

GENERAL OFFICE MEMORANDUM 18-084

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

SUBJECT: PROPOSITION 47 APPLIES TO SOME FELONY IDENTITY
THEFT/RECEIVING STOLEN VEHICLE CRIMES

DATE: JUNE 7, 2018

The evolution of judicial doctrine as it relates to Proposition 47 (Prop 47) continues.¹

Two recent Court of Appeal cases add identity theft (Pen. Code § 530.5, subd. (a)) and knowingly obtaining a stolen vehicle (Pen. Code § 496d) to the list of theft-related felonies eligible for misdemeanor resentencing under Prop 47.

PENAL CODE SECTION 530.5

In *People v. Jimenez* (May 8, 2018, No. B283858) ___ Cal.App.5th___ [2018 Cal. App. LEXIS 410; 2018 WL 2112257]) (*Jimenez*) defendant entered a check cashing business two different times and cashed company checks payable to himself in the amounts of \$632.47 and \$596.60. The checks were not issued in Jimenez's name. After a jury convicted defendant of two counts of felony identity theft under Penal Code section 530.5, subdivision (a),² the defendant admitted a strike prior and a prison prior then moved to reduce the convictions to misdemeanors pursuant to Prop 47. The trial court granted the motion, citing *People v. Gonzales* (2017) 2 Cal. 5th 858, and *People v. Romanowski* (2017) 2 Cal.5th 903.³ The People appealed.

The Court of Appeal affirmed, holding that defendant's acts constituted misdemeanor shoplifting under section 459.5, subdivision (a), and had to be charged as such. (*Jimenez, supra*, at p. 2.) The fact that the defendant committed identity theft in the course of the shoplifting did not alter the fact that he also committed shoplifting. (*Jimenez, supra*, at pp. 11-12, citing *People v. Garrett* (2016) 248 Cal. App. 4th 82, 88.)

Jimenez relies substantially on *People v. Gonzales* (2017) 2 Cal. 5th 858 (*Gonzales*). In *Gonzales*, defendant stole his grandmother's checkbook. Twice in the same week he entered a

¹ See also GOMs 14-090, 14-099, 14-102, 15-013, 15-014, 15-026, 15-030, 15-034, 15-035, 15-036, 17-025, 17-045, 18-025 and Special Directive 14-08. Additionally, several Prop 47-related documents are available in the Brief Bank: adanet/library/brief bank

² All further statutory references are to the Penal Code unless otherwise indicated.

³ See GOM 17-045 which addresses *Romanowski*'s application of Prop 47 to the theft of access cards or account information under section 484e. Footnote 1 in 17-045 states: "If the access card information [is] used for any unlawful purpose, felony identity theft under Penal Code section 530.5, subdivision (a) may still be charged—regardless of value." Under *Garret, Gonzales* and *Jimenez* this may no longer be accurate.

bank and cashed checks made out to him for \$125 that were not signed or authorized by his grandmother. Defendant pleaded guilty to burglary for formal probation and later petitioned for Prop 47 resentencing. The trial court denied the petition and the Court of Appeal affirmed. The Supreme Court reversed, holding that defendant's act of entering a bank to cash a stolen check for less than \$950 constituted shoplifting under section 459.5. (*Id.* at p. 862.) This was the case even if Gonzales entered the bank intending to commit identity theft under section 530.5, subdivision (a), wrote the Court, because his underlying conduct *also* constituted shoplifting. Thus, section 459.5, subdivision (b), precluded a felony burglary charge. “A defendant must be charged only with shoplifting when [section 459.5] applies.” (*Gonzales, supra*, 2 Cal.5th at pp. 876-877.)

Jimenez distinguished *People v. Liu* (2018) 21 Cal.App.5th 143 which held that convictions under section 530.5, subdivision (c) do not qualify for Prop 47 resentencing, noting that the court in *Liu* “had no occasion to consider whether a conviction under section 530.5, subdivision (a) may qualify as shoplifting.” (*Jimenez* at p. 14.) Under *Jimenez*, when a defendant’s underlying conduct constitutes shoplifting within the meaning of section 459.5, even though the defendant committed identity theft in the course of the shoplifting, Prop 47 requires the defendant be charged only with shoplifting when the statute applies. Section 459.5 expressly prohibits alternate charging and ensures only misdemeanor treatment for the underlying conduct. (*Jimenez, supra*, at p. 8, citing *Gonzales, supra*, 2 Cal.5th at p. 876.)

PENAL CODE SECTION 496d

In *People v. Williams* (May 21, 2018, No. A143877) ___ Cal.App.5th ___ [2018 Cal. App. LEXIS 460; 2018 WL 2296689]) (*Williams*) defendant pleaded no contest to receiving a stolen vehicle, a 1991 Nissan, in violation of section 496d, subdivision (a), admitted five section 667.5, subdivision (b) priors and a strike prior. The court dismissed the strike prior, suspended seven years custody and placed defendant on probation for four years. Three years later, the trial court denied defendant’s petition for resentencing under Prop 47. The Court of Appeal reversed.

The *Williams* court noted that section 1170.18 permits resentencing under section 490.2 for obtaining property by theft if the property is worth \$950 or less. Citing *People v. Page* (2017) 3 Cal.5th 1175 [Veh. Code § 10851] and *People v. Romanowski, supra*, 2 Cal.5th 903 [§ 484e], the court found that section 1170.18 applies to qualifying theft offenses even if the offense is not listed in section 1170.18. (*Williams, supra*, at pp. 6-7.) The court found it illogical that section 1170.18 lists section 496 as eligible for misdemeanor resentencing under Prop 47 but not section 496d (*id.* at p. 10) and held that section 496d falls within Prop 47. (*Id.* at p. 13.) However, because *Williams* had not proven that the value of the car was \$950 or less, the court remanded the matter to give him the opportunity to establish his eligibility.

Both *Jimenez* and *Williams* confirm that the burden rests on the defendant to establish that his or her convictions qualify as misdemeanors for purposes of resentencing under Prop 47. (*Jimenez* at p. 15; *Williams* at p. 13.)

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