, Proposition 47's treatment of the various stolen-property offenses is structurally different from its treatment of theft crimes, as examined in *Page* and *Romanowski*. There is also no equivalent prefatory language in section 496 serving to redesignate other offenses proscribing the receipt of stolen property. And this Court should not construe section 496 as to render those statutes superfluous. (*City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707, 724.)

Accordingly, section 496d remains unchanged following the enactment of Proposition 47.

D. A Conclusion that the Drafters Did Not Intend Proposition 47 to Include Penal Code Section 496d Does Not Lead to Absurd Results

Interpreting Proposition 47 as written and leaving section 496d a wobbler that is beyond Proposition 47's reach does not lead to absurd results. Courts will not interpret statutes according to their plain meaning if such an interpretation will lead to absurd results that the voters or Legislature did not intend. (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 165-166.) But there is nothing absurd about retaining the discretion to treat those who receive stolen vehicles worth $950 or less more severely than those who engage in the receipt of other kinds of stolen property worth $950 or less, or those who steal vehicles worth $950 or less.

It is rational to punish the person who knowingly purchases or receives a stolen vehicle more severely than the person who actually stole the vehicle. "It has been said that those who offend by [receiving stolen property] are more dangerous and detrimental to society than those who offend by committing theft. . . . For that reason they are subjected to the heavier maximum penalty." (*People v. Adams* (1974) 43 Cal.App.3d 697, 709, internal citations omitted.)

The criminals who receive stolen vehicles encourage stealing and are the backbone of the stolen car business. Not only that, but these intermediaries make it more difficult to locate the stolen cars. "The statute proscribing receipt of stolen property '. . . is directed at the traditional 'fence' and at those who lurk in the background of criminal ways in order to provide the thieves with a market or depository for their loot. Such offenses are essentially different from the actual theft of property prohibited by section 484. . . .'" (*People v. Jaramillo* (1976) 16 Cal.3d 752, 758.

quoting *People v. Tatum* (1962) 209 Cal.App.2d 179, 183.) "Experience has shown that by cutting off the 'fence' a major obstacle is placed in the path of encouraging thefts as a profitable venture.... [I]n the eyes of the law the 'fence' is more dangerous and detrimental to society than is the thief ...." (*People v. Loera* (1984) 159 Cal.App.3d 992, 1002; *People v. Tatum, supra*, 209 Cal.App.2d at p. 184.)

Nor is it absurd to distinguish vehicles from other property. Those who lose their vehicles often suffer greater hardship from the loss of that vehicle than they would from the loss of other property they own which has a value of $950 or less. No matter the value of the vehicle, it serves a vital purpose to its owner. Individuals rely heavily on their vehicles to accomplish basic life necessities such as getting to work and taking their children to school. Vehicles worth $950 or less still provide a valuable service to their owners. Indeed, those who have vehicles worth $950 or less might be persons who can least afford the loss of their cars. The drafters may have seen fit to punish the receivers of stolen cars more harshly than the thieves themselves and the receivers of other types of property.

Those convicted of receiving a stolen vehicle have inflicted a different type of injury from those who receive other stolen property. It is not absurd for the drafters to have intended to maintain the legislative purpose behind section 496d by treating stolen vehicles as distinct from other property. There exists a rational basis for punishing those who knowingly receive or buy a stolen vehicle valued at less than $950 more severely than those who knowingly receive or buy other stolen property valued at less than $950.

E. The Voter Information Guide Did Not Convey That Receiving a Stolen Vehicle Could Be Recalled to a Misdemeanor If the Vehicle Was Valued at $950 or Less

The language of section 1180.17 is unambiguous, so reference to the official ballot pamphlet is unnecessary. But in any event, the Voter Information Guide sheds no light on the issue. If anything, its lack of guidance supports the People's position that receiving a stolen vehicle was not intended to be subject to Proposition 47 relief.

The Voter Information Guide did not inform the voters one way or the other whether receiving a stolen vehicle would be affected by Proposition 47. "'We cannot presume that ... the voters intended the initiative to effect a change in law that was not expressed or strongly implied in either the text of the initiative or the analyses and arguments in the official ballot pamphlet.'" (*People v. Valencia* (2017) 3 Cal.5th 347, 364, quoting *Farmers Ins. Exchange v. Superior Court* (2006) 137 Cal.App.4th 842, 857-858.) The ballot materials did not mention or address receiving a stolen vehicle in any manner.

Proposition 47's stated purpose was "'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,'" while also ensuring "'that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed.'" (*People v. Dehoyos* (2018) 4 Cal.5th 594, 597, quoting Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 2, p. 70.) "Proposition 47 directed that the text of the initiative 'shall be broadly construed to accomplish its purposes' and 'shall be liberally construed to effectuate its purposes.'" (*Romanowski, supra*, 2

Cal.5th at p. 909, quoting Voter Information Guide, *supra*, text of Prop. 47, §§ 15, 18, p. 74.)

The Legislative Analysts Office explained, the reduction of existing penalties as follows:

"Specifically, the measure reduces the penalties for the following crimes:

- ***Grand Theft.*** Under current law, theft of property worth $950 or less is often charged as petty theft, which is a misdemeanor or an infraction. However, such crimes can sometimes be charged as grand theft, which is generally a wobbler. For example, a wobbler charge can occur if the crime involves the theft of certain property (such as cars) or if the offender has previously committed certain theft-related crimes. This measure would limit when theft of property of $950 or less can be charged as grand theft. Specifically, such crimes would no longer be charged as grand theft solely because of the type of property involved or because the defendant had previously committed certain theft-related crimes.

- ***Shoplifting.*** Under current law, shoplifting property worth $950 or less (a type of petty theft) is often a misdemeanor. However, such crimes can also be charged as burglary, which is a wobbler. Under this measure, shoplifting property worth $950 or less would always be a misdemeanor and could not be charged as burglary.

- ***Receiving Stolen Property.*** Under current law, individuals found with stolen property may be charged with receiving stolen property, which is a wobbler crime. Under this measure, receiving stolen property worth $950 or less would always be a misdemeanor.

- ***Writing Bad Checks.*** Under current law, writing a bad check is generally a misdemeanor. However, if the check is worth more than $450, or if the offender has previously

committed a crime related to forgery, it is a wobbler crime. Under this measure, it would be a misdemeanor to write a bad check unless the check is worth more than $950 or the offender has previously committed three forgery related crimes, in which case they would remain wobblers.

- ***Check Forgery***. Under current law, it is a wobbler crime to forge a check of any amount. Under this measure, forging a check worth $950 or less would always be a misdemeanor, except that it would remain a wobbler crime if the offender commits identity theft in connection with forging a check.

- ***Drug Possession***. Under current law, possession for personal use of most illegal drugs (such as cocaine or heroin) is a misdemeanor, a wobbler, or a felony – depending on the amount and type of drug. Under this measure, such crimes would always be misdemeanors. The measure would not change the penalty for possession of marijuana, which is currently an infraction or a misdemeanor."

(Voter Information Guide, Gen. Elec. (Aug. 13, 2014) analysis of Prop. 47 by Leg. Analyst, pp. 4-5.)[8]

The Voter Information Guide and legislative analysis make no mention of section 496d, or the other two statutes specific to receiving certain types of property. The electorate "is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted. [Citation.]" (*People v. Weidert, supra,* 39 Cal.3d 836, 844.) And "it is not to be presumed that the [enacting body] intends to overthrow long-established principles of law unless such intention is made clearly to appear

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[8] http://vigarchive.sos.ca.gov/2014/general/en/propositions/47/analysis.htm

either by express declaration or by necessary implication. [Citations.]" (*County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 644.) Presumably aware of section 496d, there is no information that expressly declares voter intent to include section 496d as a reducible offense.

On the other hand, the ballot materials were very specific when it came to grand theft. In relevant part, the Voter Information Guide informed the voters that grand theft could no longer be charged solely because of the type of property or because a defendant previously committed certain theft-related crimes. In accordance with this, petty theft was written to include all theories of grand theft. (§ 490.2.) The Voter Information Guide never insinuates that eliminating charges of grand theft based solely on the type of property means eliminating receiving a stolen vehicle as a wobbler.

It is not necessary to interpret section Proposition 47 to include section 496d in order to effect the purpose of the initiative. Proposition 47 was intended to lessen punishment for "nonserious, nonviolent crimes like petty theft and drug possession" (Voter Information Guide, *supra*, text of Prop. 47, § 3, subd. (3), p. 70), in order "to ensure that prison spending is focused on violent and serious offenses ...." (*Id.*, § 2, p. 70.) Receiving a stolen vehicle has historically been viewed to be a more harmful offense. Leaving this offense as a wobbler will not frustrate the purpose of Proposition 47. The legislative history of section 496d explains that it has prosecutorial value that saves Californians millions of dollars, and keeps repeat offenders that perpetuate the stolen car industry off the streets.

The voters were not informed that Proposition 47 would impact the offense of receiving stolen vehicles. When the voters approved Proposition 47, they did not approve legislation that would render section 496d and related sections 496a and 496b superfluous. Instead, voters were presented with an initiative designed to impact specifically enumerated crimes,

including section 496, but without mention of section 496d. This Court "may not properly interpret the measure in a way that the electorate did not contemplate: the voters should get what they enacted, not more and not less." (*People v. Park*, *supra*, 56 Cal.4th at p. 796, internal citations omitted; accord, *People v. Johnson* (2015) 61 Cal.4th 674, 682.) Therefore, this Court should not rewrite the statutes to include receiving a stolen vehicle. (See *Guzman*, *supra*, 35 Cal.4th at p. 587.)

F. If Penal Code Section 496d is a Reducible Offense Appellant Is Entitled to Have His Petition Reconsidered by the Trial Court

Even if Proposition 47 is interpreted to include receiving a stolen vehicle as a reducible offense, appellant is not entitled to immediate resentencing because the trial court has not made findings on the value of the property and whether appellant presents a danger to the community.

A section 496d conviction could only be redesignated or recalled and resentenced as a misdemeanor if the value of the property does not exceed $950. (See, e.g., §§ 490.2, subd. (a), 496, subd. (a).) Appellant submitted with his petition to recall his sentence a page of the Escondido Police Department's arrest report that lists the value of the stolen vehicle as $301. (CT 44.) However, the trial court never made a factual finding on the value of the stolen vehicle before denying the petition. Without this finding, appellant's felony cannot be recalled and resentenced as a misdemeanor under Proposition 47. In addition, a sentence should not be recalled and the petitioner should not be resentenced if "the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." (§ 1170.18, subd. (b).)

If appellant prevails on his claim here, his petition should be reconsidered on remand to determine whether the car was worth $950 or less and whether he poses an unreasonable risk of danger to public safety.

CONCLUSION

Respondent asks this Court to affirm the judgment.

Dated: January 28, 2019

Respectfully submitted,

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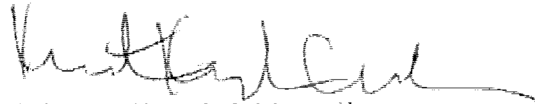
CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT' BRIEF** uses a 13 point Times New Roman font and contains 6750 words.

Dated: January 28, 2019

XAVIER BECERRA
Attorney Generalof California



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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **People v. Orozco**

No.: **S249495**

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; my business address is: 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266.

On January 28, 2019, I served the attached **RESPONDENT'S BRIEF** by placing a true copy thereof enclosed in a sealed envelope with **FEDEX**, addressed as follows:

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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 January 28, 2019, at San Diego, California.

E. Longe-Atkin	
Declarant	Signature

KKC els
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