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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.

REZA MESDAGHI,

Defendant and Appellant.

B268858

(Los Angeles County  
Super. Ct. No. SA088624)

APPEAL from an order of the Superior Court of Los Angeles County. Edward B. Moreton, Jr., Judge. Affirmed.

John Doyle, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Michael Katz, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant Reza Mesdaghi of grand theft and burglary. He argues the trial court erred in ruling he could be impeached with his prior misdemeanor conviction for receiving stolen property. We affirm.

### ***PROCEDURAL BACKGROUND***

On March 26, 2015, an information charged defendant with one count of grand theft and three counts of burglary based on allegations he cashed checks made out to his employer. At trial, defendant testified on his own behalf. He did not dispute that he cashed some of the checks at issue but claimed he was entitled to the money.

At sidebar, the prosecutor informed the court she intended to impeach defendant with his prior misdemeanor conviction for receiving stolen property under Penal Code section 496, subdivision (a).<sup>1</sup> Defense counsel objected, arguing that in order to establish that the crime involved moral turpitude the prosecution had to present witnesses “to show what happened.” The court ruled the prosecution could ask defendant about the conduct underlying the conviction.

Back before the jury, defense counsel asked defendant about the incident and defendant testified, “I had made a purchase of a piece of jewelry at a pretty discounted rate, and it turned out the item was a stolen piece of jewelry.” The prosecution did not cross-examine defendant about the incident.

Defendant was convicted on all counts. As to the grand theft count, the jury found true the special allegations that defendant had committed the crime of theft in an amount exceeding \$100,000 and had engaged in a pattern of related

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<sup>1</sup> Although defendant was convicted of a felony, the court subsequently reduced it to a misdemeanor.

felony conduct involving fraud and embezzlement. The court sentenced defendant to three years for one of the burglary convictions, and eight months consecutively for each of the other two burglary convictions. The sentence for grand theft was stayed pursuant to section 654. Defendant filed a timely notice of appeal.

### ***DISCUSSION***

“ ‘ “No witness[,] including a defendant who elects to testify in his own behalf[,] is entitled to a false aura of veracity.” ’ [Citation.] In accordance with this maxim the California Supreme Court in *People v. Wheeler* [(1992)] 4 Cal.4th 284 [*Wheeler*] abrogated the felony-only rule and permitted misdemeanors to be used to impeach.” (*People v. Chavez* (2000) 84 Cal.App.4th 25, 28 (*Chavez*).) *Wheeler* held that “if past criminal conduct amounting to a misdemeanor has some logical bearing upon the veracity of a witness in a criminal proceeding, that conduct is admissible” to impeach a witness.<sup>2</sup> (*Wheeler*,

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<sup>2</sup> *Wheeler* distinguished evidence of a misdemeanor *conviction* from that of the underlying conduct, holding that “a witness’s prior convictions are relevant for impeachment, if at all, only insofar as they prove criminal *conduct* from which the factfinder could infer a character inconsistent with honesty and veracity. [Citation.]” (*Wheeler, supra*, 4 Cal.4th at p. 299.) The Court further held that “evidence of a misdemeanor *conviction*, whether documentary or testimonial, is inadmissible hearsay when offered to impeach a witness’s credibility” and declined to create “a judicial hearsay exception allowing impeachment with misdemeanor convictions.” (*Id.* at p. 300.) Evidence Code section 452.5, subdivision (b), enacted subsequent to *Wheeler*, created such a hearsay exception. The statute “allow[s] admission of qualifying court records to prove not only the fact of conviction, but also that the offense reflected in the record occurred.” (*People*

*supra*, 4 Cal.4th at p. 295.) The Court further held that “[m]isconduct involving moral turpitude may suggest a willingness to lie.” (*Ibid.*)

Defendant’s sole argument on appeal is that the trial court erred in concluding that receiving stolen property involves moral turpitude as a matter of law such that it was admissible for impeachment purposes. He contends that a violation of Penal Code section 496 is not “necessarily” a crime of moral turpitude, and the trial court should have considered “the circumstances surrounding” the crime.

The California Supreme Court held that “receiving stolen property necessarily involve[s] moral turpitude.” (*People v. Turner* (1990) 50 Cal.3d 668, 705 (citing *People v. Rodriguez* (1986) 177 Cal.App.3d 174).) The rationale behind this holding is that “a necessary element of the offense of receiving stolen property is actual knowledge of the stolen character of the property. [Citation.] One who unlawfully acts in disregard for the property rights of others, whether known or unknown, demonstrates moral laxity and to some degree a ‘readiness to do evil.’” (*Rodriguez*, at p. 179; see also *People v. Gray* (2007) 158 Cal.App.4th 635, 641.)

Furthermore, in determining whether a witness’s prior conviction involves moral turpitude such that it is admissible for impeachment, the trial court is prohibited from going “behind the conviction and tak[ing] evidence on or consider[ing] the facts and

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*v. Duran* (2002) 97 Cal.App.4th 1448, 1460.) Thus, a qualifying record of conviction may now be used to prove conduct underlying a misdemeanor conviction although testimonial evidence of a misdemeanor conviction is still inadmissible to impeach a witness. (*Ibid.*)

circumstances of the particular offense.” (*People v. Mansfield* (1988) 200 Cal.App.3d 82, 87.) Rather, “the court must look to the statutory definition of the particular crime and only if the least adjudicated elements of the crime necessarily involve moral turpitude is the prior conviction admissible for impeachment purposes. [Citation.]” (*Ibid.*; see *Chavez, supra*, 84 Cal.App.4th at p. 28 [applying the least adjudicated elements test to a misdemeanor conviction].)

The Supreme Court explained the reasons for this rule: “A witness ought to know what convictions he has suffered and their proof should not entail complicated factual questions. Obviously, however, if the conviction is only admissible if it evinces moral turpitude and such turpitude can only be established through extrinsic evidence, confusion of issues becomes inevitable and unfair surprise more than probable. Therefore . . . a witness’ prior conviction should only be admissible for impeachment if the least adjudicated elements of the conviction necessarily involve moral turpitude.” (*People v. Castro* (1985) 38 Cal.3d 301, 316–317.)

Although *Castro* was addressing the admissibility of felony convictions to impeach, its rationale applies equally to misdemeanor convictions used for impeachment purposes. A conviction reliably establishes that the witness committed the offense at issue. Thus, when a misdemeanor conviction is at issue — as opposed to acts of moral turpitude that did not result in a conviction — the least adjudicated elements test allows the court to effectively and efficiently determine whether moral turpitude is involved without consuming undue time on extrinsic evidence of the underlying facts. (See *Chavez, supra*, 84 Cal.App.4th at p. 28.)

On these grounds, we conclude the trial court ruled correctly that defendant's prior misdemeanor conviction involved moral turpitude as a matter of law such that the conduct underlying it could be used to impeach.

***DISPOSITION***

The judgment is affirmed.

SORTINO, J.\*

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.

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