

**S239488**

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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. )  
 )  
 \_\_\_\_\_ )

S.Ct. No. S \_\_\_\_\_  
4th Crim. No. E065918  
(Super. Ct. No. FV11200894)

**SUPREME COURT  
FILED**

JAN 17 2017

Jorge Navarrete Clerk

Deputy

**PETITION FOR REVIEW**

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By Appointment of the Court of Appeal

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THE PEOPLE OF THE STATE OF CALIFORNIA, ) S.Ct. No. S  
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JULIAN MICAH BULLARD, )  
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Defendant and Appellant. )  
\_\_\_\_\_ )

**PETITION FOR REVIEW**

TO: THE HONORABLE CHIEF JUSTICE OF CALIFORNIA AND THE  
ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE  
OF CALIFORNIA:

Julian Micah Bullard, defendant and appellant, respectfully petitions for review from the unpublished opinion filed by the Court of Appeal, Fourth Appellate District, Division Two, on December 12, 2016. A copy of that opinion, including the dissenting and concurring opinion, is attached as exhibit "A."

## ISSUE PRESENTED FOR REVIEW

The issue presented in this petition is identical to that presented in *People v.*

*Page* (2015) 241 Cal.App.4th 714, in which this Court has already granted review:

Whether felony convictions for violating Vehicle Code Section 10851 is properly considered a theft offense and, therefore, subject to reduction under Proposition 47?

## STATEMENT OF THE CASE

On April 23, 2012, Bullard waived his constitutional rights and pled guilty to a violation of Vehicle Code section 10851, subdivision (a). Pursuant to the terms of the plea agreement, the court sentenced Bullard to the low-term of one year, four months. (Slip Opn. P. 3.)

On March 9, 2016, Bullard filed a petition, pursuant to Proposition 47, to have his conviction reduced to a misdemeanor. On April 15, 2016, the Superior Court denied the petition, finding that a conviction suffered under Vehicle Code section 10851, subdivision (a) is not a qualifying offense under Proposition 47. Bullard filed a timely notice of appeal. (Slip Opn. 3.)

On December 12, 2016, the Court of Appeal affirmed the denial of the prop 47 petition, finding that convictions suffered under Vehicle Code section 10851 do not qualify. Justice Miller, in dissent, opined that some convictions suffered under section 10851 qualify for reduction under Proposition 47. Justice Miller concurred in the result because Bullard failed to prove his was a qualifying conviction because he failed to show that the vehicle involved was worth \$950 or less and failed to show he intended to permanently deprive the owner of the vehicle. (Opn. Justice Miller p. 1.)

## STATEMENT OF FACTS

At the hearing on Bullard's Proposition 47 petition, counsel stated that the page 11 of the police report indicated the value of the vehicle was \$500. He further stated that the Kelly Blue Book value was \$603. According to the felony complaint and the police report, Bullard stole a 1993 Lincoln Towncar on April 11, 2012. The vehicle had approximately 260,000 miles on it at the time Bullard was arrested driving the vehicle.

(Slip Opn. 2.)



## NECESSITY FOR REVIEW

Under California Rules of Court, rule 8.500, subdivision (b)(1), review is necessary to settle an important question of law that has and will continue to arise in countless Proposition 47 hearings and appeals throughout the State. Indeed, this Supreme Court has already chosen to grant review on the very same issue in several published and unpublished cases. Appellant Julian Micah Bullard simply requests this Court to grant and hold review in this case pending its decision in *People v. Page* (2015) 241 Cal.App.4th 714, et. al.

As in *People v. Page*, the seminal issue is whether a felony conviction for violating Vehicle Code section 10851 constitute “theft” for the purposes of the resentencing provisions of Proposition 47. Julian Micah Bullard was convicted of violating Vehicle Code 10851, subdivision (a). The Superior Court summarily denied the Proposition 47 petition because it concluded that convictions suffered under Vehicle Code section 10851 are not covered by Proposition 47. As the Court of Appeal did in *Page*, Division Two of The Fourth Appellate District concluded that the plain language of Penal Code section 1170.18 excludes convictions for violating Vehicle Code section 10851. (Slip Opn. pp. 5 - 9.) Conversely, in *People v. Ortiz* (2016) 243 Cal.App.4th 854, the Sixth Appellate District opined that said convictions would qualify for resentencing if the defendant can prove the value of the vehicle was \$950 or less. Justice Miller, in dissent, agreed with this conclusion. (Justice Miller Opn. p. 1.) As this Court has already

surmised, there is clearly a conflict of authority on the issue at hand.

*A. The Language Of Proposition 47 Is Broadly Inclusive And Covers All Theft-Related Offenses Where The Property Value Does Not Exceed \$950.*

The enactment of Proposition 47 resulted in the creation of Penal Code section 490.2, which provides as follows:

“(a) 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, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more 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.” (emphasis added)

Where the value of the vehicle does not exceed \$950, the offense is rightly classified as a misdemeanor, and not a felony, under Penal Code section 490.2.

First, the plain statutory language of Proposition 47 covers the theft of a vehicle. Penal Code section 490.2, subdivision (a), states that obtaining “any money, labor, real or personal property with a value of less than \$950 shall be considered petty theft.” A vehicle is clearly personal property. The taking of a vehicle with the intent to permanently deprive the owner of its possession is, therefore, a theft. (See *People v. Garza* (2005) 35 Cal.4th 866, 881.) The language of section 490.2 does not carve out an exception for vehicles from the broad definition of the types of personal property covered

by Proposition 47. Like the theft of any other real property, vehicle theft is covered by Proposition 47.

Second, the Findings and Declarations of Proposition 47 support the argument that qualifying vehicle thefts are to be now classified as misdemeanors:

“The people of the State of California find and declare as follows: The people enact the Safe Neighborhoods and Schools Act 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. This act ensures that sentences for people convicted of dangerous crimes like rape, murder, and child molestation are not changed.” (Prop. 47, Sec. 2, as approved by voters, Gen. Elec., Nov. 4, 2014.)

The Proposition also included a Purpose and Intent clause that is consistent with the above Declaration. It provided, in relevant part, as follows:

“ . . . (3) Require misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes.” (Prop. 47, sec 3.)

Violations of Vehicle Code section 10851 constitute nonserious, nonviolent crimes. (See Pen. Code §§ 667.5, subd. (c), 1192.7, subd. (c).) Thus, classifying a conviction under any of these sections as a misdemeanor is fully consistent with the Findings, Declarations, Purpose and Intent of Proposition 47.

Third, the Proposition expressly requires a liberal construction of its

provisions. The last sentence reads: “This act shall be liberally construed to effectuate its purpose.” (Prop. 47, Sec. 18.) To the extent the statutory language reflects any ambiguity regarding the inclusion of vehicle thefts under Vehicle Code section 10851, a court is required to interpret section 490.2 liberally. This requirement compels the conclusion that such offenses are misdemeanors under Proposition 47 if the value of the vehicle taken does not exceed \$950.

*B. Proposition 47 Expressly Refers To Thefts Of Motor Vehicles Under Vehicle Code Section 10851.*

A violation of Vehicle Code section 10851 was considered a theft before Proposition 47 was passed and it is still a theft now. In 1986, the legislature added language to Penal Code section 666 that a prior conviction for “auto theft under Section 10851 of the Vehicle Code section” qualifies as a prior conviction that could elevate a misdemeanor petty theft offense to a “wobbler” felony. (Pen. Code, § 666, subds. (a) - (b); Stats. 1986, ch. 402 [see Historical and Statutory Notes].) Thus, language in the Penal Code section explicitly recognizes that Vehicle Code section 10851 constitutes “auto theft.”

In enacting Proposition 47, the voters adopted the same language. Section 10 of Proposition 47 (page 72, left hand column of the Officer Voter Information Guide), which amends Penal Code section 666, includes reference to “auto theft under Section 10851 of the Vehicle Code section.” (Prop 47, Sec. 10, amending Pen Code, § 666, subd.

(a.) Accordingly, both pre-Proposition 47 law, as well as Proposition 47 itself, have amended Penal Code section 666 to specify that “auto theft under Section 10851 of the Vehicle Code section” falls within its purview. Thus, a person charged with committing a new, non-auto, theft offense, who has been previously convicted under Vehicle Code section 10851, qualifies to be charged with petty theft with a prior under Penal Code section 666. If a prior conviction under Vehicle Code section 10851 constitutes a theft, then a current conviction under the same statute must also constitute a theft.

*C. This Court Has Also Held That A Violation Of Vehicle Code Section 10851 Constitutes A Theft.*

This Court has previously held that “[i]f the [10851] conviction is for the taking of the vehicle, with the intent to permanently deprive the owner of possession, then it is a theft conviction. . . .” (*People v. Garza, supra*, 35 Cal.4th at p. 881; see also Justice Miller Opn. p. 1.) In reaching this conclusion, the Court pointed out that a person caught driving a stolen vehicle might well have also been the person who took the vehicle. (*Id.*, at p. 880, fn. 2.) Further, the Court noted that the mere passage of time did not necessarily show that the person driving the vehicle was not the person who also took it; they might be one and the same. (*Id.*, at p. 879.)

In examining the entire record of conviction to determine whether a prior conviction for violating Vehicle Code section 10851 was a theft, this Court noted that the charges themselves may show whether the defendant was guilty of a theft. For example,

in *Garza*, the Court was primarily concerned with the issue of when a defendant could be convicted under both Vehicle Code section 10851 and Penal Code section 496, receiving stolen property. By both statute and case law, a person cannot be convicted of both stealing and receiving the same property at the same time. (*Id.*, at pp. 874 - 875.)

Accordingly, as in this case, the dismissal of a receiving stolen property charge is itself an indication that the person guilty of violating Vehicle Code section 10851 acquired that vehicle through the person's own theft of that vehicle and not by driving a vehicle someone else stole. Taking this Court's reasoning a step further, a person cannot be convicted of violating both Vehicle Code section 10851 and Penal Code section 496 for the same vehicle because section 10851 is a theft offense.

*D. As Appellant's Offense Clearly Constituted A "Theft" For Purposes Of Proposition 47, He Is Entitled To Have His Conviction Reduced To A Misdemeanor And To Be Resentenced Accordingly.*

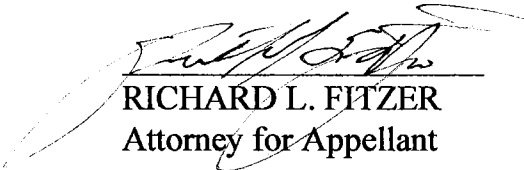
Proposition 47 itself, along with pre-existing case law from this Court, clearly indicates that the unlawful taking of a vehicle in violation of Vehicle Code section 10851 constitutes a theft for the purposes of newly enacted Penal Code section 490.2. As such, appellant and Petitioner Julian Micah Bullard respectfully requests this Court to grant and hold review behind *People v. Page*. Ultimately, he requests that his conviction for the unlawful driving or taking of a motor vehicle, in violation of Vehicle Code section 10851 and Penal Code section 666.5, be found to constitute a theft offense.

## CONCLUSION

For the foregoing reasons, petitioner and appellant Julian Micah Bullard respectfully requests this Court to grant review, and hold behind *People v. Page*, from the opinion in this case.

Dated: January 13, 2017

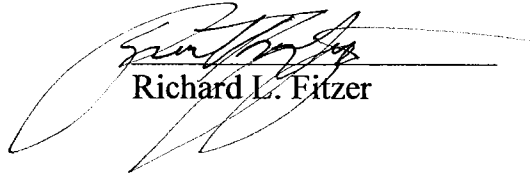
Respectfully submitted,



RICHARD L. FITZER  
Attorney for Appellant

WORD COUNT CERTIFICATION  
*People v. Julian Micah Bullard*  
Court of Appeal No. E061443

I, Richard Fitzer, certify that this petition was prepared on a computer using Corel Word Perfect, and that, according to that program, this document contains 2,012 words.



Richard L. Fitzer



**EXHIBIT A**

See Dissenting and Concurring Opinion

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIAN MICAH BULLARD,

Defendant and Appellant.

E065918

(Super.Ct.No. FVI1200894)

OPINION

APPEAL from the Superior Court of San Bernardino County. John P. Vander Feer, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Meagan J. Beale, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Julian Micah Bullard appeals from an order of the superior court denying his petition (Pen. Code, § 1170.18) to reduce his felony conviction for unlawful driving or taking a vehicle (Veh. Code, § 10851, subd. (a)) to a misdemeanor under the Safe Neighborhoods and Schools Act (Proposition 47). (§ 1170.18.) On appeal, defendant argues that his conviction for violating Vehicle Code section 10851 is properly considered a theft offense under Proposition 47, and therefore he was entitled to reduce his conviction to a misdemeanor. We reject defendant's contentions and affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

In April 2012, defendant stayed overnight at his girlfriend's residence in Apple Valley, California. On the morning of April 11, 2012, defendant took his girlfriend's car keys from her purse without her permission and took her 1993 Lincoln Towncar while she was not home. Later that night, hours after his girlfriend reported the vehicle stolen, defendant agreed to meet his girlfriend and return her vehicle. Police were waiting for defendant at his girlfriend's place of employment when he showed up to drop off the vehicle and arrested him. The vehicle had approximately 260,000 miles on it and was valued at \$500.

On April 13, 2012, a felony complaint was filed charging defendant with one count of felony unlawful driving or taking of a 1993 Lincoln Towncar (Veh. Code,

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<sup>1</sup> The factual background is taken from the police report.

§ 10851, subd. (a); count 1) and one count of felony receiving a stolen motor vehicle (Pen. Code, § 496d, subd. (a); count 2).

On April 23, 2012, defendant entered into a plea agreement and pled guilty to count 1. As a term of the plea, the remaining charge was dismissed and defendant was sentenced to county jail for the low term 16 months with credit for time served.

In November 2014, the voters approved Proposition 47, which allows certain defendants convicted of specified theft- or drug-related felonies to petition to have those convictions treated as misdemeanors. On March 9, 2016, after he had completed his sentence, defendant filed a petition for resentencing, requesting that his conviction for unlawful driving or taking of a vehicle be redesignated as a misdemeanor. (Pen. Code, § 1170.18, subd. (f).) The People opposed defendant’s petition on the ground that “VC 10851 is not affected by Prop. 47.”

On April 15, 2016, following a hearing, the trial court denied defendant’s petition, finding Vehicle Code section 10851, subdivision (a), is “not affected by Prop. 47.”

## II

### DISCUSSION

#### A. *Standard of Review*

In interpreting a voter initiative such as Proposition 47, “we apply the same principles that govern statutory construction. [Citation.] Thus, ‘we turn first to the language of the statute, giving the words their ordinary meaning.’ [Citation.] The statutory language must also be construed in the context of the statute as a whole and the

overall statutory scheme. [Citation.] When the language is ambiguous, ‘we refer to other indicia of the voters’ intent, particularly the analyses and arguments contained in the official ballot pamphlet.’ [Citation.]” (*People v. Rizo* (2000) 22 Cal.4th 681, 685; *People v. Marks* (2015) 243 Cal.App.4th 331, 334.)

B. *Overview of Proposition 47 and Penal Code Section 1170.18*

On November 4, 2014, the voters approved Proposition 47, which went into effect the next day. (Cal. Const., art. II, § 10, subd. (a); *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) Proposition 47 reduced certain drug- and theft-related crimes from felonies or wobblers to misdemeanors for qualified defendants and added, among other statutory provisions, Penal Code sections 490.2 and 1170.18. (*People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108.)

Under Penal Code section 1170.18, subdivision (f): “A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under [Proposition 47] had [Proposition 47] been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.” (Pen. Code, § 1170.18, subd. (f); *People v. Diaz* (2015) 238 Cal.App.4th 1323, 1329.)

Under Penal Code section 490.2, subdivision (a): “Notwithstanding [Penal Code] 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 . . . .”

C. *Applicability of Proposition 47 to Vehicle Code Section 10851 Offenses*

Penal Code section 1170.18, subdivision (a), lists the offenses for which relief may be appropriate: “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.” Vehicle Code section 10851 is not one of the listed offenses. Defendant nonetheless contends that because Vehicle Code section 10851 is a theft offense, and Penal Code section 1170.18 explicitly applies to theft offenses through Penal Code section 490.2 when the value of the stolen property is less than \$950, Penal Code section 1170.18 must also apply to violations of Vehicle Code section 10851.

The California Supreme Court is currently reviewing whether a felony conviction for violating Vehicle Code section 10851, subdivision (a), may be reduced to misdemeanor petty theft (Pen. Code, §§ 490.2, 1170.18), and whether the defendant may be resentenced on a Vehicle Code section 10851, subdivision (a) conviction as if convicted of misdemeanor petty theft.<sup>2</sup> More recently, in *People v. Saucedo* (2016) 3 Cal.App.5th 635, 647-654 (*Saucedo*), the Fifth District, and in *People v. Johnston* (2016)

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<sup>2</sup> See, e.g., *People v. Page* (2015) 241 Cal.App.4th 714, review granted January 27, 2016, S230793, *People v. Haywood* (2015) 243 Cal.App.4th 515, review granted March 9, 2016, S232250, *People v. Ortiz* (2016) 243 Cal.App.4th 854, review granted March 16, 2016, S232344, and *People v. Solis* (2016) 245 Cal.App.4th 1099, review granted June 8, 2016, S234150.

247 Cal.App.4th 252, 256-259, review granted July 13, 2016, S235041,<sup>3</sup> the Third District held that a felony conviction for violating Vehicle Code section 10851, subdivision (a), does not come within the ambit of Penal Code section 1170.18 and is ineligible for misdemeanor resentencing or misdemeanor redesignation under Proposition 47, regardless of the facts of the crime or the value of the vehicle involved. Until the California Supreme Court rules on the issue, we adhere to the view that no felony conviction for violating Vehicle Code section 10851 can be reduced to misdemeanor petty theft or qualify for resentencing as misdemeanor petty theft under Penal Code section 1170.18.

As a matter of statutory interpretation, all Vehicle Code section 10851 convictions, including both theft- and nontheft-based convictions, are ineligible for reduction in accordance with section 8 of Proposition 47. (See Voter Information Guide, Gen. Elec. [Nov. 4, 2014] text of Prop. 47, § 8, p. 72 [adding Pen. Code, § 490.2] <<http://vig.cdn.sos.ca.gov/2014/general/pdf/complete-vig.pdf>> [as of Nov. 30, 2016].) As noted, Penal Code section 1170.18 does not include Vehicle Code section 10851 as one of the enumerated offenses eligible for resentencing. Penal Code section 490.2, added by Proposition 47, also does not mention that Vehicle Code section 10851 is eligible to the limited extent a Vehicle Code section 10851 offense might qualify as a petty theft under Penal Code section 490.2. Furthermore, Vehicle Code section 10851 is not strictly a theft statute. It applies to thefts, as well as to nontheft offenses, such as

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<sup>3</sup> California Rules of Court, rules 8.1105 and 8.1115.

driving someone's car without consent and without the intent to permanently deprive the owner of the car, as occurred in this case. (Veh. Code, § 10851, subd. (a); see *People v. Garza* (2005) 35 Cal.4th 866, 876 (*Garza*) [Veh. Code, § 10851, subd. (a), “ ‘proscribes a wide range of conduct,’ ” and may be violated “ ‘either by taking a vehicle with the intent to steal it or by driving it with the intent only to temporarily deprive its owner of possession (i.e., joyriding).’ ”].)

For this reason, the sole fact that one has violated Vehicle Code section 10851 does not demonstrate one has obtained any property by theft under the ordinary meaning of the term. (See *Garza, supra*, 35 Cal.4th at p. 881 [finding that “once a person who has stolen a car has [completed their journey from the locus of the theft], further driving of the vehicle is a separate violation of [Vehicle Code] section 10851 [, subdivision ](a) that is properly regarded as a nontheft offense for purposes of the dual conviction prohibition of section 496(a)”]; *People v. Allen* (1999) 21 Cal.4th 846, 862, 865-866 (*Allen*) [burglary accomplished by entering home with intent to commit theft is not functional equivalent of theft offense and, thus, does not prevent concomitant conviction for receiving stolen property obtained in burglary].) Regardless of the underlying conduct supporting the conviction, the statutory requirements for conviction lack all the elements of common law theft because a violation of Vehicle Code section 10851 can be fully and completely satisfied whether or not the required intent for theft has been proven.

Under Penal Code section 490.2, one is guilty of petty theft when “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).” The ordinary meaning of “obtaining any property by theft” in this context is clear. One obtains property by theft when the crime they commit is one of the common-law crimes covered by California’s theft statute. (Cf. *Allen, supra*, 21 Cal.4th at pp. 863 [holding the term “theft” in Pen. Code, § 496 was limited to “the meaning the term has in the general theft statute”].) Thus, if one’s conviction does not necessarily require a conviction for theft, the property has not been obtained by theft. Vehicle Code section 10851 does not require a theft occur for conviction. Upon a conviction of the law generally, one is not guilty of obtaining any property by theft because the law has not required proof of intent to permanently deprive and, thus, none of the crimes covered by California’s theft statute have been necessarily met.

Relying on *Garza, supra*, 35 Cal.4th 866, defendant argues that the California Supreme Court has held that a violation of Vehicle Code section 10851 constitutes theft. However, as our colleagues in *Sauceda, supra*, 3 Cal.App.5th 635 at pages 648 to 650 at length analyzed, *Garza* is distinguishable in the context of Proposition 47. We agree with the analysis in *Sauceda* and find defendant’s reliance on *Garza* misplaced.

A conviction under Vehicle Code section 10851 does not require an explicit determination of intent to steal. Thus, evidence of theft is unnecessary to satisfy the elements needed for conviction. The fact that, in some limited circumstances, Vehicle Code section 10851 can serve as a lesser included offense to theft of an automobile (whether grand or petty theft under Proposition 47), does not change the fact that the

ultimate conviction is not necessarily for a theft offense. Because Vehicle Code section 10851 is not by its nature a theft offense, its exclusion from Proposition 47 confirms there was no intent to modify the punishment scheme separately set forth for the crime of unlawfully driving or taking a vehicle.

Thus, we conclude defendant's Vehicle Code section 10851, subdivision (a) conviction is not entitled to redesignation under Proposition 47.

### III

#### DISPOSITION

The order denying defendant's Proposition 47 petition is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

I concur:

CODRINGTON

J.

[*People v. Bullard*, E065918]

MILLER, J., Dissenting and Concurring.

I respectfully dissent to that part of the majority opinion finding that Proposition 47 does not apply to all convictions under Vehicle Code section 10851. Some convictions of Vehicle Code section 10851 constitute theft offenses. (*People v. Garza* (2005) 35 Cal.4th 866, 881.) Assuming that a defendant takes a vehicle with the intent to permanently deprive the owner of the vehicle and it is valued under \$950, such violation would constitute a violation of Penal Code section 490.2, petty theft, which was added by Proposition 47. Under Proposition 47, defendant was entitled to prove he would have been guilty of a misdemeanor violation of Vehicle Code section 10851.

I concur in the result that defendant's petition to recall his sentence was properly denied by the trial court as defendant failed to meet his burden of establishing the vehicle he took was valued under \$950, and that he intended to permanently deprive the owner of the vehicle.

MILLER

J.

Richard Fitzer (#156904)  
Attorney at Law  
6285 East Spring Street, # 276N  
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(562) 429-4000

**PROOF OF SERVICE**

I am a citizen of the United States, over the age of 18 years, employed in Los Angeles County with my business address as stated above. I am not a party to this case. On January 13, 2017, I served the **Appellant's Petition For Review**, a copy of which is attached, by mailing a copy to each addressee named below by regular United States mail at Long Beach, California.

Appellate Defenders, Inc.  
(Served via True Filing)

Julian Bullard  
# 1507370342  
Glen Helen Rehabilitation Center  
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Attorney General  
(Served via True Filing)

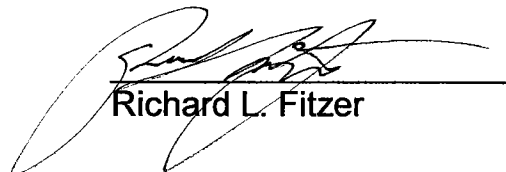
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Division Two  
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I declare under penalty of perjury that the foregoing is true and correct. Executed January 13, 2017 at Long Beach, California.



Richard L. Fitzer