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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. EDWARD SAHINIAN, Defendant and Appellant.	B290389 (Los Angeles County Super. Ct. No. BA456291)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jose I. Sandoval, Judge. Reversed and remanded with instructions.

Megan Hailey-Dunsheath, 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, Senior Assistant Attorney General, Zee Rodriguez, Supervising Deputy Attorney General, Noah P. Hill, Deputy Attorney General, Nathan Guttman, Deputy Attorney General, for Plaintiff and

Respondent.

We must interpret Proposition 47, which voters passed in 2014 to reduce *some* felonies to misdemeanors. Our main issue here is, *which* felonies? In particular, did Proposition 47 reduce the sentence for *receiving a stolen vehicle*, which is the crime outlawed by Penal Code section 496d?

This issue has split courts badly.

Six published opinions have said no. (*People v. Bussey* (2018) 24 Cal.App.5th 1056, review granted Sept. 12, 2018, S250152; *People v. Orozco* (2018) 24 Cal. App. 5th 667, 674, review granted Aug. 15, 2018, S249495; *People v. Varner* (2016) 3 Cal.App.5th 360, review dism. and case remanded Aug. 9, 2017, S237679; *People v. Nichols* (2016) 244 Cal.App.4th 681, review dism. and case remanded Aug. 9, 2017; *People v. Garness* (2015) 241 Cal.App.4th 1370, review dism. and case remanded Aug. 9, 2017; *People v. Peacock* (2015) 242 Cal.App.4th 708, review dism. and case remanded Aug. 9, 2017.)

Two published opinions say yes. (*People v. Wehr* (2019) 41 Cal.App.5th 123 (*Wehr*); *People v. Williams* (2018) 23 Cal.App.5th 641.)

We join the minority that says yes. We hold Proposition 47 applies to section 496d. That is, Proposition 47 confers misdemeanor status on receiving a stolen vehicle, unless the vehicle's value exceeds $950 or unless the offender has a particularly serious record. Unspecified citations are to the Penal Code.

I

The germane facts are few because interpreting Proposition 47 issue is a legal issue. A jury convicted Edward Sahinian of violating section 496d. Police arrested him in a stolen car in 2017. No evidence set the car's value. At sentencing, Sahinian asked the trial court to apply Proposition 47 to reduce his felony conviction to a misdemeanor because nothing showed the car was worth more than $950, which is the line between grand and petty theft. The court denied the motion, denied probation, and sentenced Sahinian to the upper term of three years in state prison plus an additional year for one of the prior prison terms, with presentence custody credit for 820 days.

II

We independently review decisions about the scope of Proposition 47. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1249.)

Our Supreme Court has resolved important issues about Proposition 47. (See *People v. Valenzuela* (2019) 7 Cal.5th 415, 423 ["Proposition 47 has generated many interpretive issues for this court."] [listing 10 Supreme Court cases].)

This jurisprudence frames our analysis. It predates Proposition 47's passage in 2014. *People v. Garza* (2005) 35 Cal.4th 866, 871 considered whether dual convictions under Vehicle Code section 10851 (taking or driving a vehicle without the owner's consent) and Penal Code section 496, subdivision (a) (receiving stolen property) violated the statutory rule against convicting a person for both stealing and receiving the same property. The *Garza* decision concluded the answer depended on the basis for the Vehicle Code section 10851 conviction—whether

it was for stealing the automobile or for taking or driving it in another prohibited manner.

The *Page* case then applied *Garza*'s distinction in the context of Proposition 47. (See *People v. Page* (2017) 3 Cal.5th 1175, 1183 (*Page*).) *Page* reviewed a conviction under Vehicle Code section 10851 and established an "automobile is personal property." This meant that, under Proposition 47, one who obtains a car worth less than $950 *by theft* must be charged with petty theft and may not be charged as a felon under any other criminal provision. (*Ibid.*)

Our Supreme Court has ruled theft of access card account information is one of the crimes eligible for reduced punishment under Proposition 47. (*People v. Romanowski* (2017) 2 Cal.5th 903, 905–906 (*Romanowski*).)

Earlier this year, the Supreme Court again grappled with a Proposition 47 case involving a stolen car. The jury convicted one Lara of violating Vehicle Code section 10851, but the evidence was only that he was driving the stolen car, not that he had stolen it. (*People v. Lara* (2019) 6 Cal.5th 1128, 1137 (*Lara*).) No evidence showed the vehicle's value, but the proof supported a theory of posttheft driving, which does not require proof of vehicle value in order to be treated as a felony. The *Lara* decision held Proposition 47 did not cover such a case. (*Ibid.*)

These cases illuminate our analysis. But they are not directly controlling, because none involved the statute here: section 496d. We thus seek to apply Supreme Court guidance to an interpretive question the Supreme Court has yet to resolve.

In every interpretive quest involving legislation, we seek the legislature intent. With Proposition 47, the "legislature" was the millions of Californians who voted on it. The proposition's

words are key. We supplement that focus with other traditional interpretative tools. (See, e.g., *People v. Valencia* (2017) 3 Cal.5th 347, 356–358 (*Valencia*).)

The text is silent on the central question. Proposition 47's text neither expressly affirms nor negates its application to section 496d.

Our job is to effectuate the purpose of the statute. (E.g., *Apple Inc. v. Superior Court* (2013) 56 Cal.4th 128, 135.) "The dominant mode of statutory interpretation over the past century has been one premised on the view that legislation is a purposive act, and judges should construe statutes to execute that legislative purpose. This approach finds lineage in the sixteenth-century English decision *Heydon's Case*, which summons judges to interpret statutes in a way 'as shall suppress the *mischief*, and advance the *remedy*.'" (Katzmann, Judging Statutes (2014) p. 31, italics added.)

So we search for the *mischief* Proposition 47 sought to *remedy*. We find Proposition 47 applies to section 496d, and thus yields misdemeanor treatment for Sahinian. Here is why.

The text of Proposition 47 states its purpose. That purpose was 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." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 3, subd. 3, p. 70 (Voter Information Guide).) The goal was to save "significant state corrections dollars on an annual basis." (*Id.* at text of Prop. 47, §3, subd. 6, p. 70.)

According to the proposition, then, the *mischief* was the expensive over-incarceration of offenders who had committed nonviolent and nonserious crimes. Its *remedy* was to shorten

their sentences, to reduce the state's prison population, and thus to save public funds. (Accord, *Wehr*, *supra*, 41 Cal.App.5th at p. 128–129.)

This goal was big. The voter guide forecast the annual savings to be in the "hundreds of millions of dollars." (Voter Information Guide, *supra*, at p. 34; see also *id.* at text of Prop. 47, §3, subd. 6, p. 70 ["Preliminary estimates range from $150 million to $250 million per year."].) Proponents argued the measure would eliminate the waste of "money on warehousing people in prisons for nonviolent petty crimes, saving hundreds of millions in taxpayer funds every year." (Voter Information Guide, *supra*, at p. 38.) Opponents claimed "10,000 inmates will be eligible for early release." (*Id.* at p. 38.) Friends and foes agreed this proposition was to have a major impact.

This breadth of purpose suggests Proposition 47 applies to section 496d. Nothing about this broad purpose implies persnickety or crabbed boundaries on Proposition 47's scope, as would be necessary were we to distinguish section 496 from 496d.

This analysis of purpose is consistent with the text of the voter pamphlet, which we now scrutinize.

The important parts of the voter pamphlet are the title, the summary, and the description by the Attorney General and the Legislative Analyst. That is what voters typically read first, if indeed they read the pamphlet at all. Voters also may look over the arguments pro and con to see who has endorsed the measure, who has opposed it, and what their arguments are. Further information in the voter pamphlet — especially the text of the proposed law — is of less utility. Those with voter experience in our state know how unusual it is for *any* voter to grapple with the pages of very small print setting forth the proposed law's

complete text. For good reason, then, our Supreme Court does not presume voters thoroughly study the probable impact of proposed propositions. (*Valencia*, *supra*, 3 Cal.5th at pp. 370–375.) Voters do not have legislative staff. It is unreasonable to presume the average voter will be aware of a proposition's implications outside the text of the proposition and the voter pamphlet. (*Id.* at p. 372.) Thus the voter guide's summary of a proposition is the vital part of its legislative history.

We summarize the vital part of the voter pamphlet. For Proposition 47, the summary was six pages long. The title for Proposition 47 was "Criminal Sentences. Misdemeanor Penalties. Initiative Statute." The description began with a one-line description of Proposition 47's impact on drug possession offenses, which are not pertinent here.

The important line comes next. This bullet point is near the very top of the first page of description. It states the proposition would require misdemeanor sentences instead of felony sentences for the following crimes when the amount involved is $950 or less: "petty theft, *receiving stolen property*, and forging/writing bad checks." We add italics to emphasize the obvious point: straightaway, the pamphlet implies this proposition *does* apply to section 496d.

There is a further reference on the second page (page 35 of the pamphlet) that mentions "cars" specifically, to the effect that theft of cars would get misdemeanor treatment unless the car's value exceeded $950. (See *Page*, *supra*, 3 Cal.5th at p. 1187.) This sentence enforces the notion the proposition applies to section 496d.

Most significant is this sentence: "Under [Proposition 47], receiving stolen property worth $950 or less would *always* be a

misdemeanor." (Voter Information Guide, *supra*, at p. 35, italics added.)

Nothing in this six-page summary hints at an exception that would retain felony treatment for receiving stolen cars, no matter the value. The important part of the voter pamphlet states the opposite.

In sum, the voter pamphlet suggests Proposition 47 applies to section 496d.

We acknowledge a wrinkle. Proposition 47 adds or amends many sections of statutory code but omits section 496d. In other circumstances, this omission might create a negative implication that Proposition 47 does not apply to section 496d. But here, as we have just seen, there is a clear legislative intent to the contrary. (See *Lopez v. Sony Electronics, Inc*. (2018) 5 Cal.5th 627, 635–636 [if the statute specifies exemptions, judges may not imply additional exemptions unless there is a clear legislative intent to the contrary].)

This wrinkle is insignificant because context shows we should not draw a negative implication from the Proposition 47's failure to mention section 496d. (Cf. Scalia & Garner, Reading Law: The Interpretation of Legal Texts (2012) p. 107 ["Virtually all the authorities who discuss the negative-implication canon emphasize that it must be applied with great caution, since its application depends so much on context."].)

The vital context is the text of Proposition 47 itself. This text gives us pause because it included two sentences saying the same thing. The two redundant sentences are both on page 74 of the voter pamphlet. The first sentence states (with our italics) that "[t]his act shall be *broadly* construed to *accomplish* its purposes." (Voter Information Guide, *supra*, at text of Prop. 47, §

15, p. 74.) Again, and on the same page, section 18 states "This act shall be *liberally* construed to *effectuate* its purposes." (*Id.* at § 18, p. 74, italics added; see *Page*, *supra*, 3 Cal.5th at p. 1187; *Romanowski*, *supra*, 2 Cal.5th at p. 909.)

These two sentences say the same thing. It is impossible to interpret them to say different things. So one of them is surplusage. This is curious.

Even more curious is how the surplusage is redundant in a pointlessly differing way: "broadly" versus "liberally," and "accomplish" versus "effectuate." This is inattention to detail.

Surplusage in legislation is unusual and disfavored. The venerable assumption is drafters avoid surplusage and therefore so should judges who interpret the drafting. (E.g., *Market Co. v. Hoffman* (1879) 101 U.S. 112, 115–116; *People v. Leiva* (2013) 56 Cal.4th 498, 506.)

The drafters of Proposition 47 departed from this assumption, for no obvious reason. This observation is not carping criticism. Rather the point is a valuable clue: we should not draw a negative implication from the drafting omission.

Judges prefer to show respect for the democratic process by presuming legislative omniscience and omnicompetence. But it does not honor democracy to use that assumption to thwart the plain will of voters, which they revealed through their purpose in passing Proposition 47. This wrinkle is indeed inconsequential.

As a final point, the proposition contains express instructions for judges to interpret it "broadly" and "liberally." As just observed, sections 15 and 18 repeat this instruction, with some puzzling redundancy. But a repeated instruction remains an instruction. We obey it. And we obey the Supreme Court

holdings to the same end. (See *Page*, *supra*, 3 Cal.5th at p. 1187; *Romanowski*, *supra*, 2 Cal.5th at p. 909.)

We thus interpret Proposition 47 broadly. We apply it to section 496d.

What does that mean, exactly? It means the following sentence from section 496 also governs section 496d: "However, if the value of the property does not exceed nine hundred fifty dollars ($950), the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year, if such person has no 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."

We agree with our colleagues in *Wehr* that we should remand and allow the People either (1) to accept a reduction of the conviction to a misdemeanor, or (2) to retry Sahinian for a felony violation of section 496d. (See *Wehr*, *supra*, 41 Cal.App.5th at pp. 134–135). We adopt *Wehr*'s thorough analysis of this issue.

III

Sahinian incorrectly faults the trial court for admitting evidence of his previous arrests. This evidence was that he had been arrested three times in the past for stealing cars or possessing a stolen car. This evidence was proper because it suggested Sahinian knew the car in which he was arrested was stolen. We review this issue for abuse of discretion. (*People v. Whisenhunt* (2008) 44 Cal.4th 174, 203 (*Whisenhunt*).)

Additional facts are pertinent now. At trial, an officer testified a key ring with shaved keys was on the floor of the

stolen car in which police found Sahinian in 2017. The evidence was shaved keys are for stealing cars.

There also was testimony about three pre-2017 events. These events were in 2005, 2013, and 2014.

Officer Camuy testified that, in 2005, he found Sahinian driving a stolen taxi. The key to the taxi looked unusual, but Camuy could not determine whether it belonged to the taxi or instead whether it had been altered.

Officer Leal testified she went to the scene of a traffic collision in 2013 where police arrested Sahinian after a pursuit. He had been driving a stolen car and had the owner's driver's license and two shaved keys. Neither of these keys belonged to the stolen car. Sahinian told Leal he stole the car using keys he had stolen. He used the owner's key, not the shaved keys.

Officer Liang testified he found Sahinian in 2014 with a stolen car. Sahinian had two shaved keys. He gave a false name, but then admitted he stole the car. He explained how to start cars with shaved keys.

The court instructed jurors to use this evidence for the limited purpose of deciding whether Sahinian knew the vehicle was stolen and whether his actions were or were not the result of mistake.

This evidence was proper. It was relevant. An issue was whether Sahinian knew the car he received was stolen. The shaved keys in the car tended to prove his guilty knowledge, but only if Sahinian *knew* shaved keys were for stealing cars. The episodes in 2005, 2013, and 2014 tended to show Sahinian knew this. Therefore this testimony was proper proof of knowledge and not bad character evidence. Nor was there a probability of undue prejudice substantially outweighing the probative value. There

was no abuse of discretion. (See, e.g., *Whisenhunt*, *supra*, 44 Cal.4th at pp. 203–205.)

Sahinian states on page 21 of his reply brief he is not arguing the trial court should have sanitized the evidence. We thus do not pursue this point.

IV

Sahinian argues we must reverse because the trial court provided no adequate remedy for the prosecution's failure to provide timely discovery. He concedes such an error (assuming there was one) is usually harmless unless there is a reasonable probability it affected the verdict. This argument fails for want of this probability.

Sahinian says he suffered prejudice because defense counsel did not have the chance to interview *non-testifying* witnesses mentioned in the police reports for the episodes in 2005, 2013, and 2014.

Sahinian has not demonstrated prejudice. He does not say in particular how non-testifying witnesses could have helped his cause. Nor can we imagine how other witnesses could have undone the valid damage Officer Liang did in just two pages of transcript. Liang recounted how he personally found Sahinian in 2014 with a stolen car and shaved keys in Sahinian's left front pocket. This was all the prosecution needed. The other evidence of this sort was cumulative. There was no reasonable probability the tardiness of discovery could have affected the verdict.

V

We grant Sahinian's motion to withdraw his argument concerning *People v. Dueñas* (2019) 30 Cal.App.5th 1157.

VI

The Attorney General does not contest Sahinian's argument that, if Proposition 47 applies to his offense, the one-year enhancement imposed under section 667.5, subdivision (b) must be vacated as unauthorized. The trial court is to address this issue on remand.

DISPOSITION

We reverse and remand to allow the People either (1) to accept a reduction of the conviction to a misdemeanor, or (2) to retry Sahinian for a felony violation of section 496d. After the People have made this election, the court is to determine whether the one-year enhancement imposed under section 667.5, subdivision (b) must be vacated as unauthorized.

WILEY, J.

We concur:

BIGELOW, P. J.

STRATTON, J.