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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

EBONY CHANEY,

Defendant and Appellant.

A147169

(Solano County
Super. Ct. No. FCR264126)

MEMORANDUM OPINION¹

In 2009, defendant Ebony Chaney was charged in an amended information with two counts of receiving stolen property (Pen. Code,² § 496, subd. (a)) and three counts of second degree commercial burglary (§ 459). Testimony at the preliminary hearing demonstrated defendant was riding in a car in which shoplifted goods from three different stores were found. The value of the goods stolen from the individual stores was \$108, \$295, and \$573, for a total of \$976. Defendant pleaded no contest to two counts of receiving stolen property and was sentenced in April 2010 to concurrent two-year prison terms.

In October 2015, following the passage of Proposition 47, the Safe Neighborhoods and Schools Act, defendant petitioned for reduction of her felony convictions to misdemeanors under section 1170.18, subdivision (f). Proposition 47 reclassified certain

¹ We resolve this case by a memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1(1), (3).

² All statutory references are to the Penal Code.

offenses from felonies to misdemeanors. (*People v. Abdallah* (2016) 246 Cal.App.4th 736, 743.) Section 1170.18, added by Proposition 47, permits persons previously convicted of a felony reduced to a misdemeanor by Proposition 47 to petition the sentencing court for redesignation of the conviction. (§ 1170.18, subd. (g).) Among the offenses reduced to a misdemeanor by Proposition 47 is receiving stolen property, so long as the value of the stolen goods is less than \$950. (§ 496, subd. (a).) The prosecution opposed defendant’s petition for redesignation, arguing the total value of the stolen goods, combined between the two counts, was more than the \$950 statutory maximum. The trial court accepted the prosecution’s argument and denied defendant’s petition.

Defendant contends the trial court erred in aggregating the value of the goods from the two convictions. A similar issue was addressed in *People v. Hoffman* (2015) 241 Cal.App.4th 1304 (*Hoffman*). Prior to the passage of Proposition 47, the defendant in *Hoffman* was convicted of seven felony counts of forgery, based on the passing of seven bad checks. (*Id.* at p. 1307.) Proposition 47 reduced the crime of forgery from a felony to a misdemeanor, so long as the “value of the check” or other instrument was less than \$950. (§ 473, subd. (b).) None of the checks forged by the defendant had a face value of more than \$950. (*Hoffman*, at p. 1307.) The Attorney General conceded the value of the checks forged by the defendant could not be aggregated across her convictions to defeat redesignation under section 1170.18. The *Hoffman* court accepted the Attorney General’s concession, based on the language in section 473 tying the designation of the offense as a felony or misdemeanor to the value of the instrument forged. The court found its holding supported by the legislative history of the proposition.³ (*Hoffman*, at p. 1310.)

³ In *People v. Salmorin* (2016) 1 Cal.App.5th 738, the court extended *Hoffman*’s reasoning to preclude aggregation of the value of forged instruments even when those forgeries were charged in a single count, rather than in separate counts, as in *Hoffman*. (*Salmorin*, at pp. 745–748.) The Attorney General had not conceded the issue, arguing that the value of forged instruments can be aggregated *within* counts (*id.* at p. 745), but the office did not seek review of the *Salmorin* decision.

As in *Hoffman*, the Attorney General here concedes with respect to the aggregation of the value of stolen goods charged in separate counts. We agree. This situation is somewhat different from that of *Hoffman*, since section 496 does not tie the designation of the offense to the value of a single “good,” in the same manner that section 473 refers to a single check or instrument. Nonetheless, it is necessarily the value of the stolen goods charged in an individual count that must be evaluated to determine whether the conviction resulting from that count is a felony or a misdemeanor under section 496. In turn, section 1170.18 refers to the redesignation of a “conviction.” (*Id.*, subd. (f).) Because the two counts to which defendant pleaded resulted in two separate convictions, the status of each conviction as a felony or misdemeanor must be evaluated separately under section 1170.18. Defendant cannot be treated as though she suffered a felony conviction of section 496 merely because she suffered two misdemeanor convictions that, if charged differently, could have constituted a single felony.

While the two counts charged against defendant do not specify precisely the property included within them, the prosecutor told the court that the second count (charged as count 6) involved only the possession of “clothing.” Because the stolen items included shoes and jewelry as well as clothing, the former items would have been included in the first count and excluded from the second count. There was no testimony regarding the value of the non-clothing items, but their value undoubtedly exceeded \$26, the amount by which the total value of the stolen items exceeded the statutory maximum. Accordingly, neither of the two counts alone could have involved the possession of goods totaling more than \$950. Because the two counts to which defendant pleaded would have constituted misdemeanors under section 496, as amended by Proposition 47, defendant’s petition to redesignate her convictions should have been granted.

The trial court’s denial of defendant’s petition is reversed, and the matter is remanded for redesignation of defendant’s crimes as misdemeanors, pursuant to section 1170.18.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.

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