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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE LUIS ALEGRIA,

Defendant and Appellant.

D067706

(Super. Ct. No. JCF27767)

APPEAL from an order of the Superior Court of Imperial County, Raymundo A. Cota, Judge. Reversed.

Denise M. Rudasill, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Scott C. Taylor, Paige B. Hazard and Samantha Begovich, Deputy Attorneys General, for Plaintiff and Respondent.

Jose Luis Alegria completed his sentence following a felony conviction for receiving stolen property — namely, a debit card, a Social Security card and a driver's license. The trial court denied Alegria's application to have this felony conviction designated a misdemeanor conviction pursuant to Penal Code section 1170.18, subdivision (f), which was enacted as part of Proposition 47.¹ On appeal, Alegria argues that the trial court erred in ruling that he did not meet his burden of establishing eligibility for Proposition 47 relief — which in this case required substantial evidence that the value of the property at issue was less than \$950. Alegria contends that, based on his application and what was before the trial court, section 1170.18, subdivision (g) entitles him to have his conviction designated a misdemeanor.² We agree and reverse the order denying Alegria's application.

¹ "A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors." (Pen. Code, § 1170.18, subd. (f). Further undesignated statutory references are the Penal Code.)

² "If the application satisfies the criteria in subdivision (f), the court shall designate the felony offense or offenses as a misdemeanor." (§ 1170.18, subd. (g).)

I.

FACTUAL AND PROCEDURAL BACKGROUND³

At 5:00 a.m. on July 20, 2011, the victim parked her car outside her place of employment in Brawley. She left her purse — which, among other personal items, contained her bank debit card, Social Security card and driver's license — on the floor of the passenger's side of the car. A short while later, one of the victim's coworkers saw, and told the victim, that the victim's car window was shattered. The victim called the police and reported the incident. The officer who responded to the victim's call transmitted the crime information to other officers in the area, one of whom stopped Alegria later in the day and in searching him found personal cards, including the debit card, belonging to the victim.

The district attorney charged Alegria with four counts: second degree burglary (§ 459; count 1); receiving stolen property (§ 496, subd. (a); count 2); resisting, obstructing or delaying a peace officer (§ 148, subd. (a)(1); count 3); and giving false information to a peace officer (§ 148.9, subd. (a); count 4). More specifically, with regard to count 2 (receiving stolen property), the complaint alleged that the stolen property was "Union Bank debit cards, Social Security card, and driver's licen[s]e." (Some capitalization omitted.)

³ The parties agree on the underlying facts and procedure, both relying on the probation report which was filed in the superior court on October 21, 2011, prior to Alegria's original sentencing.

Pursuant to an agreement, in September 2011 Alegria pleaded no contest to counts 2 (receiving stolen property; § 496) and 4 (false information to a police officer; § 148.9, subd. (a)), and the court dismissed the remaining two counts. With regard to the factual basis for the plea, (1) the portion of the written plea form indicates only that Alegria "stipulate[d] to [the] factual basis" for the plea, and (2) at the hearing both counsel stipulated, and the court accepted, that "the police report in this matter sets forth facts that would constitute a factual basis for the crimes to which Mr. Alegria is pleading." Counsel on appeal do not direct us to the police report, and the district attorney told the trial court that the police report did not contain facts that established the value of the victim's debit card.

In October 2011, the court suspended imposition of sentence, placed Alegria on three years' formal probation, ordered Alegria to serve 180 days in county jail and issued various fees, fines and assessments. In January 2014, the court revoked probation and sentenced Alegria to 16 months in county jail. With credits, Alegria had to serve approximately four months.

On November 4, 2014, California voters approved Proposition 47, the Safe Neighborhoods and Schools Act; and under the California Constitution (art. II, § 10, subd. (a)), it became effective the following day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089 (*Rivera*)). "Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors)." (*Rivera*, at p. 1091.)

In January 2015, Alegria applied to have his felony conviction for receiving stolen property designated a misdemeanor conviction under Proposition 47. (§ 1170.18, subd. (f).) More specifically, he alleged that he had completed serving a sentence for a felony conviction of receiving stolen property, which would have been a misdemeanor had Proposition 47 been in effect at the time of the offense, since the value of the stolen property in his possession did not exceed \$950, and he was not otherwise disqualified from having his felony conviction designated a misdemeanor.

The People filed a written opposition to Alegria's application. As relevant to the issue on appeal, the People's position was Alegria did not meet his burden of establishing that the value of the debit card was less than \$950:

"In the instant case, both the probation report and the police reports do not establish the value of the debit card found in the pocket of [Alegria]. This conflicts with [Alegria's] assertion in his [application] . . . [that t]he *value of the property* in this case did *not* exceed \$950 . . . [.] And while it is conceded that the value of the debit card itself would not exceed \$950.00, it isn't the value of the card that is relevant; *rather it is the ability to use the card to remove funds from the victim's checking account that is.*" (Underscoring added.)

The court held a hearing in March 2015. In response to the court's comment that Alegria had not presented *evidence* of the value of the debit card, Alegria's counsel emphasized the People's concession as to value in their written opposition, explaining that Alegria's mere *possession of the card* without more did not suggest a different value. The court denied the application on the basis that Alegria did not meet his burden of establishing that the value of the property taken was less than \$950.

Alegria timely appealed from the court's written order.

II.

DISCUSSION

The determinative issue on appeal is whether Alegria met his burden of establishing eligibility for Proposition 47 relief — namely, that the value of the stolen property that formed the basis of his felony conviction did not exceed \$950.⁴ As we explain, the record on appeal confirms that Alegria met this burden.

A. *Proposition 47*

As relevant to this appeal, Proposition 47 amended section 496. (*Rivera, supra*, 233 Cal.App.4th at p. 1091.) In part, recently amended section 496, subdivision (a) provides:

"Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, *if the value of the property does not exceed nine hundred fifty dollars (\$950), the*

⁴ At the time Alegria filed his application, the law was unclear as to who had the burden when a defendant requested relief under Proposition 47. *People v. Sherow* (2015) 239 Cal.App.4th 875 (*Sherow*) subsequently held that the defendant who seeks relief under Proposition 47 has the initial burden of establishing eligibility for relief, including specifically the facts on which the eligibility is based. (*Sherow*, at pp. 878, 880; accord, *People v. Bush* (2016) 245 Cal.App.4th 992, 1007; *People v. Perkins* (2016) 244 Cal.App.4th 129, 136-137; *People v. Rivas-Colon* (2015) 241 Cal.App.4th 444, 449.) Both parties now agree that Alegria had the burden of establishing that the value of the debit card did not exceed \$950.

offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year"⁵ (*Ibid.*, italics added.)

(See Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 9, p. 72.)

In addition to other relief, Proposition 47 also created a procedure whereby those who had completed felony sentences for offenses that became misdemeanors under Proposition 47 could file an application with the trial court to have their felony convictions " 'designated as misdemeanors.' " (*Rivera, supra*, 233 Cal.App.4th at p. 1093, quoting from § 1170.18, subd. (f); see § 1170.18, subs. (g)-(h).)

Thus, pursuant to the procedure established in section 1170.18, subdivision (f), and the substance of section 496, subdivision (a), Alegria applied to the trial court to designate as a misdemeanor his felony conviction for receiving stolen property.

B. *Standards on Appeal*

In interpreting a ballot initiative measure, we apply the same principles as we do in construing a statute enacted by the Legislature. (*People v. Arroyo* (2016) 62 Cal.4th 589, 593 (*Arroyo*) [Proposition 21, which "expanded prosecutorial authority to file charges against minors in adult court"].) We begin by considering the actual language of the initiative, giving its words their usual and ordinary meaning. (*Arroyo*, at p. 593.) We construe the words of an initiative as a whole and within the overall statutory scheme to

⁵ Prior to Proposition 47, the last quoted sentence provided: "However, if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed nine hundred fifty dollars (\$950), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year." (§ 496, former subd. (a); Stats. 2011, ch. 15, § 372.)

effectuate the voters' intent. (*Ibid.*) If the language is ambiguous, we look to other indicia of the intent of the electorate, including the analyses and arguments in the official ballot pamphlet. (*Ibid.*) We will not interpret ambiguities in initiative language in a defendant's favor if that interpretation would create an absurd result or be inconsistent with the voters' intent. (See *People v. Cruz* (1996) 13 Cal.4th 764, 782-783.)

Because this appeal involves only the interpretation of a statute enacted as part of a voter initiative, the issue on appeal is a legal one, which we review de novo.⁶ (*Arroyo, supra*, 62 Cal.4th at p. 593.)

C. *Analysis*

The first sentence of section 496, subdivision (a) defines the crime of receiving stolen property: "Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170." (*Ibid.*) The second sentence of section 496, subdivision (a) — i.e., the language at issue in this appeal —

⁶ Had the trial court applied disputed facts to the interpretation of section 496, subdivision (a), we would review the factual findings for substantial evidence, while reviewing de novo the application of those facts to the statute. (*Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 549.) Here, however, the parties did not dispute the fact that value of the debit card did not exceed \$950 — a fact that, as we explain in part II.C., *post*, is determinative of the issue on appeal.

deals with the value of the stolen property received and provides in part: "However, *if the value of the property does not exceed nine hundred fifty dollars (\$950)*, the offense shall be a misdemeanor" (*Ibid.*, italics added.)

The property at issue here is a debit card. In writing the People have "conceded that the value of the debit card itself would not exceed \$950.00," instead arguing that "it isn't the value of the card that is relevant; rather it is the ability to use the card to remove funds from the victim's checking account that is." (Italics omitted.) However, the plain language of the statute — set forth in the italicized portion of the last sentence of the preceding paragraph — mentions only "*the value of the property*" not what the defendant might be able to do with the property. (§ 496, subd. (a), italics added.) Contrary to the position of the Attorney General, given the language of the statute, there is no relevance to "the ability to use the card to remove funds from the victim's checking account"; the *only* relevance is the "the value of the card."

In the People's brief on appeal, the Attorney General argues that, since "the gravamen" of receiving stolen property is "akin to possession of access card account information," we should look to the cases interpreting and applying section 484e, subdivision (d), since a debit card is an "access card" for purposes of that statute. (§ 484d, subd. (2).) Section 484e, subdivision (d) provides in full: "Every person who acquires or retains possession of access card account information with respect to an access card validly issued to another person, without the cardholder's or issuer's consent, with the intent to use it fraudulently, is guilty of grand theft." While (in the People's words) "the ability to use the card to remove funds from the victim's checking account"

may, indeed, be relevant to establishing a violation of section 484e, subdivision (d), Alegria was neither charged with nor convicted of violating this statute; and notably, section 496, subdivision (a) does not contain such a requirement.

Alternatively, the People suggest that, since section 496, subdivision (a) does not specify how the \$950 threshold is to be determined, courts should value stolen property under the theft statutes — i.e., by using " 'the reasonable and fair market value' " of the property, which requires the determination of the highest price obtainable in the open market by a willing buyer and a willing seller (quoting from *People v. Pena* (1977) 68 Cal.App.3d 100, 102). Once again, however, Alegria was neither charged with nor convicted of theft.⁷ In any event, given the People's concession as to the value of the debit card *in this case* — i.e., in the context of the receipt of stolen property — there is no need to consider how stolen property may be valued in the context of a different crime.

Finally, relying on comments from the trial court, the People analogize valuing a debit card in the same manner as valuing a stolen check. This analogy is unpersuasive, given that the authority on which the People rely involved "bank checks of *specified amounts*." (*People v. Quiel* (1945) 68 Cal.App.2d 674, 678, italics added.) In contrast, the debit card here did not disclose a specific amount. For this reason, we find more persuasive *People v. Cuellar* (2008) 165 Cal.App.4th 833 (which, to their credit, the People acknowledge), where the court ruled that a stolen *blank check* had some value, if

⁷ Indeed, given his conviction for receiving stolen property, Alegria could not have been convicted of theft of the property, since section 496, subdivision (a) expressly precludes a defendant's convictions for *both* the receipt *and* the theft of the same stolen property.

only "intrinsic," based on (1) the "slight" value of the paper it was printed on, and (2) the check's negotiability that, if legally drawn, would entitle its holder to payment on demand. (*Id.* at p. 839; see also *People v. Caridis* (1915) 29 Cal.App. 166, 169 [winning lottery ticket in an illegal lottery "a mere piece of paper," yet still had "some slight intrinsic value"]; *United States Rubber Co. v. Union Bank & Trust Co.* (1961) 194 Cal.App.2d 703, 708-709 [forged check "is of no value unless accepted"].)

The People's reliance on these different statutes and crimes — i.e., access card violations, theft and stolen checks — in order to establish a value to the debit card in Alegria's possession is unnecessary, given that Alegria was not charged with these crimes and Alegria was convicted of receiving property *that the People conceded had a value of less than \$950*. Thus, on this record and by this concession, Alegria met his initial burden of establishing eligibility for Proposition 47 relief by showing that the value of the stolen property in his possession did not exceed \$950. (*Sherow, supra*, 239 Cal.App.4th at pp. 878, 880.) The trial court erred in finding otherwise.

In the trial court, the People did not raise any objection to Alegria's application other than his alleged failure to establish that the value of the property in his possession did not exceed \$950. Accordingly, the court should have granted the application.

DISPOSITION

The March 12, 2015 order denying Alegria's application is reversed, and the matter is remanded with instructions to grant the application and designate the section 496, subdivision (a) felony offense as a misdemeanor.

IRION, J.

WE CONCUR:

MCDONALD, Acting P. J.

AARON, J.