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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL JAY WOODARD,

Defendant and Appellant.

H042506

(Santa Clara County

Super. Ct. No. C1118724)

**I. INTRODUCTION**

In December 2011 defendant Michael Jay Woodard pleaded no contest to three felony offenses, including buying or receiving a stolen motor vehicle with a prior conviction (Pen. Code, §§ 496d, 666.5;<sup>1</sup> count 2); receiving stolen goods (§ 496, subd. (a); count 3); and possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a); count 4); and admitted the allegations that he had served four prior prison terms (§ 667.5, subd. (b)). The trial court imposed a total term of three years in the state prison.

In May 2015 defendant filed a petition to redesignate his felony convictions (counts 2, 3 & 4) as misdemeanors pursuant to section 1170.18, subdivision (f). Section 1170.18 was enacted by Proposition 47, the Safe Neighborhoods and Schools

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<sup>1</sup> All statutory references hereafter are to the Penal Code unless otherwise indicated.

Act. (Prop. 47, as approved by voters, Gen. Elec. (Nov. 4, 2014), eff. Nov. 5, 2014.) The trial court granted the petition only as to counts 3 and 4 and denied the petition as to count 2 on the ground that a felony conviction for buying or receiving a stolen motor vehicle in violation of section 496d is ineligible for redesignation as a misdemeanor under section 1170.18.

On appeal, defendant contends that the trial court erred in denying his petition as to count 2 because section 1170.18, subdivision (f) should be construed to make a felony conviction for violating section 496d eligible for redesignation as a misdemeanor where the value of the stolen motor vehicle was \$950 or less. Defendant also contends the trial court's order denying redesignation of his section 496d conviction violates his constitutional right to equal protection and misapplies the burden of proof. For the reasons stated below, we find no merit in defendant's contentions and therefore we will affirm the order.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

In December 2011 defendant pleaded no contest to buying or receiving a stolen motor vehicle, a pickup truck, with a prior conviction (§§ 496d, 666.5; count 2); receiving stolen goods, license plates (§ 496, subd. (a); count 3); and possession of a controlled substance, methamphetamine (Health & Saf. Code, § 11377, subd. (a); count 4) and admitted the allegations that he had served four prior prison terms (§ 667.5, subd. (b)).

The trial court imposed a total term of three years in the state prison, dismissed the remaining counts in the complaint, and struck the prior conviction allegations pursuant to section 1385. Defendant was also ordered to pay restitution, including restitution in the amount of \$4,600 to the alleged owner of the stolen pickup truck.

On May 7, 2015, defendant filed a petition to redesignate his felony convictions as misdemeanors pursuant to section 1170.18, subdivision (f). The trial court issued an order on May 18, 2015, in which the court stated that count 2, buying or receiving a

stolen motor vehicle (§ 496d) was ineligible on the ground that “misdemeanor treatment” of a section 496d conviction was not authorized under section 1170.18. The order further stated that it appeared that count 3, receiving stolen goods, (§ 496, subd. (a)) and count 4, possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) “may be eligible for redesignation” as misdemeanors and directed the district attorney to respond to the petition with respect to those two counts. The district attorney filed a response indicating that counts 3 and 4 were eligible for redesignation as misdemeanors. The trial court’s subsequent order of May 27, 2015, granted defendant’s petition for redesignation of counts 3 and 4.

### **III. DISCUSSION**

Defendant filed a timely notice of appeal from the trial court’s May 27, 2015 order, which did not grant his petition to redesignate count 2, buying or receiving a stolen motor vehicle (§ 496d), as a misdemeanor. We will begin our evaluation of defendant’s contentions of trial court error with a brief summary of the pertinent provisions of Proposition 47.

#### ***A. Proposition 47***

On November 4, 2014, the voters enacted Proposition 47, the Safe Neighborhoods and Schools Act (the Act). (Prop. 47, as approved by voters, Gen. Elec. (Nov. 4, 2014), eff. Nov. 5, 2014.) Proposition 47 reclassified certain drug and theft related offenses as misdemeanors instead of felonies or alternative felony misdemeanors. (§ 1170.18, subd. (a); *People v. Shabazz* (2015) 237 Cal.App.4th 303, 308.)

Proposition 47 also enacted a new statutory provision, section 1170.18, which sets forth a procedure for defendants seeking to have a felony conviction designated as a misdemeanor. The procedure may be utilized by a person who has completed his or her sentence for a felony conviction and who would have been guilty of a misdemeanor under the Act if the Act had been in effect at the time of the offense. (§ 1170.18, subd. (f).) Such a person may file an application to have the felony conviction designated

a misdemeanor, and the trial court must make the misdemeanor designation if the defendant meets the requisite criteria and has not suffered a specified prior conviction. (*Id.*, subds. (f), (g) & (i).)

The theft related offenses enumerated in section 1170.18, subdivisions (a) and (b) that may be designated as misdemeanors under Proposition 47 include shoplifting with a value of \$950 or less (§ 459.5, subd (a)); forgery of a document with a value of \$950 or less (§ 473, subd (b)); issuing a check for \$950 or less without sufficient funds (§ 476a, subd. (b)); petty theft with a value of \$950 or less (§ 490.2, subd. (a)); receiving stolen property with a value of \$950 or less (§ 496, subd.(a)); and petty theft with a prior theft conviction (§ 666, subd. (a)). The offense of buying or receiving a stolen motor vehicle (§ 496d) is not one of the theft related offenses listed in section 1170.18, subdivisions (a) and (b).

***B. Exclusion of Section 496d***

On appeal, defendant contends that the trial court erred in failing to grant his petition for redesignation of count 2 under Proposition 47 because section 1170.18 should be construed to apply to a felony conviction for violating section 496d where the value of the stolen motor vehicle was \$950 or less.

Defendant acknowledges that Proposition 47 did not amend section 496d to provide that the offense of buying or receiving a stolen motor vehicle with a value of \$950 or less is a misdemeanor. Despite this omission, defendant maintains that it is clear that the voters intended that all theft related offenses be treated as misdemeanors where the value of the property is less than \$950. Defendant explains that section 496d is a more narrow version of the broader misdemeanor offense of receiving stolen property with a value of \$950 or less (§ 496, subd (a)), which is expressly eligible for redesignation under section 1170.18, subdivisions (a). Defendant also asserts that construing section 1170.18 to apply to the offense of buying or receiving a stolen motor vehicle with a value of \$950 or less would serve the purpose of Proposition 47 “to

channel incarceration spending to serious crimes, to maximize alternatives to incarceration for nonserious crimes, and to invest the savings in children's and adult programs.”

The People argue that defendant's statutory analysis is incorrect because the plain language of Proposition 47 and section 1170.18 does not include section 496d, and therefore the Legislature intended to exclude section 496d. Alternatively, the People contend that the restitution order of \$4,600 payable to the alleged owner of the stolen pickup truck constitutes a stipulation that the value of the stolen pickup truck exceeded \$950. In addition, the People assert that defendant's admission that he had served four prior prison terms precludes redesignation under section 1170.18, subdivision (f) because section 666.5 mandates felony punishment.

We will resolve the issue of whether the trial court erred in failing to grant defendant's petition to redesignate count 2, buying or receiving a stolen motor vehicle in violation of section 496d, as a misdemeanor by applying the rules of statutory interpretation. These rules are applicable to voter initiatives like Proposition 47. “When we interpret an initiative, we apply the same principles governing statutory construction. We first consider the initiative's language, giving the words their ordinary meaning and construing this language in the context of the statute and initiative as a whole. If the language is not ambiguous, we presume the voters intended the meaning apparent from that language, and we may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language. If the language is ambiguous, courts may consider ballot summaries and arguments in determining the voters' intent and understanding of a ballot measure. [Citation.]” (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571 (*Pearson*).)

Thus, “ “[w]hen statutory language is clear and unambiguous, there is no need for construction and courts should not indulge in it.” [Citation.]’ [Citation.]” (*People v. Hendrix* (1997) 16 Cal.4th 508, 512.) We also consider the maxim *expressio unius est*

*exclusio alterius*: “The expression of some things in a statute necessarily means the exclusion of other things not expressed.” (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852.) Under that maxim, where the Legislature expressly includes certain criminal offenses in a statute, the legislative intent was to exclude offenses that were not mentioned. (*People v. Sanchez* (1997) 52 Cal.App.4th 997, 1001 (*Sanchez*); *People v. Walker* (2000) 85 Cal.App.4th 969, 973 [same]; *People v. Brun* (1989) 212 Cal.App.3d 951, 954 [same].)

Since section 1170.18, subdivisions (a) and (b) expressly includes certain theft related offenses (§§ 459.5, 473, 476a, 490.2, 496, & 666), we determine that the intent of the voters was to exclude theft related offenses not mentioned in the statute from redesignation under Proposition 47. (See, e.g., *Sanchez, supra*, 52 Cal.App.4th at p. 1001.) The offense of buying or receiving a stolen motor vehicle is set forth in section 496d, which is a statute not mentioned in section 1170.18, subdivisions (a) and (b). Therefore, under the maxim *expressio unius est exclusio alterius*, a conviction of violating section 496d is excluded from redesignation under Proposition 47.

Moreover, to construe section 1170.18 as including section 496d would be inconsistent with our Supreme Court’s instructions. We may not “add to the statute or rewrite it to conform to some assumed intent not apparent from that language.” (*Pearson, supra*, 48 Cal.4th at p. 571.) And “ ‘[w]henver possible, significance must be given to every word [in a statute] in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage.’ [Citation.]” (*People v. Rodriguez* (2012) 55 Cal.4th 1125, 1131.)

We therefore conclude that the trial court did not err in failing to grant defendant’s petition for redesignation of count 2 because section 496d is not included in section 1170.18. The rule of lenity argued by defendant does not convince us to alter our conclusion. Under the rule of lenity, “courts must resolve doubts as to the meaning of a statute in a criminal defendant’s favor.” (*People v. Avery* (2002) 27 Cal.4th 49, 57.) However, “ ‘[t]he rule [of lenity] applies only if the court can do no more than guess what

the legislative body intended; there must be an egregious ambiguity and uncertainty to justify invoking the rule.’ [Citation.]” (*Id.* at p. 58.) We have found no ambiguity in the language of section 1170.18, subdivisions (a) and (b) with respect to the theft related offenses that are eligible for designation as a misdemeanor; therefore, the rule of lenity does not apply.

### ***C. Equal Protection***

Defendant also contends that failing to grant a petition for redesignation of a section 496d conviction of buying or receiving a stolen motor vehicle with a value of \$950 or less violates his constitutional right to equal protection. According to defendant, a person who is guilty of the offense of receiving a stolen vehicle (§ 496d) with a value of \$950 or less is similarly situated to a person who is guilty of the offense of theft of a vehicle or other property with a value of \$950 or less (§§ 496, 490.2) that is eligible for redesignation under section 1170.18.

Defendant correctly asserts that the federal equal protection clause (U.S. Const., 14th Amend.) and the California equal protection clause (Cal. Const., art. I, § 7) provide that all persons similarly situated should be treated alike. However, California Supreme Court authority precludes a finding of an equal protection violation in this case. “A defendant . . . ‘does not have a fundamental interest in a specific term of imprisonment or in the designation a particular crime receives.’ [Citations.]” (*People v. Wilkinson* (2004) 33 Cal.4th 821, 838 (*Wilkinson*)). Therefore, the rational basis test is applicable to an equal protection challenge involving “ ‘an alleged sentencing disparity.’ ” (*Ibid.*) Our Supreme Court also applied the rational basis test to an alleged statutory disparity: “Where, as here, a disputed statutory disparity implicates no suspect class or fundamental right, ‘equal protection of the law is denied only where there is no “rational relationship between the disparity of treatment and some legitimate governmental purpose.” ’ [Citations.]” (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881 (*Johnson*)).

The *Johnson* court applied the rational basis test as follows: “ ‘This standard of rationality does not depend upon whether lawmakers ever actually articulated the purpose they sought to achieve. Nor must the underlying rationale be empirically substantiated. [Citation.] While the realities of the subject matter cannot be completely ignored [citation], a court may engage in “ ‘rational speculation’ ” as to the justifications for the legislative choice [citation]. It is immaterial for rational basis review “whether or not” any such speculation has “a foundation in the record.” ’ [Citation.]” (*Johnson, supra*, 60 Cal.4th at p. 881.) Therefore, “[t]o mount a successful rational basis challenge, a party must “ ‘negative every conceivable basis’ ” that might support the disputed statutory disparity. [Citations.] If a plausible basis exists for the disparity, courts may not second-guess its “ ‘wisdom, fairness, or logic.’ ” [Citations.]” (*Ibid.*)

We find that there are several plausible reasons for the alleged disparity in excluding a conviction under section 496d from redesignation under section 1170.18 where the value of the stolen motor vehicle was \$950 or less. One reason is that the offense of buying or receiving a stolen motor vehicle may have greater consequences for the victims than other theft related offenses. The owners of motor vehicles are often dependent on their vehicles for transportation to work and school, and for obtaining the necessities of life, more so than other forms of stolen property.

Another reason is that stolen vehicles may be sold for parts in “chop shops,” which may increase their worth. Targeting that type of criminal enterprise was in part the Legislature’s intent in enacting section 496d, as indicated in the legislative history. The bill’s author proposed that section 496d be added “ ‘to the Penal Code to encompass only motor vehicles related to the receiving of stolen property.’ ” (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2390 (1997-1998 Reg. Sess.) as amended June 23, 1998.) Section 496d was described as “ ‘provid[ing] additional tools to law enforcement for utilization in combating vehicle theft and prosecuting vehicle thieves. Incarcerating vehicle thieves provides safer streets and saves

Californians millions of dollars. These proposals target persons involved in the business of vehicle theft and would identify persons having prior felony convictions for the receiving of stolen vehicles for enhanced sentences.’ ” (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2390 (1997-1998 Reg. Sess.) as amended June 23, 1998.)

A third plausible reason for the alleged disparity in excluding a conviction under section 496d from section 1170.18 concerns prosecutorial discretion in charging the offense of receiving a low value stolen motor vehicle as a felony under section 496d, rather than as a misdemeanor under section 496. Our Supreme Court has ruled that “numerous factors properly may enter into a prosecutor’s decision to charge under one statute and not another, such as a defendant’s background and the severity of the crime, and so long as there is no showing that a defendant ‘has been singled out deliberately for prosecution on the basis of some invidious criterion,’ that is, ‘ “one that is arbitrary and thus unjustified because it bears no rational relationship to legitimate law enforcement interests[,]” ’ the defendant cannot make out an equal protection violation. [Citation.]” (*Wilkinson, supra*, 33 Cal.4th at pp. 838-839.)

Accordingly, we determine that the rational basis test is satisfied because there is a plausible basis for the alleged disparity between a conviction under section 496d for buying or receiving a motor vehicle with a value of \$950 or less, which is not eligible for redesignation under section 1170.18, and the eligible theft related convictions where the property had a value of \$950 or less. We therefore find no merit in defendant’s equal protection claim.

#### ***D. Burden of Proof***

Finally, defendant argues that he cannot be required to prove that the value of the stolen pickup truck was \$950 or less in order to obtain redesignation of his felony conviction for buying or receiving stolen property in violation of section 496d under Proposition 47. In making this argument, defendant urges us to reject the ruling in

*People v. Sherow* (2015) 239 Cal.App.4th 875 (*Sherow*) that a defendant has the burden of proving eligibility for redesignation under Proposition 47 by showing that the value of the stolen property was under \$950. (*Sherow, supra*, at p. 878.)

Defendant also argues that the trial court engaged in improper fact finding under *Apprendi v. New Jersey* (2000) 530 U.S. 466 and its progeny because there was insufficient proof that the value of the stolen pickup truck exceeded \$950. Alternatively, defendant contends that where the record of conviction is silent as to the value of the stolen vehicle, it is presumed that the defendant is eligible for the lesser punishment pursuant to the decision in *People v. Guerrero* (1988) 44 Cal.3d 343, 345 [“in determining the truth of a prior-conviction allegation, the trier of fact may look to the entire record of the conviction.”].

We need not address defendant’s contentions regarding the burden of proof, fact finding, or the record of conviction in a proceeding under section 1170.18, subdivision (f) for redesignation of a felony conviction under section 496d. These contentions have no application in the present case, since we have determined that defendant’s section 496d conviction is not eligible for designation as a misdemeanor under section 1170.18, subdivision (f) even if the actual value of the stolen motor vehicle was \$950 or less. For the same reason, we also need not address the People’s contention that defendant’s admission of a prior prison term (§ 666.5) precludes redesignation under section 1170.18, subdivision (f).

Having determined that defendant’s section 496d conviction is not eligible for designation as a misdemeanor under section 1170.18, subdivision (f), we conclude that the trial court did not err in failing to grant defendant’s petition for redesignation of his section 496d conviction as a misdemeanor. We will therefore affirm the order of May 27, 2015.

#### **IV. DISPOSITION**

The order of May 27, 2015, is affirmed.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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MIHARA, J.

*People v. Woodard*  
**H042506**