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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. DAVID GORDON MOUNTFORD, Defendant and Appellant.	B286803, B287202 (Los Angeles County Super. Ct. Nos. BA359842, BA435045)

APPEALS from orders of the Superior Court of Los Angeles County, David M. Horowitz, Judge. Affirmed.

Nancy L. Tetreault, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Noah P. Hill, Heather B. Arambarri and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant David Gordon Mountford was convicted of fraudulent use of personal identifying information and fraudulent possession of personal identifying information in violation of Penal Code section 530.5, subdivisions (a) and (c)(2),[1] and offering a false or forged instrument in violation of section 115, subdivision (a). Following the enactment of Proposition 47, Mountford filed petitions for resentencing, claiming that his convictions were eligible for reduction to misdemeanors. The trial court denied the petitions, finding the convictions ineligible for resentencing.[2]

On appeal, Mountford contends that the trial court erred because his offenses should be treated the same as the theft offenses enumerated in Proposition 47. We hold that Mountford's offenses are ineligible for resentencing under Proposition 47.[3]

BACKGROUND

I. Mountford's February 28, 2010 Conviction (No. B286803)

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] We consider the appeals from the denial of both petitions together, because both involve the same issues.

[3] As we discuss below, the issue as to whether a felony conviction for identity theft under section 530.5, subdivision (a), can be reclassified as a misdemeanor under Proposition 47 is currently pending before the California Supreme Court.

On June 10, 2009, Mountford was an inmate at the Los Angeles County Men's Central Jail and was being held in a cell with inmate John Bettancourt. Sheriff's deputies heard Bettancourt yell that Mountford was "stealing his information." When the deputies went to investigate, they found the two inmates arguing. Bettancourt said that Mountford had looked at Bettancourt's booking paperwork—documents that contained his driver's license and Social Security numbers—and had written down Bettancourt's personal information on a piece of paper. Bettancourt also said that Mountford had flushed that piece of paper in the toilet. The deputies searched Mountford's property and found several pieces of paper with handwritten notes. One piece of paper was a booking sheet from one of Mountford's prior arrests and listed Mountford's alias. Another piece of paper contained instructions on acquiring a fraudulent bank account in another person's name. Another bore a number that appeared to be a debit or credit card number.

Deputies also discovered three pieces of a paper that contained information on other inmates. The first piece of paper had the birth date, driver's license number and Social Security number of inmate John Bowlin. The second piece of paper was a booking sheet with handwritten notes reflecting the birth date and Social Security number of inmate Michael Eiring. The third piece of paper had handwritten notes regarding the booking number and address of former inmate Miguel Mancia. Bowlin told the deputies that he did not know Mountford and had not given him his personal information. Eiring said that he had given Mountford his personal information because Mountford had promised him a job once he was released from jail.

On October 30, 2009, the People charged Mountford with identifying information theft with a prior identity theft conviction, in violation of section 530.5, subdivision (c)(2). The People also alleged that Mountford had served four prior prison terms within the meaning of section 667.5, subdivision (b). On February 18, 2010, Mountford pleaded no contest to the charged offense, and the trial court dismissed the prior conviction allegations. The court then sentenced Mountford to the middle term of two years in state prison.

II. Mountford's August 3, 2015 Conviction (No. B287202)

On September 8, 2013, Mountford was arrested by sheriff's deputies following a vehicle pursuit. Inside the vehicle, deputies discovered a blank quitclaim deed with Samantha Greer's notary stamp and signature on it, and a number of forged documents—including a quitclaim deed—with Valentina Andreetta's name on it. When deputies spoke to Andreetta, she stated that she did not know Mountford and had not quitclaimed her residence to him. She said that her residence had been burglarized and documents may have been taken at that time. She added that she had allowed a friend to stay with her, and the friend may have known Mountford. Deputies also spoke to Greer, who stated that the signature on the blank quitclaim deed was not hers, and she never notarized the Andreetta quitclaim deed. A title search of Andreetta's property revealed a quitclaim deed in Mountford's name.[4]

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[4] We grant Mountford's August 16, 2018 request to augment the record with copies of the probation officer's report and forged quitclaim deed.

On April 3, 2015, the People filed a felony complaint against Mountford, accusing him of procuring and offering a false or forged instrument (§ 115, subd. (a); count 1), two counts of identity theft (§ 530.5, subd. (a); counts 2 & 4), and two counts of forgery (§ 470, subd. (a); counts 3 & 5). The complaint alleged seven prior felony convictions within the meaning of section 667.5, subdivision (b).

On July 2, 2015, Mountford pleaded no contest on counts 1 and 2 in exchange for 16-month concurrent sentences on the two counts. At the August 3, 2015 sentencing hearing, Mountford agreed to make restitution to Andreetta in the amount of $4,184.04. The trial court sentenced him to the low term of 16 months on the two counts and dismissed the remaining counts pursuant to the plea agreement.

III. Mountford's Proposition 47 Petitions

On October 16, 2017, Mountford petitioned for resentencing pursuant to Proposition 47 as to both cases. In the first petition, he sought to reduce the February 28, 2010 conviction to a misdemeanor. In the second, he sought to reduce the August 3, 2015 convictions of "P.C. 470 & P.C. 530.5" to misdemeanors (although he was not convicted on § 470 forgery charges but for offering a false or forged instrument in violation of § 115).

On October 27, 2017, Mountford filed a motion to reduce a charge to a misdemeanor pursuant to Proposition 47 as to the August 3, 2015 section 530.5 conviction. Underneath the section number, he wrote, "Get Credit." He also filed a second Proposition 47 petition as to the section 530.5 conviction.

At the November 16, 2017 hearing on the petitions, the People objected to granting the petitions. The trial court denied

the petitions on the ground the identity theft convictions were not eligible for Proposition 47 relief. Mountford timely appealed as to both petitions.

DISCUSSION

I. Relevant Section 530.5 Provisions

Under section 530.5, subdivision (a), "[e]very person who willfully obtains personal identifying information . . . of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense . . . ." If convicted under this subdivision, the defendant "shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170."

Under section 530.5, subdivision (c)(1), "[e]very person who, with the intent to defraud, acquires or retains possession of the personal identifying information . . . of another person is guilty of a public offense . . . ." If convicted under this subdivision, the defendant "shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment." Under subdivision (c)(2) of section 530.5, a person who violates subdivision (c)(1) and "has previously been convicted of a violation of this section, upon conviction therefor shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170."

II. Proposition 47 Overview

In November 2014, California voters enacted Proposition 47, The Safe Neighborhoods and Schools Act. (*People v. Gonzales* (2017) 2 Cal.5th 858, 863.) One purpose of Proposition 47 is " 'to reduce the number of nonviolent offenders in state prisons, thereby saving money and focusing prison on offenders considered more serious under the terms of the initiative.' [Citations.] [Proposition 47] also expressly states an intent to '[r]equire 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.' " (*Gonzales*, *supra*, at p. 870.)

Proposition 47 reduced certain theft-related offenses from felonies or wobblers to misdemeanors, unless the offenses were committed by certain ineligible offenders. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) To that end, Proposition 47 created the new crime of shoplifting, which is defined as "entering a commercial establishment during regular business hours with the intent to commit 'larceny' of property worth $950 or less." (*People v. Gonzales*, *supra*, 2 Cal.5th at p. 862; see § 459.5, subd. (a).) Section 459.5, subdivision (b), expressly limits charging on shoplifting: "Any act of shoplifting as defined in subdivision (a) shall be charged as shoplifting. No person who is charged with shoplifting may also be charged with burglary or theft of the same property." (See *Gonzales*, *supra*, at p. 863.)[5]

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[5] Proposition 47 did not amend section 459, which states in part: "Every person who enters any house, room, apartment . . . with intent to commit grand or petit larceny or any felony is guilty of burglary. . . ."

Under Proposition 47, a defendant may be eligible for misdemeanor resentencing or redesignation under section 1170.18 if the offense would have been a misdemeanor had Proposition 47 been in effect at the time of the offense, and he or she would have been guilty of a misdemeanor under Proposition 47.[6] (§ 1170.18, subds. (a) & (f); *People v. Gonzales*, *supra*, 2 Cal.5th at pp. 863, 875.) For eligible convictions, resentencing or redesignation under Proposition 47 "is required unless 'the court, in its discretion, determines that resentencing the petitioner [or reclassifying the conviction as a misdemeanor] would pose an unreasonable risk of danger to public safety.' (§ 1170.18, subd. (b).)" (*Gonzales*, *supra*, at p. 863.)

III. Current Split of Authority

Shortly after Mountford filed his opening brief in appeal No. B286803, the California Supreme Court granted review in

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[6] Under section 1170.18, subdivision (a), "[a] person who, on November 5, 2014, was serving a sentence for a conviction . . . of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section . . . had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with 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." Under section 1170.18, subdivision (f), "[a] person who has completed his or her sentence for a conviction . . . of a felony or felonies who would have been guilty of a misdemeanor under this act had this act 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."

cases addressing the impact, if any, of Proposition 47 on charges of unauthorized use and fraudulent possession of personal identifying information under section 530.5. (See *People v. Jimenez* (2018) 22 Cal.App.5th 1282, 1292-1293 [conviction for unauthorized use of personal identifying information was properly reduced to misdemeanor shoplifting], review granted July 25, 2018, S249397 (*Jimenez*); *People v. Sanders* (2018) 22 Cal.App.5th 397, 400 [unauthorized use of personal identifying information is not a theft offense and should not be considered as petty theft or reduced to misdemeanor], review granted July 25, 2018, S248775 (*Sanders*).)[7] The People urge us to follow *Sanders*, as well as *People v. Liu* (2018) 21 Cal.App.5th 143, review granted June 13, 2018, S248130 (*Liu*).[8] Conversely,

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[7] According to the California Supreme Court, *Jimenez* presents the following issue: "May a felony conviction for the unauthorized use of personal identifying information of another (Pen. Code, § 530.5, subd. (a)) be reclassified as a misdemeanor under Proposition 47 on the ground that the offense amounted to Penal Code section 459.5 shoplifting?" The case was fully briefed on November 15, 2018. The court deferred briefing in *Sanders* pending its decision in *Jimenez*.

[8] According to the California Supreme Court, *Liu* presents the following issue: "For the purpose of determining whether a conviction for theft of access card information in violation of Penal Code section 484e, subdivision (d), is eligible to be reduced to a misdemeanor under Proposition 47 when the information has been used to obtain property, is the value of the access card information limited to the fair market value of the information itself on the black market or can the value of the property obtained by the use of the information be considered? (See *People v. Romanowski* (2017) 2 Cal.5th 903, 914.)" The case was fully briefed on January 7, 2019.

Mountford argues that *Jimenez*, as well as *People v. Romanowski*, *supra*, 2 Cal.5th 903 (*Romanowski*), are the better cases to follow.

A. *Sanders* and *Liu*

In *Sanders*, *supra*, 22 Cal.App.5th 397, the defendant used a credit card she found on the ground to buy cigarettes and a beverage at a convenience store and to get cash at a fast food restaurant. The total amount of charges made by the defendant on the credit card were $174.61. The defendant pleaded guilty to two counts of commercial burglary (§ 459) and two counts of identity theft (§ 530.5, subd. (a)). The defendant subsequently filed a petition under Proposition 47 to reclassify all of her convictions as misdemeanors and to dismiss the identity theft counts. The trial court granted the petition as to the burglary counts, reasoning they qualified as "shoplifting" offenses under section 459.5, but denied the petition with regard to the violations of section 530.5. On appeal, the defendant argued that since the burglary charges had been reclassified as misdemeanor shoplifting and the amount of goods taken from the merchants was under $950, the section 530.5 violations must be considered as petty thefts and thus reduced to misdemeanors and dismissed. (*Sanders*, *supra*, at pp. 399-400.)

The Fourth District disagreed. "Identity theft is not actually a theft offense," the court observed. "Rather it seeks to protect the victim from the misuse of his or her identity." (*Sanders*, *supra*, 22 Cal.App.5th at p. 405.) Thus, the court held, the defendant's violation of the identity theft statute "was not a theft as it relates to the cardholder. It was an unlawful use, one of several unlawful uses set forth in the statute. To the extent there was a theft . . . , it was against the property interest of the

merchants who were defrauded by [the defendant's] presentation of the card as belonging to her, a false pretense." (*Ibid*.) Consequently, while the defendant was entitled to have her commercial burglary offense reclassified as shoplifting, she was not entitled to have her nontheft section 530.5 offenses reclassified under Proposition 47. (*Sanders*, *supra*, at p. 406.)

In *Liu*, *supra*, 21 Cal.App.5th 143, Division Eight of this court held that a conviction of identity theft in violation of section 530.5 is not eligible for resentencing under Proposition 47. The defendant had been convicted of 22 theft-related counts arising from her scam of offering loan services to immigrants. (*Id*. at p. 146.) Of specific relevance here, the jury convicted the defendant of violating section 530.5, subdivision (c)(3), the fraudulent acquisition and retention of the personal identifying information of 10 or more people.[9] The trial court denied the defendant's petition for resentencing on that count. The Court of Appeal affirmed. (*Liu*, *supra*, at p. 146.)

The *Liu* court first framed the issue: "We must decide whether section 530.5 constitutes 'grand theft' or 'obtaining any property by theft' within the meaning of section 490.2, subdivision (a)."[10] (*Liu*, *supra*, 21 Cal.App.5th at p. 150.) The

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[9] Section 530.5, subdivision (c)(3), provides: "Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information . . . of 10 or more other persons is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170."

[10] Section 490.2 addresses petty theft and provides that "obtaining any property by theft where the value of the money,

court noted that while "section 484e explicitly defines theft of access card information as *grand theft*" "section 530.5 does not define its crimes as grand theft, but [instead] describes them as 'public offense[s].' " (*Id*. at p. 151.) Therefore, the court noted, "section 530.5 addresses harms much broader than theft." (*Id*. at p. 152.) The court concluded: "We are not persuaded that section 530.5 defines a 'nonserious' crime within the meaning of Proposition 47, given the far-reaching effects of the misuse of a victim's personal identifying information." (*Id*. at p. 153.)

Indeed, although the crime is commonly referred to as " 'identity theft,' " the gravamen of a section 530.5 offense is the unlawful use of a victim's identity, not theft. (*Sanders*, *supra*, 22 Cal.App.5th at p. 400.) To that end, the California Legislature did not categorize section 530.5 as a theft offense and did not include it among the offenses listed in title 13, chapter 5 of the Penal Code entitled "Larceny." It is instead included in title 13, chapter 8 of the Penal Code—"False Personation and Cheats." (See *People v. Truong* (2017) 10 Cal.App.5th 551, 561 [violation of section 530.5 "is not a theft offense"].) Identity theft is also distinguishable from theft offenses because the potential harm to victims flowing from the use of personal identifying information far exceeds the value of any actual property obtained by the misuse of the information. " 'Identity theft victims' lives are often severely disrupted.' " (*People v. Valenzuela* (2012) 205 Cal.App.4th 800, 808, quoting Sen. Com. on Public Safety, Analysis of Assem. Bill No. 2886 (2005-2006 Reg. Sess.) as

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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" unless the defendant has one or more specified prior convictions.

amended May 26, 2006, pp. O-P.) " '[I]dentity theft in the electronic age is an essentially unique crime, not simply a form of grand theft. [¶] . . . Grand theft is typically a discrete event, not a crime that creates ripples of harm to the victim that flow from the initial misappropriation.' [Citation.]" (*Ibid*.)

B. *Jimenez* and *Romanowski*

In *Jimenez*, *supra*, 22 Cal.App.5th 1282, Division Six of this court affirmed a trial court order granting a defendant's motion to reduce his convictions for identity theft to misdemeanors. In *Jimenez*, the defendant entered a commercial check-cashing business and cashed two stolen checks valued at less than $950 each. Prosecutors charged the defendant with two counts of felony identity theft pursuant to section 530.5, subdivision (a). After he was convicted of both charges, the defendant moved to reduce the convictions to misdemeanors. The trial court granted the motion. (*Jimenez*, *supra*, at pp. 1285-1286.) The Court of Appeal affirmed. Relying on *Romanowski*, *supra*, 2 Cal.5th 903, as well as *People v. Gonzales*, *supra*, 2 Cal.5th 858 and *People v. Garrett* (2016) 248 Cal.App.4th 82, the Court of Appeal concluded that the defendant's convictions qualified as misdemeanor shoplifting offenses under Proposition 47. (*Jimenez*, *supra*, at pp. 1292-1293.)[11]

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[11] In *People v. Garrett*, *supra*, 248 Cal.App.4th 82, the defendant entered a store and tried to buy merchandise with a stolen credit card. (*Id*. at p. 84.) After pleading no contest to commercial burglary, the defendant petitioned for resentencing under Proposition 47. (*Id*. at p. 86.) The trial court denied the petition, but the Sixth District reversed, rejecting the prosecution's argument that because the defendant intended to

In *Romanowski*, *supra*, 2 Cal.5th 903, the Supreme Court held theft of access card information in violation of section 484e, subdivision (d), is not excluded from Proposition 47 relief. In so holding, the court rejected the prosecution's argument that the offense of theft of an access card (§ 484e) was enacted in order to protect consumers and thus should be exempt from the petty theft statute (§ 490.2) in Proposition 47. (*Id*. at pp. 913-914.) The defendant in *Romanowski* pleaded no contest to felony theft of access card information in violation of section 484e, subdivision

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commit felony identity theft, the shoplifting statute did not apply. (*Id*. at pp. 86-90.) "[E]ven assuming [the] defendant intended to commit felony identity theft, he could not have been charged with burglary under . . . section 459 if the same act—entering a store with the intent to purchase merchandise with a stolen credit card—also constituted shoplifting under [s]ection 459.5." (*Id*. at p. 88.) Based on this reasoning, the Court of Appeal concluded that use of a stolen credit card to purchase merchandise valued at $950 or less constituted shoplifting under section 459.5. (*Id*. at p. 90.)

In *People v. Gonzales*, *supra*, 2 Cal.5th 858, the defendant entered a bank and cashed two checks, each valued at less than $950. (*Id*. at p. 862.) After pleading guilty to second degree burglary, the defendant petitioned for resentencing under Proposition 47. The trial court denied his petition and the Court of Appeal affirmed, but the Supreme Court reversed. (*Ibid*.) The Supreme Court concluded that the electorate "intended that the shoplifting statute apply to an entry to commit a nonlarcenous theft. Thus, [the] defendant's act of entering a bank to cash a stolen check for less than $950, traditionally regarded as a theft by false pretenses rather than larceny, now constitutes shoplifting under the statute. [The d]efendant may properly petition for misdemeanor resentencing under . . . section 1170.18." (*Ibid*.)

(d), and sought reduction of his sentence pursuant to section 1170.18. (*Id.* at p. 906.) The trial court denied his petition, holding that Proposition 47 did not apply to theft of access card information. Division Eight of this court reversed, holding that theft in violation of section 484e, subdivision (d), was subject to Proposition 47 by way of section 490.2, which reduces such a violation to a misdemeanor if it involves property valued at less than $950. (*Ibid.*) The court remanded the case so that the trial court could determine whether the property involved was valued at less than $950. (*Ibid.*) On review, the Supreme Court affirmed, holding that the theft of access card information as defined in section 484e, subdivision (d), was subject to resentencing under Proposition 47. The crime fell within section 490.2, which "reduce[d] punishment for crimes of 'obtaining any property by theft' that were previously punished as 'grand theft' when the stolen property was worth less than $950." (*Id.* at p. 909.)

IV. Fraudulent Possession of Personal Identifying Information in Violation of Section 530.5, Subdivision (c)(2) (No. B286803)

Although section 530.5, subdivision (c)(2), is not listed in section 1170.18, nor was it amended by Proposition 47, Mountford argues that his conviction is eligible for redesignation as a misdemeanor under Proposition 47's new petty theft statute, section 490.2.[12] (See *Romanowski*, *supra*, 2 Cal.5th at p. 906 [the

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[12] According to Mountford, whether his identity theft is construed as petty theft pursuant to section 490.2, or shoplifting pursuant to section 459.5, his conviction is eligible for resentencing under Proposition 47.

defendant convicted of violating § 484e eligible for misdemeanor resentencing under § 490.2]; see also *People v. Martinez* (2018) 4 Cal.5th 647, 652 [the defendant convicted of violating Health & Saf. Code, § 11379 eligible for misdemeanor resentencing under § 490.2]; *People v. Page* (2017) 3 Cal.5th 1175, 1184-1186 [the defendant convicted of violating Veh. Code, § 10851 eligible for misdemeanor resentencing under § 490.2]; *People v. Soto* (2018) 23 Cal.App.5th 813, 822.) We disagree and conclude that, consistent with *Sanders* and *Liu*, Mountford is not entitled to have his section 530.5, subdivision (c)(2), offense reclassified as a misdemeanor under Proposition 47.[13]

As noted above, section 530.5 addresses harms much broader than theft (*Liu*, *supra*, 21 Cal.App.5th at p. 152), and section 530.5, subdivision (c), has no requirement that the information be acquired or retained without the consent of its owner, a hallmark requirement of a theft crime (*Romanowski*, *supra*, 2 Cal.5th at p. 912; see also § 484, subd. (a)). The statute is intended "to protect the victims of identity fraud, who cannot protect themselves from fraudulent use of their identifying information once it is in the possession of another, because they cannot easily change their name, date of birth, Social Security number, or address. [Citation.]" (*People v. Valenzuela*, *supra*, 205 Cal.App.4th at p. 807.) The harms these victims suffer go " 'well beyond the actual property obtained through the misuse of the person's identity. Identity theft victims' lives are often severely disrupted,' " extending to damage to a victim's credit

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[13] In light of the Supreme Court's pending review of *Sanders* and *Liu*, we cite these cases for their persuasive rather than precedential value. (See Cal. Rules of Court, rules 8.1105(e)(1)(B), 8.1115(e)(1).)

which may be difficult to repair, and even the commission of " 'other crimes by using the victim's identity, causing great harm to the victim.' " (*Id.* at p. 808.) Given the wide-ranging effects of the exploitation of a victim's personal identifying information, we are not persuaded that section 530.5 defines a "nonserious" crime within the meaning of Proposition 47.

Neither *Romanowski* nor *Jimenez* compels a different result. In *Romanowski*, the Supreme Court—faced with a crime previously classified as grand theft—had to decide whether stealing a particular type of property could constitute petty theft. Specifically, the court was tasked with analyzing whether theft of access cards in violation of section 484e was subject to misdemeanor reduction pursuant to section 490.2. (*Romanowski*, *supra*, 2 Cal.5th at p. 908.) The answer thus hinged on whether section 484e was a theft crime. Noting first that section 484e was defined as "grand theft" (§ 484e, subd. (d)), the court next observed that "[s]ection 484e also resides in . . . chapter 5 of the Penal Code, which is titled 'Larceny.' " (*Romanowski*, *supra*, at p. 908.) Based on the statutory definition and chapter placement, the court concluded: "In just about every way available, the Legislature made clear that theft of access card information is a theft crime." (*Ibid.*) Unlike section 484e, however, section 530.5 is defined as a "public offense" and contains no references to theft or its hallmarks. Moreover, as noted above, "[s]ection 530.5 is placed in the chapter of the Penal Code defining 'False Personation and Cheats,' which includes crimes such as marriage by false pretenses (§ 528) and falsifying birth certifications and licenses (§§ 529a, 529.5)." (*Liu*, *supra*, 21 Cal.App.5th at p. 151.) Thus, with regard to misuse of identity, the Legislature has used "just about every way available," to make clear that a violation of

section 530.5 is not a theft offense. (*Romanowski*, *supra*, 2 Cal.5th at p. 908; see *Sanders*, *supra*, 22 Cal.App.5th at p. 400; *People v. Truong*, *supra*, 10 Cal.App.5th at p. 561.)

Furthermore, *Romanowski* did not have to determine Proposition 47 eligibility for "a pure 'theft-plus' offense, i.e., one that is not identified as grand theft and requires *additional necessary elements* beyond the theft itself." (*People v. Soto*, *supra*, 23 Cal.App.5th at p. 822.)[14] In fact, "[n]othing in *Romanowski* . . . suggests that section 490.2 extends to any course of conduct that happens to include obtaining property by theft worth less than $950." (*Ibid.*) Indeed, as noted by *Soto*, a different conclusion would lead to absurd results. For example, robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear. Theft is a lesser included offense of robbery. If a robber took property worth less than $950, an over-expansive reading of *Romanowski* might construe this crime as petty theft under section 490.2. "Such a construction would thwart Proposition 47's objective to reduce sentences for *nonviolent* crimes while shifting spending toward *more serious* offenses." (*Id.* at p. 823.)[15]

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[14] The "theft-plus" offense at issue in *Soto* was theft from an elder, in violation of section 368, subdivision (d), that occurred when the defendant used his grandmother's birth date and social security number to obtain a line of credit in her name. (*People v. Soto*, *supra*, 23 Cal.App.5th at p. 816.)

[15] *People v. Segura* (2015) 239 Cal.App.4th 1282 is also illustrative. There, a defendant convicted of conspiracy argued that he was eligible for resentencing because he had conspired with his codefendants to commit a theft. The Fourth District

In order to find a defendant guilty of violating section 530.5, subdivision (c)(2), the People must prove the defendant acquired or kept the personal identifying information of another person, and did so with the intent to defraud another person, and that the defendant has a prior section 530.5 conviction. (See CALCRIM No. 2041.) Thus, even if we categorized this particular crime as a theft offense, these additional elements render Mountford's crime a "theft-plus" offense much in the same way as robbery or conspiracy to commit theft and place his conviction outside the scope of section 490.2. (See *People v. Soto*, *supra*, 23 Cal.App.5th at p. 824.) In sum, a violation of section 530.5, subdivision (c)(2), is neither defined as a theft offense nor encompasses conduct that entails theft and nothing more. As a result, we conclude the crime does not fall within the scope of section 490.2, subdivision (a), even if the amount obtained is under $950.[16] (See *Soto*, *supra*, at p. 824.)

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disagreed. Applying Proposition 47 to theft—but not conspiracy to commit theft—did not lead to an absurd result because conspiracy crimes "present a greater evil than crimes committed by an individual," warranting different treatment. (*Id.* at p. 1284.) Here, while theft is typically a discrete event, identity theft " 'creates ripples of harm to the victim that flow from the initial misappropriation.' " (*People v. Valenzuela*, *supra*, 205 Cal.App.4th at p. 808.) Consequently, this crime presents a greater evil than a common theft offense and deserves different treatment.

[16] Nor does the crime fall within the scope of section 459.5. In *Jimenez*, the court of appeal held that theft by false pretenses—and by analogy section 530.5, subdivision (a)—now constitutes shoplifting under section 459.5, subdivision (a). (*Jimenez*, *supra*, 22 Cal.App.5th at p. 1291, citing *People v.*

V. Use of Personal Identifying Information in Violation of Section 530.5, Subdivision (a), and Offering a False or Forged Instrument in Violation of Section 115 (No. B287202)

For the reasons set forth above, we conclude that Mountford's conviction of the use of personal identifying information in violation of section 530.5, subdivision (a), was not an offense within the scope of Proposition 47. Therefore, Mountford was not eligible for resentencing on that count.

With respect to Mountford's conviction of offering a false or forged instrument in violation of section 115, Mountford contends he is eligible for resentencing on that count, and the trial court erred in failing to rule on it. Mountford's first Proposition 47

Gonzales, *supra*, 2 Cal.5th at p. 876.) The Court of Appeal believed the result was mandated because "Jimenez's conduct is identical to Gonzales's conduct. They both entered a commercial establishment during business hours for the purpose of cashing stolen checks valued at less than $950 each." (*Jimenez*, *supra*, at p. 1289, citing *Gonzales*, *supra*, at pp. 862, 868-869.) Here, Mountford's conduct in no way resembled Jimenez's or Gonzales's conduct. Furthermore, *Gonzales* established that a charged violation of section 459, second degree burglary, based upon a theory that the defendant entered with the intent to cash a stolen check, would be shoplifting under Proposition 47. (See *Gonzales*, *supra*, at p. 862.) But Mountford was not charged with burglary or theft. He was charged with and convicted only of acquiring and retaining possession of personal identifying information of another person with the intent to defraud.

Given our conclusion that Mountford's offense is ineligible for reduction under Proposition 47, there is no need for an evidentiary hearing to determine whether the value of the property associated with his offense was less than $950.

petition referred to two convictions, which he erroneously identified as "P.C. 470 & P.C. 530.5." His second petition referred only to section 530.5. The trial court's oral ruling denying the petitions in both cases referred only to section 530.5. The minute order for the hearing stated that the court found Mountford's conviction of violating section 115, subdivision (a), was an ineligible offense. As Mountford points out, where there is a conflict between the court's oral ruling and the minute order, the oral ruling is controlling. (*People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2; *People v. Mullins* (2018) 19 Cal.App.5th 594, 612.) Mountford thus requests that we remand the case back to the trial court for a ruling as to his section 115 conviction.

We conclude that violation of section 115 is not an eligible offense. Therefore, a remand is unnecessary.

Section 115, subdivision (a), provides: "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, registered, or recorded under any law of this state or of the United States, is guilty of a felony." The section falls within title 7 of the Penal Code, "Of Crimes Against Public Justice," chapter 4, "Forging, Stealing, Mutilating, and Falsifying Judicial and Public Records and Documents." Theft falls within Penal Code, title 13, "Of Crimes Against Property," chapter 5, "Larceny."

" '[S]ection 115 was designed to prevent the recordation of spurious documents knowingly offered for record. [Citation.]' [Citation.] ' "The core purpose of . . . section 115 is to protect the integrity and reliability of public records." [Citations.]' " (*People v. Denman* (2013) 218 Cal.App.4th 800, 808.) It contains no requirement that the document offered for recording have been

taken from the owner without the owner's consent, the hallmark of theft. (*Romanowski*, *supra*, 2 Cal.5th at p. 912.) The crime is the recordation of the false document itself, not the theft of any property in order to accomplish the offense or as a result of the offense. Thus, section 115 does not fall within the scope of Proposition 47. (See *People v. Page*, *supra*, 3 Cal.5th at pp. 1186-1187 [Proposition 47 applies to offenses criminalizing conduct constituting theft of property valued at $950 or less].)

No remand is necessary for the trial court to rule on whether Mountford's section 115 conviction meets the eligibility requirements of Proposition 47. As a matter of law, it does not. (See *People v. Lynn* (2015) 242 Cal.App.4th 594, 598-599 [where defendant not ineligible for resentencing as a matter of law, remand required to determine eligibility for resentencing under Proposition 36]; cf. *People v. Baker* (2018) 20 Cal.App.5th 711, 721.)

DISPOSITION

The orders are affirmed.
NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J. WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.