Filed 11/20/19 P. v. Stanley CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. RONALD STANLEY, Defendant and Appellant.	B293011 (Los Angeles County Super. Ct. No. KA114079)

APPEAL from the judgment of the Superior Court of Los Angeles County. Mike Camacho, Judge. Affirmed.

G. Martin Velez, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr. and Nicholas J. Webster, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * * * * * * *

Defendant and appellant Ronald Stanley was convicted of assault and felony unlawful taking or driving of a vehicle in violation of Vehicle Code section 10851.

Defendant contends Proposition 47 should be interpreted as applying to his conviction under Vehicle Code section 10851, requiring the prosecution to prove the value of the car exceeded $950 in order to convict him of a felony violation of the statute. Defendant contends his felony conviction must be reversed because the prosecution presented no evidence of the value of the car, and the court did not instruct the jury they had to find the value was greater than $950.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The charges against defendant arose from an incident that occurred in November 2016. Defendant was living in a garage at his aunt and uncle's townhome in Pomona. He had been casually dating Candace Green, a family friend, for about six months. On November 29, Ms. Green had driven over to visit with defendant and was in the garage with him. Her black Mitsubishi Mirage was parked on the street outside.

Defendant started speaking incoherently, talking "madness" and telling Ms. Green something to the effect that he was going to put her "in a box" which she understood to mean a coffin. Ms. Green decided to leave and as she bent to pick up her purse, defendant jumped on her back. Defendant pinned her arms and, at varying times, also covered her mouth making it difficult to breath or scream for help. They struggled for several minutes. At some point, defendant picked up a 12-inch "sledgehammer" and raised it overhead. Ms. Green started yelling. She heard banging on the garage door and defendant's

aunt and uncle yelling. Eventually, his aunt and uncle came inside and yelled at defendant. Defendant grabbed Ms. Green's purse and left in her car. Ms. Green said she had never allowed defendant to drive her car and specifically did not give him permission to drive it that night.

Defendant's aunt, Edwina Richardson, testified she heard a "commotion" in the garage, and her daughter told her Ms. Green was inside the garage with defendant. Ms. Richardson knocked repeatedly on the door to the garage, demanding that defendant let her in. Defendant did not answer so she went around to the vehicle entrance for the garage and opened that door.

Upon lifting the garage door, Ms. Richardson saw defendant standing over Ms. Green, holding a hammer over his head, aimed at Ms. Green's head. Ms. Richardson yelled at him to stop and defendant exclaimed it was not what it looked like and he was not doing anything wrong.

Ms. Richardson's husband started yelling at defendant, telling him to leave. Defendant grabbed Ms. Green's purse, walked past Ms. Richardson, who was still pleading with him to stop, and drove off in Ms. Green's car. Ms. Green called 911 but was unable to explain what happened to the operator because she was crying. Ms. Richardson's husband took the phone and told the 911 operator there had been an altercation and defendant had driven off in the car. Ms. Green denied needing an ambulance.

Defendant testified he was upset with Ms. Green because she had brought a box of drugs and drug paraphernalia with her. He told her to get rid of it and eventually picked up the box and threw it, spilling some of the contents, which made Ms. Green angry and she started screaming. They struggled for several

minutes. Because they were in the garage, there were tools stored there and Ms. Green picked up a hammer. Defendant grabbed it from her before she could hit him with it.

At that point, defendant said his aunt and uncle came into the garage and misunderstood what was happening. Everyone was yelling and cussing at him and telling him he had to leave. Defendant said he was scared, did not know what to do because he was from Texas and did not know the area or anywhere else to go. He saw the purse and keys so he grabbed them and took off in the car. Defendant kept driving until the car either broke down or ran out of gas. Defendant said he left the car where it was and started walking. Defendant said he also left Ms. Green's purse in the car and did not take any of her belongings with him.

Ms. Green learned the next day that her abandoned car had been located and towed to an impound yard. Defendant was located and arrested sometime thereafter.

The jury found defendant guilty of simple assault and of felony unlawful taking or driving of a vehicle in violation of Vehicle Code section 10851.

DISCUSSION

1. Proposition 47 and Vehicle Code Section 10851

Proposition 47, the Safe Neighborhoods and Schools Act, passed by California voters in 2014, reduced the punishment for certain theft and drug offenses, providing that theft of property worth $950 or less is a misdemeanor. (*People v. Page* (2017) 3 Cal.5th 1175, 1179 (*Page*).)

Vehicle Code section 10851, subdivision (a) proscribes both theft and nontheft conduct. As the Supreme Court has explained, "[u]nlawfully *taking* a vehicle with the intent to permanently deprive the owner of possession is a form of theft. . . . On the

other hand, unlawful *driving* of a vehicle is not a form of theft when the driving occurs or continues after the theft is complete," often referred to as posttheft driving. (*People v. Garza* (2005) 35 Cal.4th 866, 871.) A defendant convicted of posttheft driving has *not* suffered a theft conviction. (*Ibid*.) "The same is true when a defendant act[s] with intent only to deprive the owner *temporarily* of possession," often referred to somewhat inartfully as joyriding. (*Page*, *supra*, 3 Cal.5th at p. 1183.) "Regardless of whether the defendant drove or took the vehicle, he did not commit auto theft if he lacked the intent to steal." (*Ibid*.)

In *Page*, the Supreme Court concluded the plain language of Penal Code section 490.2 "covers the theft form of the Vehicle Code section 10851 offense." (*Page*, *supra*, 3 Cal.5th at p. 1183.) Shortly thereafter, in *People v. Lara* (2019) 6 Cal.5th 1128 (*Lara*), the Supreme Court again addressed the interplay between Proposition 47 and Vehicle Code section 10851. *Lara* tells us that "Proposition 47 did not reduce to misdemeanors all violations of Vehicle Code section 10851. . . . [O]nly theft-based violations fall within Penal Code section 490.2, making them misdemeanors unless the vehicle stolen was worth more than $950." (*Lara*, at pp. 1135-1136.) Because posttheft driving is not a theft offense, it "may be charged and sentenced as a felony regardless of value." (*Id.* at p. 1136; accord, *Page*, at p. 1183.)

Both *Page* and *Lara* left for another day the argument defendant raises here: whether Proposition 47 applies to the nontheft driving offense proscribed by Vehicle Code section 10851 of unlawful driving with the intent to deprive the owner *temporarily* of possession, or joyriding. The Supreme Court is currently considering that question in *People v. Bullard*, S239488, review granted February 22, 2017.

Defendant argues Proposition 47 must apply to all nontheft offenses under Vehicle Code section 10851, relying on the absurd consequences exception to the plain meaning rule of statutory interpretation, and also on equal protection.

The absurd consequences exception to the plain meaning rule provides that the " ' " 'language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.' " ' " (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 897.) Courts discussing this exception routinely caution that it "should be used most sparingly by the judiciary and only in extreme cases else we violate the separation of powers principle of government. (Cal. Const., art. III, § 3.) We do not sit as a 'super-legislature.' " (*Unzueta v. Ocean View School Dist.* (1992) 6 Cal.App.4th 1689, 1698; accord, *People v. Morales* (2019) 33 Cal.App.5th 800, 806 (*Morales*) [" 'absurdity doctrine should only be used in " 'extreme cases' " ' "].)

Defendant argues it would be absurd to read Penal Code section 490.2 as applying only to theft offenses because that would mean a defendant found guilty of stealing a car valued at $950 or less would suffer only a misdemeanor conviction, while a defendant found guilty of only temporarily taking that same car would suffer a felony conviction.

We agree with the court in *Morales*, *supra,* 33 Cal.App.5th 800 that is not an absurd result. "Driving is an inherently dangerous activity, driving illegally even more so, and although the theft of a car is a single incident, driving a car without its owner's permission may be done many times, multiplying the threat to public safety. Far from being absurd . . . imposing harsher punishment on driving violations of [Vehicle Code]

section 10851 is entirely reasonable in this respect." (*Id.* at p. 807.) It is well within the Legislature's discretion and authority to proscribe different degrees of culpability and punishment for theft offenses and driving offenses.

Defendant's equal protection argument is equally without merit. It is well established that a "criminal defendant has no vested interest ' "in a specific term of imprisonment or in the designation a particular crime receives." ' [Citation.] It is both the prerogative and the duty of the Legislature to define degrees of culpability and punishment, and to distinguish between crimes in this regard. [Citation.] Courts routinely decline to intrude upon the 'broad discretion' such policy judgments entail." (*People v. Turnage* (2012) 55 Cal.4th 62, 74.)

Where, as here, "the law challenged neither draws a suspect classification nor burdens fundamental rights, [w]e find a denial of equal protection only if there is no *rational* relationship between a disparity in treatment and some legitimate government purpose. [Citation.] This core feature of equal protection sets a high bar before a law is deemed to lack even the minimal rationality necessary for it to survive constitutional scrutiny. Coupled with a rebuttable presumption that legislation is constitutional, this high bar helps ensure that democratically enacted laws are not invalidated merely based on a court's cursory conclusion that a statute's tradeoffs seem unwise or unfair." (*People v. Chatman* (2018) 4 Cal.5th 277, 288-289.) The logic behind a potential justification need not be persuasive. It need only be rationally related to a legitimate state purpose. (*Id.* at p. 289.)

Defendant has not demonstrated that individuals who engage in theft violations are similarly situated to those who

commit nontheft violations of Vehicle Code section 10851. Nor has defendant persuaded us there is no rational basis for any disparate treatment between such offenders.

2. There Was Substantial Evidence of a Nontheft Felony Violation of Vehicle Code Section 10851

Defendant's substantial evidence challenge rests on his argument that Proposition 47 must be read to apply to nontheft offenses under Vehicle Code section 10851, and there is no evidence of the value of the car he took. There is substantial, uncontradicted evidence that defendant drove Ms. Green's car without her consent in violation of section 10851. Defendant admitted he grabbed Ms. Green's purse and keys and drove around in her car. When the car either ran out of gas or broke down, defendant abandoned the car on the side of the road. Since we reject defendant's Proposition 47 argument, defendant's substantial evidence challenge fails as well.

3. The Claimed Instructional Error

Finally, defendant argues prejudicial instructional error in the giving of CALCRIM No. 1820, which instructs on both theft and nontheft violations of Vehicle Code section 10851. CALCRIM No. 1820 was amended the same month defendant was tried (September 2018) in conformance with Proposition 47, to tell the jury that felony theft-based violations of section 10851 require a finding that the value of the car taken exceeded $950. The pre-amendment version of CALCRIM No. 1820 that the court gave the jury did not instruct that the greater-than-$950 value of the car was an element of the felony-theft offense.

Defendant argues the pre-amendment version of the instruction used by the trial court permitted the jury to convict him on the invalid theory of vehicle theft without a finding of

value. Defendant further argues the instructional error was exacerbated by the prosecutor's statements during closing argument which invited the jury to find him guilty of theft, not just joyriding.

Respondent argues any error in using the pre-amendment version of the instruction was harmless beyond a reasonable doubt. We agree.

During the pendency of this appeal, our Supreme Court announced that "alternative-theory" instructional error is subject to the harmless error standard set forth in *Chapman v. California* (1967) 386 U.S. 18. (*People v. Aledamat* (2019) 8 Cal.5th 1, 13.) "The reviewing court must reverse the conviction unless, after examining the entire cause, including the evidence, and considering all relevant circumstances, it determines the error was harmless beyond a reasonable doubt." (*Ibid*.)

Here, the evidence was overwhelming and uncontradicted that defendant was guilty of a nontheft violation of Vehicle Code section 10851, i.e., unlawful driving with the intent to temporarily deprive the owner of possession. The only evidence offered on the issue of defendant's intent in taking the car came from defendant himself. He said he fled the garage after the altercation because he was in fear of everyone yelling at him to leave, and he took Ms. Green's purse and her car so he could drive around, not knowing where else to go. Defendant did not have Ms. Green's consent to drive the car. When the car apparently ran out of gas, he abandoned it and did not take Ms. Green's purse or any other property with him. There was no evidence defendant intended to permanently deprive Ms. Green of possession of her car. The record demonstrates beyond a

reasonable doubt the jury rested its verdict on the legally correct nontheft theory of driving with the intent to temporarily deprive the owner of possession, and not on theft.

DISPOSITION

The judgment of conviction is affirmed.

GRIMES, Acting P. J.

WE CONCUR:

STRATTON, J.

WILEY, J.