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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

NICKOLAS CLYDE ANDERSON,

Defendant and Appellant.

B241055

(Los Angeles County  
Super. Ct. No. KA095980)

APPEAL from a judgment of the Superior Court of Los Angeles County. Steven D. Blades, Judge. Affirmed.

Eileen M. Rice, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, James William Bilderback II, Supervising Deputy Attorney General, and J. Michael Lehmann, Deputy Attorney General, for Plaintiff and Respondent.

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Defendant Nickolas Clyde Anderson appeals from the judgment entered following a jury trial in which he was convicted of receiving stolen property. Defendant contends the prosecutor had no power to charge him with receiving stolen property because a more specific statute, Penal Code section 484e, subdivision (c), applied to his conduct. We affirm.

### **BACKGROUND**

About 4:00 a.m. on September 5, 2011, police officers found defendant lying, partially concealed by shrubbery, against a wall in John Tarankow's yard in Claremont. The police saw a light on inside David Douglass's car, which was parked in the driveway next door, and they found Douglass's gasoline credit card and two gloves near the front steps of Tarankow's house, about 12 to 15 feet from where defendant was hiding. The credit card had been inside the center console of Douglass's car when he last purchased gasoline, three or four days earlier. Douglass was not sure whether he locked his car when he left it in the driveway on the evening of September 4, 2011.

Defendant testified that after he and his fiancée Erika Sanchez had consumed a bottle of Jagermeister, they left their home in San Bernardino about 1:00 or 1:30 a.m. on September 5, 2011, to shop at Walmart. After they finished shopping, defendant continued driving and ended up in Claremont. He got off the freeway because he and Erika were arguing and he was upset. He parked the car on a residential street and went for a walk to let his anger cool. He became tired but was still angry, so he went into some bushes, where he fell asleep. He was awakened by police shouting at him. He denied entering anyone else's vehicle and knew nothing about the gloves and credit card.

The court granted defendant's motion to dismiss a vehicular burglary charge, and the jury convicted defendant of receiving stolen property. Defendant admitted he had served three prior prison terms within the scope of Penal Code section 667.5, subdivision (b). (Undesignated statutory references are to the Penal Code.) The trial court sentenced defendant to five years in the county jail, consisting of the two-year mid term for the offense plus one year for each prior prison term enhancement.

Defendant filed a timely appeal. We appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. On September 17, 2012, we advised defendant he had 30 days within which to personally submit any contentions or issues he wished us to consider. To date, we have received no response.

On November 20, 2012, we asked the parties to file letter briefs addressing the issue of the effect, if any, of section 484e, subdivision (c), upon the validity of defendant's conviction under section 496, subdivision (a), for receiving stolen property.

### **DISCUSSION**

Defendant contends the prosecutor had no power to charge him with receiving stolen property because a more specific statute, section 484e, subdivision (c), applied to his conduct. The Attorney General correctly contends that section 484e, subdivision (c), has no effect upon defendant's receiving stolen property conviction because an uncodified section of the 1967 act repealing and reenacting the credit card crime statutes expressly provides, "This act shall not be construed to preclude the applicability of any other provision of the criminal law of this state which presently applies or may in the future apply to any transaction which violates this act." (Stats. 1967, ch. 1395, § 8, p. 3260.) This uncodified section constitutes a clear declaration of legislative intent precluding application of the general rule of statutory construction applicable where general and specific statutes proscribe the same conduct. (*People v. Braz* (1997) 57 Cal.App.4th 1, 8–9.)

Before requesting additional briefing, we examined the entire record and are satisfied that defendant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

**DISPOSITION**

The judgment is affirmed.

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MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.