In the Supreme Court of the State of California

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

Case No. S239488

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

ANSWERING BRIEF ON THE MERITS

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

ISSUE PRESENTED

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

INTRODUCTION

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

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

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

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

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

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

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

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

BACKGROUND

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

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

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

(Vehicle Code § 10851, subd. (a).)

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

ARGUMENT

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

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

Which Section 10851 Convictions Does Proposition 47 Apply To?

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

---

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

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

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

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

---

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

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

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

---

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

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

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

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