Digest: People v. Ceja

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Opinion by Corrigan, J., with George, C.J., Kennard, Baxter, Werdegar, Chin, and Moreno, JJ.

Issue

Should a theft conviction take precedence when a defendant is convicted of both stealing and receiving the same property, regardless of which offense carries the greater penalty?

Facts

Rafael Ceja was convicted of misdemeanor petty theft and felony receipt of stolen property, stemming from his arrest on June 18, 2006.[1] On that date, a police officer, who was responding to a report of suspicious behavior, saw two men matching the description of the suspects.[2] Ceja was carrying a speaker box that had been removed from a vehicle nearby.[3] Ceja was found guilty by a jury on both of the charges.[4] He was sentenced to two years in prison for the felony of receipt of stolen property[5] and the court stayed a 180-day jail term for the theft.[6]

The Court of Appeal, while acknowledging that theft is not necessarily a lesser included offense of receiving stolen property, affirmed the conviction for receipt of stolen property and reversed the theft conviction.[7] The court relied on the rule that, when a defendant is convicted on charges that include both a greater and lesser included offense, the sentence imposed is only on the greater offense.[8] The dissent stated that the common law origins of the rules for these crimes make clear that once a defendant

1 People v. Ceja, 229 P.3d 995, 997 (Cal. 2010).

2 *Id.*

3 *Id.*

4 *Id.* The court dismissed charges of unlawful taking and receiving a stolen vehicle due to lack of evidence, and a burglary charge because the vehicle was unlocked. *Id.* at 997 n.3.

5 The court also added an additional year of prison time for a prior conviction. *Id.* at 997.

6 *Id.*

7 *Id.*

8 *Id.* (citing People v. Moran, 463 P.2d 763, 767 (Cal. 1970)).

has been convicted of theft, there is no basis for a conviction of receiving stolen property.[9]

Analysis

The court first looked at the history of the relation between receiving stolen property and theft, considering the common law notion that it is "logically impossible for a thief who has stolen an item of property to buy or receive that property from himself."[10] The case law showed that there had sometimes been a narrow application of the rule, preventing only *convictions* of the two separate offenses, and sometimes a broad application, precluding a conviction when there was *evidence* to incriminate the defendant in the theft.[11] The broader application led to many problems[12] and was largely abandoned[13] in 1992 when the legislature amended the definition of receiving stolen property by adding to the statute: "A principle in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property."[14] This amendment to Penal Code section 496(a) effectively abolished the broad application of the common law rule and instead adopted the narrow application, barring dual convictions.[15] However, the court noted that the statute, even with its amendments, was silent on the question before it: "[W]hen a defendant has been improperly convicted of stealing and receiving the same property, what is the appropriate remedy?"[16] The court read section 496(a) to be neutral on its

[9] *Id.* at 997. The California Supreme Court agreed with the dissenting opinion of the Court of Appeal in this case. *Id.*

[10] *Id.* (quoting People v. Allen, 984 P.2d 486, 491 (Cal. 1999)).

[11] *Id.* (citing *Allen*, 984 P.2d at 491).

[12] *Id.* "Among other complications, defendants found room to argue that a conviction for receiving stolen property required proof that they did *not* commit the theft." *Id.* at 997 n.4 (citing *Allen*, 984 P.2d at 491).

[13] *Id.* at 998 (citing *Allen*, 984 P.2d at 491–94).

[14] *Id.* at 997 (citing CAL. PENAL CODE § 496(a) (West 2010), as amended by Stats. 1992, ch. 1146, § 1, p. 5374). Section 496(a) now reads, in relevant part:

> Every person who buys or receives any property that has been stolen . . . knowing the property to be so stolen or obtained . . . shall be punished by imprisonment . . . . However, if the district attorney or the grand jury determines that this action would be in the interests of justice, [either] . . . may . . . specify in the accusatory pleading that the offense shall be a misdemeanor . . . . A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

CAL. PENAL CODE § 496(a).

[15] *Id.* at 998 (citing *Allen*, 984 P.2d at 494).

[16] *Id.* at 998.

face, allowing either of the two convictions to be permissible, so long as only one is allowed to stand.[17]

The Attorney General argued that, because the Legislature did not indicate a preference for one over the other, the Court of Appeal was proper in holding that defendants are liable for the greatest offense they commit.[18] Considering *People v. Medina*,[19] the Attorney General referred to the rule that a lesser offense is necessarily included in a greater offense when the greater offense cannot be committed without also committing the lesser.[20] The Attorney General also argued as to the applicability of Penal Code section 654, which states: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."[21]

Though the court noted that the Attorney General's arguments were "superficially appealing," it ultimately found that they did not hold up to a more thorough assessment of the law.[22] The court found that there were considerable distinctions between the rule against multiple convictions based on greater and lesser included offenses, and those against dual convictions of theft and receiving stolen property.[23] The court stated that the amendments to section 496(a) make clear that regardless of which offense carries a greater penalty, a theft conviction will always take precedence.[24] Section 654 does not affect the outcome of such a case because it applies not to convictions, but only to sentencing.[25]

The court looked at the analogy of greater and lesser included offenses, which the Court of Appeal found persuasive.[26] It is generally understood that it is impermissible to convict on a greater and a lesser included offense because a defendant cannot commit the greater offense without also committing the lesser offense; allowing convictions on both counts would effectively

[17] *Id.*
[18] *Id.*
[19] People v. Medina, 161 P.3d 187, 196 (Cal. 2007).
[20] *Ceja*, 229 P.3d at 998 (citing *Medina*, 161 P.3d at 196).
[21] *Id.* (quoting CAL. PENAL CODE § 654 (West 2010)).
[22] *Id.* at 998.
[23] *Id.*
[24] *Id.*
[25] *Id.* The court noted that some cases have confused section 654's bar against multiple sentences with the rule against convictions for stealing and receiving stolen property, but this court has consistently rejected the proposition to fuse the two rules. *Id.*
[26] *Id.*

convict the defendant twice for the lesser offense.[27] The Court of Appeal noted that theft is not a lesser included offense of receiving stolen property[28] but failed to recognize that the rule against a conviction on both theft and receiving stolen property does not have anything to do with a defendant potentially receiving a double punishment.[29] Instead, it is rooted in the principle that "a thief cannot receive from himself."[30] As such, the commission of a theft necessarily excludes the possibility that a defendant may be convicted for receiving the same stolen property.[31]

The amended version of section 496(a) maintains a narrow application of the common law, permitting a "thief in fact" to be convicted of receiving stolen property, but only if he or she is not convicted of the theft.[32] The court noted, however, that the bar against dual convictions does not consider which offense is greater and which is lesser.[33] Relying on the explanation given in *Stewart*, the court quoted:

> [T]heft or theft-related offenses and receiving stolen property are not *mutually* exclusive offenses; it is the theft or theft-related offense which has the preclusive effect. Thus, if the defendant is found to be the thief he cannot be convicted of receiving the same property, and where he is so convicted it is the receiving conviction which is improper. For this reason it is always the receiving conviction which cannot stand, regardless whether it is the lesser or the greater offense.[34]

The Attorney General argued that *Stewart* was inapplicable to the present case because it applied the broader form of the common law rule, which would have allowed evidence of theft to serve as a bar against a conviction for receiving stolen property.[35] The court disagreed by clarifying and emphasizing the accuracy of the holding of *Stewart*, which dealt with an improper dual conviction, not mere evidence of theft.[36] The court in the instant case expressly approved of the *Stewart* court's analysis of the

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27 *Id.* (citing People v. Medina, 161 P.3d 187, 197 (Cal. 2007)).

28 *Id.* (citing In re Greg F., 159 Cal. App. 3d 466, 469 (1984)).

29 *Id.* at 998.

30 *Id.* (quoting People v. Stewart, 185 Cal. App. 3d 197, 204 (1986)).

31 *Id.* (citing People v. Allen, 984 P.2d 486, 489–90 (Cal. 1999); People v. Jaramillo, 548 P.2d 706, 710 (Cal. 1976); *Stewart*, 185 Cal. App. 3d at 206). The court noted that there is an exception to this rule when there was "complete divorcement between the theft and a subsequent receiving . . . in a transaction separate from the original theft," as well as in cases of conspiracy between the thief and the individual receiving the stolen property. *Id.* at 998 n.5 (quoting *Jaramillo*, 548 P.2d at 710 n.8).

32 *Id.* at 998.

33 *Id.* at 998–99.

34 *Id.* at 999 (quoting *Stewart*, 185 Cal. App. 3d at 209).

35 *Id.* at 999.

36 *Id.*

common law rationale for upholding the theft conviction, but not the receiving stolen property conviction.[37] The court noted that although the rationale stemmed from the concept that a thief could not be convicted of receiving the same stolen property, this very reasoning—even after the codification of the narrower form of the common law rule—has guided the courts in ascertaining which conviction takes precedence.[38]

The Attorney General further contended that allowing the court to impose the longer sentence of either theft or receiving stolen property would serve the same interests as the rule governing greater and lesser included offenses.[39] In effect, it was argued, it would "provid[e] the jury with 'a choice from the full range of crimes established by the evidence' and 'assur[e] that the defendant is convicted of the greatest crime a jury believes he committed.'"[40] The Attorney General asserted that a contrary rule would discourage prosecutors from charging the defendant with both the theft and receiving stolen property, but would instead encourage them to charge only for the crime carrying the larger possible sentence.[41] The court rejected this argument, stating that it is the legislature, through section 496(a) that limits the jury to choose only one conviction.[42] The legislature has given discretion to the prosecutor to decide whether theft or receiving stolen property is the greater or the lesser crime, as the prosecutor generally has the option to charge receiving stolen property as either a misdemeanor or a felony.[43] Moreover, the prosecutor can ultimately decide which offenses it wants to charge the defendant with.[44] Generally, courts do not supervise these "purely prosecutorial function[s]."[45]

Next, to support the contention that the rule should favor whichever conviction carries a more severe punishment, the Attorney General pointed to Penal Code section 654, which calls for the imposition of the longest possible sentence for an offense when a crime is punishable in multiple ways.[46] The court distinguished the application of this rule by explaining that, while section 654 "presumes multiple convictions but precludes multiple punishments," section 496(a) "precludes multiple

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37 *Id.*
38 *Id.*
39 *Id.*
40 *Id.*
41 *Id.*
42 *Id.*
43 *Id.* (citing CAL. PENAL CODE § 496(a)).
44 *Id.* at 999.
45 *Id.* (quoting People v. Adams, 43 Cal. App. 3d 697, 707 (1974)).
46 *Id.* at 999.

convictions, therefore making multiple punishments impossible."[47] The court noted that this provision of section 654 was an addition by the legislature in response to a judicial determination that gave deference to trial courts to choose a lesser sentence.[48] This amendment was intended to ensure that punishment was proportionate to the crime, and thus prevent the possibility that a defendant may receive a lesser sentence because he or she had been convicted of two crimes instead of one.[49]

The Attorney General then argued that the outcome would be precisely the one the legislature was trying to avoid if the courts were to allow a defendant to escape liability for a felony offense of receiving stolen property just because he or she was also convicted for misdemeanor petty theft.[50] However, the court again emphasized that, when it came to theft coupled with receiving stolen property, the problem was not with choosing the appropriate sentence, but rather with the prohibition against dual convictions clearly established by section 496(a).[51] The court again emphasized that, unlike section 654, section 496(a) simply does not allow for a choice in sentencing.[52] The statutory bar against convictions for both theft and receiving the same stolen property was created not because of sentencing concerns, but rather because of the practical problems involved with the prosecution of the receiving stolen property offenses.[53] The court further noted that, in its amendments to the Penal Code, the legislature was aware of the common law rule that a theft conviction must preclude a conviction for receiving the same stolen property.[54]

The Attorney General cited *People v. Black*, where "the defendant was convicted for stealing and receiving for the same truck."[55] The *Black* court stated that, for the sake of judicial economy, reviewing courts have reversed the lesser conviction

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47 *Id.*

48 *Id.* (citing People v. Kramer, 59 P.3d 738, 738–39 (Cal. 2002)).

49 *Id.*

50 *Id.*

51 *Id.* at 999–1000.

52 *Id.* at 1000.

53 *Id.* (citing People v. Allen, 984 P.2d 486, 491–95 (Cal. 1999)).

54 *Id.* at 1000. A legislative committee assessment of the 1992 amendment to section 496(a) shows an agreement with the holding of *People v. Price*, 821 P.2d 610 (Cal. 1991), and notes: "[T]he bill permits a person who steals property to be convicted of receiving or concealing the same property *only in those cases where there is no conviction for the theft of the property*." *Id.* at 1000 n.7 (quoting Assem. Com. on Public Safety, Analysis of Assem. Bill No. 332 (1991–1993 Reg. Sess.) for hearing Mar. 24, 1992, p.2). The legislature's concern was with making sure that a defendant may still be prosecuted for receiving stolen property even after the statute of limitations has run for the theft charge. *Id.*

55 *Id.* at 1000 (citing People v. Black, 222 Cal. App. 3d 523 (1990)).

and allowed the greater conviction to stand.[56] However, the court here noted that this assertion in *Black* was mere dicta and was based on the "erroneous notion that '[t]he rule against twin-convictions announced in *Jaramillo* is based on Penal Code section 654.'"[57] Once again, the court emphasized that the rule at issue here, section 496(a), is entirely distinct from the prohibition against double punishment in section 654.[58]

When faced with a similar issue, both before and after the amendment to section 496(a), the majority of California courts have reversed the conviction for receiving stolen property and allowed the conviction for theft to stand.[59] The Court noted that "[t]his practice was well established when section 496(a) was amended in 1992, and the legislature gave no indication that a change was intended."[60] In the present case, however, the Court of Appeal "broke new ground" when it reversed the defendant's conviction for theft in order to preserve the longer sentence received on the receiving stolen property conviction.[61]

The court asserted that, generally, statutes should not be read to modify the common law, but instead should be construed to *avoid* conflicts with the common law.[62] Quoting *California Ass'n. of Health Facilities v. Department of Health Services*, it stated:

> A statute will be construed in light of common law decisions, unless its language clearly and unequivocally discloses an intention to depart from, alter, or abrogate the common-law rule concerning the particular subject matter . . . . Accordingly, there is a presumption

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56 *Black*, 222 Cal. App. 3d at 525.

57 *Ceja*, 229 P.3d at 1000 (quoting People v. Lawrence, 111 Cal. App. 3d 630, 640 (1980)). The court also noted that, in contrast to the case at bar, in both *Black* and *Lawrence* the conviction for receiving stolen property carried the lesser sentence, and the theft conviction was allowed to stand. *Id.* at 1000 n.8.

58 *Id.* at 1000 (citing People v. Allen, 984 P.2d 486, 492 n.6 (Cal. 1999)). The court further explained that it had previously clarified this rule in *Jaramillo*, which held that the trial court erred in an attempt to comply with section 654 by staying a sentence on a lesser conviction (which could have been based on either theft of a vehicle or mere driving) and instead sentencing the defendant to the greater conviction of receiving stolen property. *Id.* (citing People v. Jaramillo, 548 P.2d 706, 709 (Cal. 1976)). This, however, evaded the issue as to whether the defendant could be properly *convicted* of both charges, the same error that has occurred in the present case. *Id.* at 1000. Here, in an attempt to comply with section 654, after the defendant was convicted of both charges, the trial court stayed the sentence on the lesser offense. *Id.*

59 *Id.* This practice has often been done "without regard to penalty, often without discussion, and sometimes on the People's stipulation." *Id.* The court further noted that a burglary conviction does not bar a conviction on receiving stolen property, because burglary does not require theft. *Id.* at 1000 n.9.

60 *Id.* at 1000–01.

61 *Id.* at 1000.

62 *Id.* at 1001 (citing Cal. Ass'n. of Health Facilities v. Dep't of Health Servs., 940 P.2d 323, 331 (Cal. 1997)).

> that a statute does not, by implication, repeal the common law. Repeal by implication is recognized only where there is no rational basis for harmonizing two potentially conflicting laws.[63]

By requiring that, when charged with both theft and receiving the same stolen property, a defendant is only convicted for the theft, the terms of section 496(a) remain in harmony with the common law rule against dual convictions.[64]

Holding

The court reversed the Court of Appeal.[65] The court held that if a defendant is convicted of theft, that defendant may not be convicted for receiving the same property.[66] A contrary holding would be in violation of section 496(a)'s bar against dual convictions.[67]

Legal Significance

This decision precludes an individual from being convicted for receiving the same property for which he or she has been found to have stolen. While there is a bar on being twice punished for the same offense, this holding has nothing to do with sentencing. Rather, it deals with the issue that a defendant who has been convicted for theft necessarily could not have received the same property in violation of law, thus making it impossible for this defendant to be convicted for such a charge.

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63 *Cal. Ass'n. of Health Facilities*, 940 P.2d at 331 (internal citations omitted).

64 *Ceja*, 229 P.3d at 1001. The court briefly noted the defendant's assertion that, per the *Recio* court, when a defendant is charged with both theft and receiving the same property, "the court should instruct the jury to determine the defendant's guilt on the theft count first, and if it finds the defendant guilty of the theft count first, and if it finds the defendant guilty of the theft, to return the receiving verdict unsigned." *Id.* (quoting People v. Recio, 156 Cal. App. 4th 719, 726 (2007)). The court stated that this is the understood practice in federal courts. *Id.* (citing United States v. Gaddis, 424 U.S. 544, 550 (1976)). Though the issue of instructing juries was not before this present court, it agreed that when a defendant is charged with both theft and receiving stolen property, the juries should be instructed to reach a verdict on the theft charge first. If the jury decides that the defendant is guilty on the theft charge, it therefore makes it unnecessary for them to consider the charge of receiving stolen property. This practice would maintain consistency with this present case, promote efficiency in jury deliberations, and ensure application of the statutory ban on dual convictions. *Id.* at 1001.

65 *Id.*

66 *Id.*

67 *Id.*