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# ONE MINUTE BRIEF

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**NUMBER:** 2020-06    **DATE:** 03-02-20    **BY:** Devallis Rutledge    **TOPIC:** Misuse of Identifying Information

**ISSUE:** Does a perpetrator commit only a misdemeanor “shoplifting” when s/he enters a commercial establishment during normal business hours with intent to obtain, and does obtain, goods or services of \$950 or less via misuse of identifying information?

“Because our Penal Code is so expansive, **the same conduct can violate more than one criminal statute.**” *People v. Corpening* (2016) 2 Cal.5<sup>th</sup> 307, 309. Sometimes, the same conduct could be either a misdemeanor or a felony, depending on the particular statute the defendant is charged with violating.

For example, the conduct of a person who, having willfully obtained another’s “personal identifying information” (as defined in PC § 530.55(b)), enters a commercial establishment during business hours, with intent to use and does use, that personal identifying information, without authorization, to obtain goods or services, might satisfy the elements of PC § 459 (burglary), PC § 484 (theft), and PC § 530.5(a) (misuse of personal identifying information). If the person were charged with burglary and/or theft, and if the value of the goods or services did not exceed \$950, the conduct would be **required** to be charged as having violated only PC § 459.5 (shoplifting, a **misdemeanor**, except as otherwise specified in § 459.5(a)). *People v. Gonzales* (2017) 2 Cal.5<sup>th</sup> 858, 862. See 1MB 2017-08. But what if the person were charged only with violating § 530.5(a) for unlawful **use** of personal identifying information (a county-jail **felony** “wobbler”)?

- Miguel Angel Jimenez twice entered an open check-cashing business, during normal business hours, and cashed forged checks for less than \$950 each, using another’s personal identifying information without authorization. He was charged with and convicted of two felony counts of violating PC § 530.5(a). His petition to reclassify his offenses as misdemeanor

shoplifting was ultimately reviewed by the California Supreme Court, which unanimously held that **misuse** of personal identifying information (although commonly—but mistakenly—referred to as “identity theft”) is not a theft or burglary offense that qualifies as “shoplifting:”

*“Although misuse of identifying information is sometimes colloquially described as ‘identity theft’ ... **no ‘burglary or theft’ offense is committed** by virtue of a defendant violating that statute.*

*“Section 530.5 criminalizes the willful use of someone’s personal identifying information for an unlawful purpose, not an unlawful taking. **It is not a theft offense...***

*“[W]e conclude that section 459.5 does not encompass misuse of identifying information. The preclusive language of section 459, subdivision (b) [mandating a misdemeanor charge of “shoplifting” in certain cases] **applies only to theft or burglary offenses**. Section 530.5, subdivision (a), does not define such an offense ... so it remains a **perfectly valid charge** where a defendant engages in actions including conduct overlapping with misdemeanor shoplifting but where the course of conduct also fulfills elements ... wholly distinct from what a shoplifting conviction would require.”*

*People v. Jimenez* (2020) \_\_\_ Cal.5th \_\_\_, S249397, Slip opn. at 2, 7 (emphases added).

**BOTTOM LINE:** Where criminal conduct simultaneously violates misdemeanor theft and burglary statutes as well as felony misuse of personal identifying information, PC § 530.5(a) is a **“perfectly valid charge”** on which to base a felony arrest and conviction.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.