SUPREME COURT COPY

SUPREME COURT CASE NO. S180181

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff and Respondent,) Court of Appeal No.
) E046742
v.)
) Superior Court No.
MELISSA KAY MURPHY,) FSB060016
)
Defendant and Petitioner.)
)

SUPREME COURT
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On Appeal from the Superior Court of California,
County of San Bernadino,
The Honorable Bryan F. Foster, Judge Presiding.

OPENING BRIEF ON THE MERITS

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By appointment of the Supreme
Court under the Appellate
Defenders, Inc. assisted case
program.

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ISSUE PRESENTED

Pursuant to the Court's order dated April 22, 2010, the issue to be briefed and argued is as follows:

> Was defendant's conviction under Penal Code section 115 preempted by Vehicle Code sections 20 and 10501, subdivision (a)?

STATEMENT OF APPEALABILITY

This appeal is from a final judgment following a trial and is authorized by Penal Code[1] section 1237, subdivision (a).

INTRODUCTION

Petitioner, Melissa Murphy, was charged in count 1 with filing a false instrument in a public office in California, a violation of section 115 and a felony. (1CT 12-13; § 115.) Two more recently enacted statutes — Vehicle Code section 10501 and Vehicle Code section 20 — define and address the more specific offenses of (1) filing a false report of vehicle theft with a California law enforcement agency, and (2) filing a false document with the California Highway Patrol. (Veh.Code, §§ 20, 10501.) Both of the more specific offenses are punishable as misdemeanors. (Veh.Code, §§ 40000.5, 40000.9.) As a consequence, under the *Williamson*[2] preemption doctrine, petitioner was improperly charged with violating section 115. Judgment against her on count 1 must be reversed.

---

[1] All references to statutes shall be to the Penal Code unless otherwise noted.
[2] *In re Williamson* (1954) 43 Cal.2d 651, 654.

STATEMENT OF THE CASE

Petitioner was charged with three counts in a felony complaint filed on January 24, 2008. (1CT 1.) The first count was for offering a false instrument for filing in a public office in violation of section 115, subdivision (a), a felony. The second count was for felony insurance fraud perpetrated by knowingly presenting a false or fraudulent claim for payment for the loss of a motor vehicle in violation of section 550, subdivision (a)(4). The third count was for felony insurance fraud perpetrated by presenting a written or oral statement in support of a claim under an insurance policy knowing that the statement contained false and misleading information concerning a material fact in violation of section 550, subdivision (b)(1). (1CT 12-14.)

The case was tried to a jury starting August 18, 2008. (1RT 1; 1CT 71.) After the conclusion of trial, on August 22, 2008, the jury returned a verdict of guilty on all three counts. (1CT 134-136; 141-142.)

Petitioner was sentenced to three years' probation and 180 days in the county jail. (1CT 159-161.) She filed timely notice of appeal on September 25, 2008. (1CT 162.)

Petitioner argued on appeal that she was improperly charged with violating section 115, because, under the *Williamson* preemption doctrine, Vehicle Code sections 20 and 10501 preempt section 115 where a defendant is charged with filing a false stolen vehicle report with any law enforcement agency or charged with filing a document containing false statements with the California Highway Patrol or Department of Motor

Vehicles. (AOB 1, 8-13.) Petitioner argued that the *Williamson* preemption doctrine applies where each element of a general criminal statute corresponds to an element of a more specific criminal statute, or when a violation of a more specific statute will necessarily or commonly result in a violation of a general statute. (AOB 10.)

The Court of Appeal denied petitioner's appeal in an opinion filed on December 28, 2009. (Opinion at p. 1.) The Court of Appeal held that the *Williamson* preemption doctrine does not apply with respect to Vehicle Code section 20 because the elements in Vehicle Code section 20 do not "correspond" to the elements in section 115 in several respects:

> First, Penal Code section 115 is primarily concerned with the filing of a false or fraudulent *instrument*. On the other hand, Vehicle Code section 20 chiefly deals with the making of false *statements* that are included in a document. ...
>
> Second, regarding the concealment of facts, Vehicle Code section 20 requires that the omitted or obfuscated subject matter be material, whereas Penal Code section 115 has no corresponding materiality requirement. ...
>
> Third, Penal Code section 115 requires that the instrument be "procured" or "offered" for filing with knowledge of its falsity.... [Citation.] However, Vehicle Code section 20 requires that the document containing the false statement be "filed."
>
> Fourth and finally, Penal Code section 115 requires that the instrument be submitted for filing with any public office, but Vehicle Code section specifically delineates that the document must be filed with the DMV or CHP.

(Opinion at p. 10.)

The Court of Appeal further found that that a violation of Vehicle Code section 20 will not necessarily or commonly result in a violation of section 115:

> Penal Code section 115 requires that the instrument itself be false or forged, not merely that it contain false or fictitious information. Thus, a prosecution under Vehicle Code section 20 will most commonly involve fictitious or false information included on a nonetheless valid document.

(Opinion at p. 11.)

The Court of Appeal also found that the elements in Vehicle Code section 10501 do not "correspond" to the elements in section 115:

> Vehicle Code section 10501's lack of a "requirement that the false report, if genuine, could have been legally filed" provides a legally decisive distinction reflecting the Legislature's intent, pursuant to Penal Code section 115, to protect recordation of documents in public institutions and the public's reliance upon them, a concern not apparent in Vehicle Code section 10501.
>
> Additionally, … Penal Code section 115's prohibition on knowingly procuring or offering false instruments to be filed is legally distinct from Vehicle Code section 10501's prohibition on making false statements or actually filing a false report of vehicle theft.
>
> Moreover, unlike Vehicle Code section 10501, Penal Code section 115 "Does not require that the act must be done with the intent to defraud another, nor is there any provision therein requiring that anyone be defrauded thereby…. The crime of violating section 115 of the Penal Code is sufficiently proven when it is shown that the accused intentionally committed the forbidden act." [Citation.]

(Opinion at p. 12-13.)

Finally, the Court of Appeal found that that a violation of Vehicle Code section 10501 will not necessarily or commonly result in a violation of section 115:

> [A] violation of Penal Code section 10501 will not necessarily, or even commonly, result in a violation of Penal Code section 115 because the former is concerned with the filing of the false or fraudulent report by the reporter himself or herself; thus, it lacks the more morally turpitudinous act of inducing behavior by another.

(Opinion at p. 13.)

Petitioner filed a timely petition for review on February 7, 2010. The Court granted review on April 22, 2010.

STATEMENT OF FACTS

On March 5, 2006, at 2:47 a.m., Deputy Jay Staviski observed a Chevrolet Mailbu that was "smashed into the side of the hill" while he was patrolling Highway 18 in the Running Springs area. (1RT 61-64, 67.) There was no key in the ignition and both of the airbags were deployed. (1RT 64.)

Deputy Staviski conducted an area check to see if anyone was hurt. (1RT 66.) Finding no one, he provided the police dispatcher with the license number of the vehicle and determined that the vehicle was registered to petitioner. (1RT 66, 68.)

Staviski drove to petitioner's residence. (1RT 67.) Petitioner answered the door. (1RT 68.) Staviski observed that she had blood on her face, a small laceration on her nose, and blood on her right hand. (1RT 69.) She was emotional and crying. (1RT 84.) Petitioner told Staviski that she

was actually in the process of trying to get the number to the California Highway Patrol ("CHP"), because she wanted to report that her vehicle had been stolen. (1RT 70.) Staviski asked her how she hurt her hand, and she told him that she cut it at Domino's Pizza, where she works. (1RT 89.)

Petitioner told Staviski that she met a friend, Lisa Barbato, earlier that evening approximately 11:00 p.m. at the Fireside Lounge in Running Springs. At closing time, approximately 2:00 p.m., she and Barbato came outside and petitioner's vehicle was gone. (1RT 73, 77.) Barbato accordingly gave petitioner a ride home to Lake Arrowhead. (1RT 79-80.) On the way there, they saw her car on the side of the road. (1RT 80.) They kept going, and were in the process of calling the CHP when he arrived. (1RT 80.)

Staviski asked petitioner to fill out a stolen vehicle report on CHP Form No. 180. (1RT 71-73; 1CT 172-173.) After Deputy Staviski completed the form, petitioner signed it under penalty of perjury. (1RT 73.) Staviski filed the CHP form in his office. (1CT 90.) The information in the stolen vehicle report was entered into the national stolen vehicle database system, and then immediately tagged to show that the vehicle had been recovered. (1RT 91.)

ARGUMENT

I. OVERVIEW.

Appellant was charged with filing a false instrument, a felony, based on allegations that she made a false stolen vehicle report to a peace officer. (1CT 13; 1RT 71-73.) At least four other statutes cover the specific

conduct — a false report to the police — that was at issue. The four statutes all provide that such conduct is a misdemeanor.

Vehicle Code section 10501 provides that:

> It is unlawful for any person to make or file a false or fraudulent report of theft of a vehicle required to be registered under this code with any law enforcement agency with intent to deceive.

(Veh.Code, § 10501 [emphasis added].) Vehicle Code section 40000.9 makes a first offense violation of Vehicle Code section 10501 a misdemeanor. (Veh.Code, § 40000.9; see Veh.Code, § 10501, subd. (b).)

Vehicle Code section 20 provides that:

> It is unlawful . . . to knowingly make any false statement or knowingly conceal any material fact in any document filed with the Department of Motor Vehicles or the Department of the California Highway Patrol.

(Veh.Code, § 20.) Vehicle Code section 40000.9 makes the violation of Vehicle Code section 20 a misdemeanor. (Veh.Code, § 40000.9.)

Penal Code section 148.5 provides that:

> Every person who reports to any peace officer listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33 . . . that a felony or misdemeanor has been committed, knowing the report to be false, is guilty of a misdemeanor ....

(§ 148.5, subd. (a) [emphasis added].)

Vehicle Code section 31 provides that:

> No person shall give, either orally or in writing, information to a peace officer while in the performance of his duties under the provisions of this code when such person knows that the information is false.

(Veh.Code, § 31.) Vehicle Code section 40000.1 makes the violation of Vehicle Code section 31 a misdemeanor.[3] (Veh.Code, § 40000.5.)

Instead of charging appellant with any one or even several of these statutes, the prosecution ignored the clear intent of the Legislature that a first-offense, false report of a stolen vehicle to a peace officer is *not* punishable as a felony, and charged appellant with the generic crime of filing a false instrument in a public office. (1CT 13.) The *Williamson* preemption doctrine does not allow this:

> The doctrine that a specific statute precludes any prosecution under a general statute is a rule designed to ascertain and carry out legislative intent. The fact that the Legislature has enacted a specific statute covering much the same ground as a more general law is a powerful indication that the Legislature intended the specific provision alone to apply. Indeed, in most instances, an overlap of provisions is determinative of the issue of legislative intent and 'requires us to give effect to the special provision alone in the face of the dual applicability of the general provision ... and the special provision . . . .'

(*People v. Jenkins* (1980) 28 Cal.3d 494, 505-506, quoting *People v. Gilbert* (1969) 1 Cal.3d 475, 481.)

Two of the specific statutes listed above — Vehicle Code section 10501 and Vehicle Code section 20 — satisfy all of the criteria for the *Williamson* preemption doctrine to apply in the instant case. In addition, the statutory scheme as a whole — which involves no less than four specific statues, all of which categorize false police reports as misdemeanors — is a further, "powerful indication" that the Legislature did

[3] Petitioner's reply brief mistakenly characterized Vehicle Code section 31 as an infraction.

not intend to punish the conduct appellant was charged with committing as a felony. Reversal of the first count is accordingly required.

II. GOVERNING LAW:

UNDER THE *WILLIAMSON* PREEMPTION DOCTRINE, A SPECIFIC CRIMINAL STATUTE IS TREATED AS AN EXCEPTION, NOT AN ALTERNATIVE, TO A MORE GENERAL CRIMINAL STATUTE WHERE THE SPECIFIC STATUTE PROVIDES FOR A HEAVIER PENALTY.

The *Williamson* preemption doctrine is well settled. (*People v. Wood* (1958) 161 Cal.App.2d 24, 29.) "[W]here the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute . . . ." (*In re Williamson, supra,* 43 Cal.2d at p. 654.) "[T]he special act will be considered as an exception to the general statute whether it was passed before or after such general enactment." (*Ibid.*)

The *Williamson* preemption rule "serves as an aid to judicial interpretation when two statutes conflict." (*Jenkins, supra,* 28 Cal.3d at p. 505.) "Typically, the issue whether a special criminal statute supplants a more general criminal statute arises where the special statute is a misdemeanor and the prosecution has charged a felony under the general statute instead." (*People v. Woods* (1986) 177 Cal.App.3d 327, 333.) "Such prosecutions raise a genuine issue whether the defendant is being subjected to greater punishment than specified by the Legislature, and the basic question for the court to determine is whether the more serious felony provisions would remain available in appropriate cases." (*Id.* at p. 334.) "The fact that the Legislature has enacted a specific statute covering much

the same ground as a more general law is a powerful indication that the Legislature intended the specific provision alone to apply." (*People v. Watson* (1981) 30 Cal.3d 290, 295-296.)

Modern case law recognizes two situations where the *Williamson* preemption rule applies. "Absent contrary legislative intent, 'the *Williamson* preemption rule is applicable (1) when each element of the general statute corresponds to an element on the face of the special statute, or (2) when it appears that a violation of the special statute will necessarily or commonly result in a violation of the general statute." (*People v. Powers* (2004) 117 Cal.App.4th 291, 299, quoting *People v. Watson, supra,* 30 Cal.3d at pp. 295-296 (*Watson*).) In addition, this Court held in *Jenkins, supra,* 28 Cal.3d at page 509, that "the usually conclusive rule that special statutes preclude prosecution for a general crime must give way to the clear and incontrovertible evidence of the Legislative intent."

As set forth below, section 115 was repealed *pro tanto* by Vehicle Code section 10501 and Vehicle Code section 20 under both tests with respect to the factual situation in the instant case. In addition, there is no evidence of contrary Legislative intent.

III. SECTION 115 WAS PREEMPTED BY VEHICLE CODE SECTION 10501 WITH RESPECT TO THE FACTUAL SITUATION PRESENTED BY THE INSTANT CASE.

Section 115 was enacted in 1872. (*People v. Wood*, *supra,* 161 Cal.App.2d at p. 27.) Section 115 makes it a felony to knowingly file *any* false instrument in *any* State public office:

> Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any

> public office within this State, which instrument, if genuine, might be filed, or registered, or recorded under any law of this State or of the United States, is guilty of [a] felony.

(§ 115.)

Section 10501 of the Vehicle Code was enacted 63 years later in 1935. (Historical and Statutory Notes, Veh.Code, § 10501, West's Online Annotated California Codes, Thomson Reuters, 2010.) It is punishable as a misdemeanor pursuant to Vehicle Code section 40000.9. Like section 115, Vehicle Code section 10501 addresses the filing of false documents in a public office, but it applies in the particular situation where a defendant is accused of filing a false stolen vehicle report with a law enforcement agency:

> It is unlawful for any person to make or file a false or fraudulent report of theft of a vehicle required to be registered
>
> under this code with any law enforcement agency with intent to deceive.

(Veh.Code, § 10501.)

As set forth below, an element-by-element comparison of the two statutes demonstrates that Vehicle Code section 10501 is indisputably more specific than section 115. In addition, a violation of Vehicle Code section 10501 will necessarily or commonly result in a violation of section 115.

A. A Comparison Of The Elements Side-By-Side Shows That The General Statute, Section 115, Includes The Same Matter As The Special Act, Vehicle Code Section 10501.

An element-by-element comparison of the two statutes under the test set out in *Watson, supra,* 30 Cal.3d at pages 295-296, demonstrates that each element of section 115 corresponds to an identical or more specific element of Vehicle Code section 10501:

Element	PC 115	VC 10501
1	Procuring or offering to be filed.	Filing.
2	A false instrument.	A false stolen vehicle report.
3	In a public office.	In any law enforcement agency.
4	Knowingly.	With intent to deceive.

1. Fourth Elements: Vehicle Code Section 10501 Is More Specific Than Section 115.

Starting with the fourth elements, the scienter requirement in Vehicle Code section 10501, "intent to deceive," is a narrower, more specific state of mind than the scienter requirement in section 115, "knowingly." (Compare § 115, Veh.Code, § 10501.) "[T]he element of 'specific intent to defraud' . . . is more rigorous than the concept of 'knowingly" and includes the latter." (*E.g., People v. Booth* (1996) 48 Cal.App.4th 1247, 1253.) This is a basic legal principle that should be beyond dispute. "While it is undoubtedly true that one can 'knowingly' present a false claim without specific intent to defraud . . . [citation], the opposite is not true. One simply cannot *intend to defraud* another by submitting false information "unknowingly." (*Id.* at p. 1254 [emphasis in the original].) The fourth element of Vehicle Code section 10501 accordingly requires a more specific type of scienter than the fourth element of section 115, subdivision (a).

2. Third Elements: Vehicle Code Section 10501 Is More Specific Than Section 115.

Turning to the third elements, Vehicle Code Section 10501 indisputably addresses a more specific situation than the second element in section 115, subdivision (a). Section 115 prohibits filing in a public office in California, whereas Vehicle Code section 10501 prohibits filing in a particular type of public office, namely a law enforcement agency. (Compare § 115, Veh.Code, § 10501.)

3. Second Elements: Vehicle Code Section 10501 Is More Specific Than Section 115.

Under the modern definition of "instrument" as the term is used in section 115, a false stolen vehicle report is a particular type of false instrument. This is because the modern definition of instrument includes almost all documents that are filed by laypersons in a public office and then relied upon by public officials:

> A document required or permitted to be filed in a public office is an instrument if (1) the claimed falsity relates to a material fact represented in the instrument; and (2a) the information contained in the document is of such a nature that the government is required or permitted by law, statute, or valid regulation to act in reliance thereon ....

(*Powers, supra,* 117 Cal.App.4th at p. 297.) A false stolen vehicle report satisfies this definition, because numerous statutes provide for the filing of a stolen vehicle report with various agencies. (*E.g.* Veh.Code, § 10504; Veh.Code, §§ 2407-2408; Veh.Code, § 10500; § 11108.) It was further undisputed at trial that a stolen vehicle report is a document that the government is permitted by law, statute, or valid regulation to act in reliance upon. (1RT 90-91; Veh.Code §§ 2407-2408, 10500, 10503-10504;

11108; Opinion at pp. 3-4.) As a consequence, a false stolen vehicle report is a specific type of false instrument under the modern definition. (*See Powers, supra,* 117 Cal.App.4th at p. 297 [fishing activity records are instruments]; *People v. Tate* (1997) 55 Cal.App.4th 663, 667 [work referral forms filed with the probation office are instruments].) The second element in Vehicle Code section 10501 is therefore a more specific version of the second element in section 115, subdivision (a). Indeed, if a false stolen vehicle report is not a particular type of false instrument, then petitioner was wrongly convicted of filing a false instrument in violation of section 115 as the stolen vehicle report was the only document that petitioner filed. (§ 115.)

4. First Elements: Vehicle Code Section 10501 Is More Specific Than Section 115.

Finally, Vehicle Code Section 10501 is plainly more specific than section 115 in that it prohibits the "filing" of a false document while section 115, subdivision (a), prohibits both offering and procuring the filing of a document. (Compare § 115, Veh.Code, § 10501.)

Respondent argued below that Vehicle Code section 10501 does not preempt section 115 with respect to false stolen vehicle reports, because in addition to prohibiting the "filing" of a false stolen vehicle report, Vehicle Code section 10501 also prohibits "making" a false stolen vehicle report. (RB 13-15.) As a consequence, respondent contended that, unlike section 115, Vehicle Code section 10501 can be violated orally without using a false instrument. (RB 13-15.) This argument was not adopted by the Court of Appeal and is unavailing in any event.

The first element of Vehicle Code section 10501 is phrased in the alternative: "It is unlawful for any person to make *or* file a false or fraudulent report of theft of a vehicle . . . ." (Veh.Code, § 10501 [emphasis added].) In enacting Vehicle Code section 10501, the Legislature therefore specifically identified and distinguished between two separate categories of conduct, both of which it intended to punish as misdemeanors: "making a false report" and "filing a false report." The fact that the Legislature communicated its intent to make both types of conduct a misdemeanor by enacting a single statute phrased in the alternative — i.e. by enacting one statute which provides that it is unlawful to "make *or* file" a false report as opposed to enacting two statutes, one of which provides that it is unlawful to "make" a false report and the other of which provides that it is unlawful to "file" a false report — does not change the fact that the Legislature specifically identified the filing of a false stolen vehicle report with a law enforcement agency to be misdemeanor conduct. (See *People v. Farina* (1963) 220 Cal.App.2d 291, 293-294 [finding section 182, the general conspiracy statute, to be preempted by Vehicle Code section 10852, even though separate clauses in section 10852 prohibit *both* individual activity *and* activity in concert with others]; *Gilbert, supra,* 1 Cal.3d at pp. 480-481 [treating alternative clauses separately for purposes of analyzing whether a special statute preempts a general one].) In other words, the fact that the Legislature chose to provide that both "filing" *and* "making" a false stolen vehicle report are to be prosecuted as misdemeanors is not an indication by any means that the Legislature's intent was to provide that "filing" a false

stolen vehicle report should actually be prosecuted as a felony. Such a conclusion simply does not follow.

The two separate clauses are thus correctly analyzed and treated separately for preemption purposes. As a consequence, the first element of Vehicle Code section 10501 is more specific than the first element of section 115.

5. The Analysis In The Court Of Appeal's Opinion *Reverses* the Specificity Requirement That Is Used To Determine Whether A Special Statute Preempts A General One.

The Opinion by the Court of Appeal erroneously *reverses* the specificity requirement for finding that a special statute preempts an earlier general statute *pro tanto*. In particular, the Opinion cites to *People v. Geibel* (1949) 93 Cal.App.2d 147, 168-169, for the proposition that '[t]he crime of violating section 115 of the Penal Code is sufficiently proven when it is shown that the accused intentionally committed the forbidden act." (Opinion at p. 13.) This is *less specific* than the state of mind required by Vehicle Code section 10501, which is "with intent to deceive." (*E.g., Booth, supra,* 48 Cal.App.4th at p. 1253.)

The Opinion also makes a distinction between the fact that section 115 criminalizes both "offering" and actually "procuring" the filing of a false instrument, while Vehicle Code section 10501 criminalizes only the actual "filing." (Opinion at p. 12.) This is another example, however, where section 115 is *less specific.*

Finally, the Opinion appears to make a distinction between giving a document to a public official to be placed in a file and personally filing a

document. (Opinion at p. 11 ["[petitioner] procured or offered the fraudulent CHP form No. 180 for filing by the deputy; she did not file the document herself"].) As a preliminary matter, the language of the statutes does not make this distinction. (Compare §115, Veh.Code, § 10501.) "Procuring" means "causing." (*E.g.,* CALCRIM 1945.) It has not been limited by the case law to mean using someone else to effectuate the filing. (Compare Opinion at p. 11.) And Vehicle Code section 10501 does not state that the defendant must personally file a false stolen vehicle report in order to be guilty. (Veh.Code, § 10501.) Indeed, to the contrary, the reality is that documents filed with a public agency are always given to a public official for filing, not personally filed by the individual. In any event, even if it were the case that a defendant must personally file a stolen vehicle report in order to be convicted of violating Vehicle Code section 10501 but can be guilty of violating section 115 regardless of whether the false instrument was personally filed, the end result is still that Vehicle Code section 10501 is *more specific* in this regard than is section 115.

All four elements of Vehicle Code section 10501 thus correspond and are more specific than the four elements of section 115, subdivision (a). The first test for determining whether section 115 is preempted by Vehicle Code section 10501 in the context of the factual situation presented by the instant case is therefore satisfied. As set forth below, the second test is also satisfied.

B. A Violation Of Vehicle Code Section 10501 Will Necessarily Or Commonly Result In A Violation Of Section 115.

As set forth previously, the *Williamson* preemption rule is not only applicable when the elements of the general statute correspond to the elements of the special statute, it is also applicable "when it appears that a violation of the special statute will necessarily or commonly result in a violation of the general statute." (*Watson, supra,* 30 Cal.3d at pp. 295-296.) That is the case here.

The filing of a false report of the theft of a vehicle with a law enforcement agency will *always* procure the filing of a false instrument in a public office. Respondent and the Court of Appeal have not offered any reasonable examples where this is not the case.

In addition, numerous Vehicle Code statutes ensure that even the "making" of a false oral report of a stolen vehicle will ultimately procure the filing of a false instrument. (Veh.Code, §§ 2407-2408, 10500, 10503-10504.) In particular, Penal Code section 11108 ensures that a written report is ultimately generated and filed in the Department of Justice stolen property database no matter whether the original stolen vehicle report is made by an individual orally or in writing:

> Every sheriff or police chief executive *shall* submit descriptions of serialized property . . . which has been reported stolen . . . to the appropriate Department of Justice automated property system for firearms, stolen bicycles, stolen vehicles, or other property as the case may be.

(§ 11108.) "Making" an oral stolen vehicle report to a law enforcement agency as opposed to "filing" a written report will thus procure or cause the

filing of a written document in the Department of Justice database in every instance. Indeed, Deputy Staviski was careful to follow the provisions of section 11108 in this case even though the vehicle had already been recovered. He testified that the stolen vehicle report was entered into the stolen vehicle database system, and that it was then immediately tagged to show that it had been recovered. (1RT 91.)

A violation of Vehicle Code section 10501 will thus necessarily or commonly result in a violation of section 115. The second test for determining whether section 115 is preempted by Vehicle Code section 10501 in the context of the factual situation presented by the instant case is therefore satisfied.

IV. SECTION 115 WAS PREEMPTED BY VEHICLE CODE SECTION 20 WITH RESPECT TO THE FACTUAL SITUATION PRESENTED BY THE INSTANT CASE.

As set forth previously, section 115 was enacted in 1872, and makes it a felony to knowingly file *any* false instrument in *any* State public office:

> Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this State, which instrument, if genuine, might be filed, or registered, or recorded under any law of this State or of the United States, is guilty of [a] felony.

(§ 115; *People v. Wood*, *supra,* 161 Cal.App.2d at p. 27.)

Section 20 of the Vehicle Code was enacted 41 years later in 1913. (Historical and Statutory Notes, Veh.Code, § 20, West's Online Annotated California Codes, Thomson Reuters, 2010 [noting that Vehicle Code section 20 was enacted in 1959, but derives from an earlier statute enacted

in 1913].) Like section 115, Vehicle Code section 20 addresses the filing of *any* false document, but unlike section 115, it addresses the filing of a false document with two specific public offices, namely the Department of the California Highway Patrol and the Department of Motor Vehicles:

> It is unlawful to . . . knowingly make any false statement or knowingly conceal any material fact in any document filed with the Department of Motor Vehicles or the Department of the California Highway Patrol.

(Veh.Code, § 20.) Vehicle Code section 20 is punishable as a misdemeanor pursuant to Vehicle Code section 40000.9.

As set forth below, an element-by-element comparison demonstrates that Vehicle Code section 20 is more specific than section 115. A violation of Vehicle Code section 20 will also necessarily or commonly result in a violation of section 115.

A. A Comparison Of The Elements Side-By-Side Shows That The General Statute, Section 115, Includes The Same Matter As The Special Act, Vehicle Code Section 20.

An element-by-element comparison of the two statutes under the test set out in *Watson, supra,* demonstrates that each element of section 115 corresponds to an identical or more specific element of Vehicle Code section 20.

Element	PC 115	VC 20
1	Procuring or offering to be filed.	Filing.
2	A false instrument.	A false statement or the concealment of a material fact in a document that is filed.
3	In a public office.	In the Department of Motor Vehicles or the Department of the California Highway Patrol.
4	Knowingly.	Knowingly.

1. <u>Fourth Elements: The Scienter Requirement In Both Statutes Is The Same</u>.

Starting with the fourth elements, Vehicle Code section 20 and section 115 are indistinguishable. The scienter required by both is knowledge. (Compare § 115, Veh.Code, § 20.)

2. <u>Third Elements: Vehicle Code Section 20 Is More Specific Than Section 115.</u>

Turning to the third elements, Vehicle Code Section 20 indisputably addresses a more specific situation than the second element in section 115. Section 115 prohibits filing with a public office in California, whereas Vehicle Code section 20 prohibits filing with two specific public offices in

California, namely the Department of Motor Vehicles and the California Highway Patrol. (Compare § 115, Veh.Code, § 20.)

Respondent argued below that Vehicle Code section 20 does not preempt section 115 with respect to the facts of this case, because a CHP stolen vehicle report is not necessarily filed with the CHP or the DMV in cases where the arresting officer is a sheriff as opposed to a member of the California Highway Patrol, as was the situation in the instant case. (RB 9-10.) This is incorrect.

By statute, stolen vehicle report forms are prepared and disseminated to law enforcement agencies across the state by the CHP, and are then recorded with the Department of Motor Vehicles and sent back to the CHP when they are filled out. (Veh.Code, §§ 2407-2408, 10500, 10503-10504; § 11108.) This is true regardless of where the reports originated. (See Veh.Code, §§ 2408 [referring to "all accident reports"], 10500 [referring to "every peace officer"]; § 11108 [referring to "every sheriff or police chief executive"].)

In particular, three statutes in the Vehicle Code direct the processing of stolen vehicle reports. First, Vehicle Code section 10500 specifically requires that *all peace officers* must provide stolen vehicle reports to the Department of Justice:

> Every peace officer, upon receiving a report based on reliable information that any vehicle registered under this code has been stolen, taken, or driven in violation of Section 10851 . . . shall, immediately after receiving that information, report the information to the Department of Justice Stolen Vehicle System.

(Veh.Code, § 10500; Pen.Code, § 11108.) The Department of Justice is then in turn required to provide the report to the Department of Motor Vehicles:

> The Department of Justice, upon receiving notice under this chapter that a vehicle has been stolen, or taken or driven in violation of Section 10851 . . . shall notify the Department of Motor Vehicles of the reported theft, taking or driving . . . .

(Veh.Code, § 10503.) The Department of Motor Vehicles is then required to file the information in its electronic database:

> The department upon receiving a report of a stolen vehicle, or of a vehicle taken or driven in violation of Section 10851, shall place an appropriate notice in the electronic file system which will identify such vehicles during the processing of new certificates of registration, ownership, or registration and ownership.

(Veh.Code, § 10504.) Stolen vehicle reports are thus definitively filed with the Department of Motor Vehicles regardless of where they originated.

The Vehicle Code also requires that traffic accident reports made on CHP forms — such as the CHP Form 180 report filled out in the instant case — must be collected by the CHP, so the CHP can publish statistical information relating to the reports. In particular, Vehicle Code section 2407 requires the CHP to prepare such forms and disseminate them to local law enforcement agencies:

> The department shall prepare and on request supply to police departments, coroners, sheriffs, and other suitable agencies or individuals, forms for accident reports required under this code, which reports shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicles involved.

(Veh.Code, § 2407.) Vehicle Code section 2408 in turn requires the CHP to collect the reports and publish statistical information about them on at least an annual basis:

> The department shall tabulate and may analyze all accident reports and publish annually or at more frequent intervals statistical information based thereon as to the number and location of traffic accidents, as well as other information relating to traffic accident prevention. Based upon its findings after such analysis, the department may conduct further necessary detailed research to more fully determine the cause and control of highway accidents. It may further conduct experimental field tests within areas of the State to prove the practicability of various ideas advanced in traffic control and accident prevention.

(Veh.Code, § 2408.) CHP Form 180 stolen vehicle reports are thus definitively filed with the California Highway Patrol on at least an annual basis regardless of where they originated so that the CHP can publish statistical reports. As set forth above, that is why the CHP is required by statute to create the forms in the first place.

Stolen vehicle reports are thus filed with *both* agencies listed in Vehicle Code section 20. Vehicle Code section 20 is accordingly more specific than section 115 with respect to this element.

3. Second Elements: The Elements Are Equivalent According To The Modern Definition Of "False Instrument."

As set forth previously, the modern definition of instrument includes almost all documents that are filed by laypersons in a public office and then relied upon by public officials. (*Powers, supra,* 117 Cal.App.4th at p. 297.) "Modern cases have interpreted the term "instrument" expansively, including any type of document that is filed or recorded with a public

agency that, if acted upon as genuine, would have the effect of deceiving someone." (CALCRIM 1945, citing *People v. Parks* (1992) 7 Cal.App.4th 883, 886-887.) "Thus the courts have held that "instrument" includes a modified restraining order, false bail bonds, and falsified probation work referrals." (CALCRIM 1945 citing *Parks, supra,* 7 Cal.App.4th at p. 886, *People v. Garcia* (1990) 224 Cal.App.3d 297, 306-307, *Tate, supra,* 55 Cal.App.4th at p. 667.) Fishing activity records have also been held to be "instruments" within the meaning of section 115. (*Powers, supra,* 117 Cal.App.4th at p. 297.) In particular, the case law holds that the meaning of "false instrument" is that it contains false statements which may relied upon by government officials or other third persons. (*Ibid.*)

Documents containing false statements that are filed with the California Highway Patrol and the Department of Motor Vehicles are thus false instruments under the modern definition. The second elements in Vehicle Code section 20 and section 115 are therefore equivalent for purposes of determining whether section 115 is preempted under the facts of this case.

4. First Elements: Vehicle Code Section 20 Is More Specific Than Section 115.

As set forth previously, filing a document is plainly more specific than offering or procuring the filing of a document. (Compare § 115, Veh.Code, § 20.)

5. The Analysis In The Court Of Appeal's Opinion Again *Reverses* The Specificity Requirement That Is Used To Determine Whether A Special Statute Preempts A General One.

According to the Court of Appeal's analysis, Vehicle Code section 20 has a materiality requirement and Penal Code section 115 does not. (Opinion at p. 10.) Vehicle Code section 20 applies where a document has been filed, while Penal Code section 115 applies where a document has been filed or offered to be filed. (Opinion at p. 10.) And Vehicle Code section 20 requires filing with the DMV or CHP, while Penal Code section 115 applies to any public office. (Opinion at p. 10.) These differences between the elements are all instances where the elements of Vehicle Code section 20 are *more specific* than those of Penal Code section 115. The Opinion accordingly should have held that the *Williamson* preemption rule applies. (*Wood, supra,* 161 Cal.App.2d at p. 29 [a "more general statute [is] superseded or repealed *pro tanto* by a ... *more specific* statute which is clearly applicable to the factual situation involved"] [emphasis added].)

All four elements of Vehicle Code section 20 thus correspond and are either equivalent or more specific than the four elements of section 115, subdivision (a). The first test for determining whether section 115 is preempted by Vehicle Code section 20 in the context of the factual situation presented by the instant case is therefore satisfied. As set forth below, the second test is also satisfied.

B. A Violation Of Vehicle Code Section 20 Will Necessarily Or Commonly Result In A Violation Of Section 115.

As set forth previously, the *Williamson* preemption rule applies "when it appears that a violation of the special statute will necessarily or commonly result in a violation of the general statute." (*Watson, supra,* 30 Cal.3d at pp. 295-296.) Because "false instrument" has been given an expansive definition, the filing of a document containing false statements with the California Highway Patrol or the Department of Motor Vehicles will necessarily or commonly constitute the filing of a false instrument with a public office in California. (*Powers, supra,* 117 Cal.App.4th at p. 297.) The second test for determining whether section 115 is preempted by Vehicle Code section 20 in the context of the factual situation presented by the instant case is therefore satisfied.

V. THERE IS NO EVIDENCE THAT THE LEGISLATURE INTENDED TO PROSECUTE FIRST-TIME OFFENDERS WHO FILE A FALSE STOLEN VEHICLE REPORT WITH A FELONY.

The legislative scheme is clear. Four statutes in California punish various types of false reports to peace officers under various circumstances, and *all* of them classify the offense as a misdemeanor. (Veh.Code, §§ 20, 31, 10501; § 148.5, subd. (a).) The imposition of relatively light punishment for these offenses supports an obvious policy objective of encouraging open communication between California's police force and the community at large. Indeed, in the case of false stolen vehicle reports, the Legislature has specifically provided that a first time offense is a misdemeanor, and a second time offense is a wobbler. (Veh.Code, § 10501.)

In contrast, the scheme suggested by the Court of Appeal's ruling makes no sense. It is not reasonable to believe that the Legislature intended for individuals who make false reports to the police to be punished as felons upon a *less* specific and *less* burdensome showing than is required to punish them as having committed a misdemeanor. In particular, it is not reasonable to interpret the statutory scheme to allow the prosecution to obtain a felony conviction under section 115 against an individual who files a false stolen vehicle report upon a showing that the person *knew* the report was false, but to require that the prosecution make *an additional showing* that the person had the *intent to deceive* in order to obtain a misdemeanor conviction. (Compare §115, subd. (a), with Veh.Code, § 10501.) To the contrary, the only reasonable conclusion is that Vehicle Code sections 20 and 10501 operate as exceptions to section 115, not alternatives. (*People v. Mayers* (1980) 110 Cal.App.3d 809, 814 [The *Williamson* preemption rule "is necessary to prevent a general statute from swallowing up exceptions contained in specific enactments"].)

That the Legislature intended Vehicle Code sections 20 and 10501 to operate as exceptions to section 115 is further supported by the Legislature's tacit approval for more than 25 years — 1958-1984 — of the decision in *People v. Wood, supra,* 161 Cal.App.2d 24. In *Wood*, the court considered whether former section 131, subdivision (d), of the Vehicle Code preempted the very same provision at issue in the instant case — section 115, subdivision (a) — with respect to false documents filed with

the Department of Motor Vehicles. (*Id.* at p. 27.) Former section 131, subdivision (d) provided:

> Any person who knowingly makes a false statement or conceals a material fact in any document required to be filed with the department as herein provided shall be guilty of a misdemeanor.

(Stats. 1937, ch. 148, p. 413; *Wood, supra,* 161 Cal.App.2d at p. 27.) Based on a side-by-side comparison of the text of the two statutes, the court found that former Vehicle Code section 131, subdivision (d), presented "a classic example" of a *pro tanto* repeal with respect to section 115. (*Wood, supra,* 161 Cal.App.2d at pp. 27-29 (*Wood*).) The court further found that the Legislature's intent to carve out an exception for false documents filed with the Department of Motor Vehicles was "too clear to be reasonably questioned." (*Id.* at p. 29.) The carve-outs presented by Vehicle Code sections 20 and 10501 for false stolen vehicle reports filed with a law enforcement agency and documents containing false statements filed with the CHP and DMV are indistinguishable in any meaningful way from the carve-out that was found in *Wood.*

In 1984, the Legislature extensively amended the sentencing provisions of section 115 without addressing or changing the *Wood* holding. (Stats. 1984, ch. 1 1397, pp. 4905-4908.) "In adopting legislation, the Legislature is presumed to know of existing domestic judicial decisions and to enact and amend statutes in light of such decisions that have a direct bearing on them." (*Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 318.) Where a statute has been construed by judicial decision and such construction is not altered by subsequent legislation, it

must be presumed that the legislature is aware of the judicial construction and approves of it. (*E.g. People v. Hallner* (1954) 43 Cal.2d 715, 719.) The failure of the Legislature when it amended section 115 to indicate that it did not intend section 115 to be preempted by provisions in the Vehicle Code that punish the filing of false documents as misdemeanors effectively constitutes affirmative legislative approval and confirmation of the analysis in *Wood* and *Wood's* conclusion that such provisions preempt section 115. (*Moradi-Shalal, supra,* 46 Cal.3d at p. 318.)

For all of these reasons, it is clear that the Legislature intended to prosecute first-time offenders who file a false stolen vehicle report with a misdemeanor, not a felony.

VI. PETITIONER WAS IMPROPERLY CONVICTED OF VIOLATING SECTION 115.

Under the *Williamson* preemption doctrine, sections 20 and 10501 of the Vehicle Code thus operate as exceptions to section 115, not alternatives, where, as here, a defendant is alleged to have filed a false stolen vehicle report with a peace officer. As set forth above, while filing a false instrument with a public office is generally considered to be a felony, the Legislature has effectively carved out an exception to the general rule and decided that filing a false document with the DMV or CHP or a false stolen vehicle report with any law enforcement agency is punishable only as a misdemeanor. (Arguments III, IV.) There is no evidence of any contrary legislative intent. (Argument V.) Petitioner was therefore improperly charged with violating section 115, and judgment against her on count 1 must be reversed.

CONCLUSION

Based on the preceding argument and analysis, petitioner respectfully requests that the Court reverse the judgment against her on count 1.

Dated: June 25, 2010

LAW OFFICES OF HELEN SIMKINS IRZA

By: ______________________
Helen S. Irza

Attorney for Petitioner
Melissa Kay Murphy

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court rule 8.360(b)(1), I certify that the foregoing brief has 7629 words as counted by Microsoft Word, excluding the table of contents and table of authorities.

Dated: June 25, 2010

LAW OFFICES OF HELEN SIMKINS IRZA

By: __________________

Helen S. Irza

Attorney for Petitioner
Melissa Kay Murphy

DECLARATION OF SERVICE

Case Name: MELISSA MURPHY Court of Appeal No. E046742

I, Helen S. Irza, declare:

I am employed in the County of San Diego, California. I am over 18 years of age and not a party to this proceeding. My business address is 3525A Del Mar Heights Road #216, San Diego, CA 92130.

On June 25, 2010, I served the attached

OPENING BRIEF ON THE MERITS

on each of the following addresses, by placing a true and correct copy in a separate envelope for each addressee, and addressing each such envelope respectively as follows:

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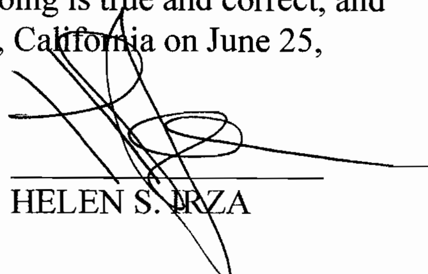
Each envelope was then sealed and deposited in the United States mail by me with fully prepaid postage affixed at San Diego, California on June 25, 2010.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed in San Diego, California on June 25, 2010.



HELEN S. IRZA