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Supreme Court Number_____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA	) Court of Appeal
	) No. **D066907**
Plaintiff and Respondent,	)
	) Superior Court
v.	) No. **JCF32712**
	)
LAURA REYNOSO VALENZUELA,	)
	)
Defendant and Appellant,	)
	)

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

Honorable M. Christopher J. Plourd, Judge Presiding

PETITION FOR REVIEW AFTER THE PUBLISHED DECISION OF THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE, AFFIRMING THE JUDGMENT OF CONVICTION AND SENTENCE

STEVEN J CARROLL
Attorney at Law
P.O. Box 45338
San Diego, CA 92145-0338
(858) 368-9181
sjcarrollesq@gmail.com
CA State Bar # 60761

By appointment of the Court of Appeal
under California Appellate Defenders, Inc.,
Independent Case System

TABLE OF CONTENTS

TABLE OF AUTHORITIES

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LAURA REYNOSO VALENZUELA,	)
	)
Defendant and Appellant,	)
	)

TO, THE HONORABLE CHIEF JUSTICE, TANI CANTIL-SAKAUYE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioner, Laura R. Valenzuela, respectfully requests this Court to accept her petition for review in this case following the published decision of the Court of Appeal, Fourth Appellate District, Division One, affirming the judgment of conviction and sentence.

A copy of the opinion is attached to this petition as Appendix "A."

Pursuant to rule 8.500 of the California Rules of Court, review is urged in this case to settle important questions of law, to wit:

ISSUE PRESENTED

1. Was it the intent of the voters who passed Proposition 47 that California Penal Code section 1170.18[1] have retroactive effect and thus preclude the imposition of section 667.5, subdivision (b) enhancements at the time of resentencing in cases where the prior was reduced to a misdemeanor?

[1] Hereafter all statutory references shall be to the Penal Code unless otherwise noted.

STATEMENT OF THE CASE

Appellant was charged with car-jacking in violation of Penal Code section of 215, subdivision (a); willful disregard for safety while fleeing a pursuing police office in violation of Vehicle Code section 2800.2, subdivision (a) and possession of methamphetamine in violation of Health and Safety Code section 11377, subdivision (a). (1 C.T. 39-42.) The jury found appellant guilty of each of the offenses. (1 C.T. 157.) Appellant waived jury on two alleged prison priors. (1 C.T. 207.) The trial court found that only the alleged prior conviction for possession of stolen property was true. (1 C.T. 207-208.)

Appellant was sentenced to a prison term of six years and eight months as follows: five years for the car-jacking; eight months consecutive for the felony evading and two years concurrent for the possession of methamphetamine. The court also imposed a one year consecutive term for the prison prior. (2 C.T. 276.)

The Court of Appeal filed its opinion on February 3, 2016. Appellant timely files this appeal.

STATEMENT OF THE FACTS

For purposes of this petition ONLY, appellant accepts the facts as detailed in the decision below. (Appendix A at pp. 2-5.)

ARGUMENT

I

BECAUSE APPELLANT'S SENTENCE WAS ENHANCED BY A PRIOR PRISON TERM FOR A CHARGE WHICH IS NOW A MISDEMEANOR UNDER PROPOSITION 47, THE PRISON PRIOR ENHANCEMENT MUST BE STRICKEN, AND APPELLANT'S SENTENCE MUST BE REDUCED BY ONE YEAR.

A. Statement of the Issue

Appellant's sentence was enhanced by a one year term under Penal Code section 667.5, subdivision (b) based on her 2012 felony conviction for receiving stolen property in violation of section 496, subdivision (a). Proposition 47 went into effect less than two weeks after appellant was sentenced on this case. Appellant filed a petition for recall of her sentence with respect to her prison prior on November 17, 2014. On December 4, 2014, the trial court granted appellant's appellant's petition and ordered her prior conviction to be designated as a misdemeanor. (Appendix A at pp. 19-20.) However, the trial court did not reduce appellant sentence by one year for the enhancement.

Appellant argues that because the underlying conduct for the prior prison term is a misdemeanor, the use of that felony conviction as a prison prior sentencing enhancement is now unlawful. Moreover, with the elimination of that conviction as a prison prior enhancement, appellant was free of commission of a

felony or prison for the five-year period preceding the incident underlying the conviction now on appeal. Consequently, appellant's prison term must be reduced by one year.

B. Opinion Below

In the opinion below, the Court of Appeal found that nothing in the ballot materials for Proposition 47 expresses an intent to require that an enhancement for a prison prior be stricken. (Appendix A, at p. 22.) Further, the court below held that even though appellant's prior conviction was reduced to a misdemeanor after her current conviction and sentence, that *People v. Flores* (1979) 92 Cal.App.3d 461 and *People v. Park* (2013) 56 Cal.4th 782, as relied on by appellant, do not apply in appellant's case to require that the enhancement be stricken. (Appendix A at pp.22-23.) The court further noted that a section 667.5 enhancement is based on a "defendant's status as a recidivist and not on the underlying criminal conduct." (Appendix A at p. 24.)

C. Error in Opinion Below

The error in the opinion below is that the voters did intend section 1170.18, subdivision (k), to preclude the trial court from reimposing the prior prison term enhancement at resentencing. The goal of Proposition 47 was to "ensure that prison spending is focused on violent and serious offenses, to maximize alternative

for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support in K-12 schools, victim services, and mental health and drug treatment." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014), text of Prop 47, §2, p.70.) To that end, a number of drug and theft related offenses were reduced from felonies or wobbleres to misdemeanors, including thefts of property valued at less than $950 and drug possession. (*People v. Riviera* (2015) 233 Cal.App.4th 1085, 1092; *People v. Lynall* (2015 233 Cal.App.4th 1102, 1108-1109.) Here, following a hearing in the trial court, the court reduced appellant's prior felony conviction for receipt of stolen property to a misdemeanor. (Appendix A at p. 20.)

Section 1170.18, subdivision (k), provides that: "Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except for the right to own or possess firearms. (§1170.18, subd. (k).) In order to determine whether this provision applies to preclude the imposition of a prior prison term enhancement, the normal rules for statutory and initiative interpretation apply. (See *People v. Rivera, supra,* 233 Cal.App.4th at pp. 1099-1100 (*Rivera*).) As discussed in *Rivera*, the fundamental purpose of statutory construction is to determine the intent of the lawmakers in order to give proper effect to the law. The same rules apply to voter initiatives as to laws enacted by the legislature. (*Ibid.*)

Appellate courts have consistently said that words are given their ordinary meaning. Moreover, where there is no ambiguity in the language of the statute, the plain meaning applies. (*Ibid.*)

The issue here is whether the voters intended section 1170.18, subdivision (k) to preclude the trial court from reimposing the prior prison term enhancement when it resentences a defendant after the underlying prior felony has been reduced to a misdemeanor. Moreover, if the voters intended that this section not have retroactive effect, the voters, just as with the Legislature, are presumed to know how to draft that into the Proposition. Thus, the answer should be that the voters did so intend retroactive effect.

At the time appellant petitioned to have her prior conviction reduced to a misdemeanor, Proposition 47 provided for a full resentencing in her case. (See Couzens & Bigelow, Proposition 47: "The Safe Neighborhoods and Schools Act" (Aug. 2015 rev. ed.) p. 57 www.courts.ca.gov/documents/Prop-47-Information.pdf, ["Because the Proposition 47 count is part of a multiple-count sentencing scheme, changing the sentence of one count fairly puts into play the sentence imposed on non-Proposition 47 counts, at least to the extent necessary to preserve the original concurrent/consecutive sentencing structure. The purpose of section 1170.18 is to take the defendant *back to the time of the original sentence* and resentence him [or

her] with the Proposition 47 count now as a misdemeanor." Italics added.])

Contrary to the court below's decision, Both *People v. Park, supra*, 56 Cal.4th 782, and *People v. Flores, supra,* 92 Cal.App.3d 46, do apply to the issues in this case. The applicability of the one year enhancement is dependent on the continued characterization of its factual basis as a felony, and a downgrade of that status to a misdemeanor bars its use as a sentence aggravator. (*People v. Flores* (1979) 92 Cal.App.3d 461.) In *Flores*, the defendant served time in prison after suffering a felony conviction in 1966 for the possession of marijuana. (*Id.*, at p. 470.) Despite the fact that marijuana possession had become a misdemeanor in 1975, the trial court nonetheless enhanced Flores' sentence by one year in light of his service of the 1966 prior prison term. (*Ibid.*; Cal. Pen Code § 667.5, subd. (b).)

On appeal, Flores argued that he should not have been subjected to the enhancement because its underlying criminal conduct no longer amounted to a felony. (*People v. Flores, supra*, 92 Cal.App.3d at p. 470.)

The Court of Appeal agreed that the imposition of the enhancement was improper. "The amendatory act imposing the lighter sentence for possession of marijuana," noted the Court of Appeal, "can obviously be applied constitutionally to prevent the enhancement of a new sentence by reason of a prior conviction of possession." (*People v. Flores, supra*, 92 Cal.App.3d at p. 471.) It further noted

that the change in the law specifically prohibited the use of a past record of marijuana possession as means by which to impose a collateral sanction. (*Ibid.*) The Court of Appeal concluded that "[i]n view of the express language of the statute and the obvious legislative purpose, it would be unreasonable to hold that the Legislature intended that one who had already served a felony sentence for possession of marijuana should be subjected to the additional criminal sanction of sentence enhancement." (*Id.* at p. 473.)

In the opinion below, the Court of Appeal distinguished *Flores* stating that the Legislature reduced the crime of marijuana possession to a misdemeanor before the defendant committed the new offense. The court below noted that appellant's conviction was reduced to a misdemeanor after she committed and was sentenced for the current offenses. (Appendix A at pp. 23-24.) As noted above however, at the time when the trial court reduced appellant's prior conviction to a misdemeanor, the court was empowered by Proposition 47 to conduct a full resentencing in her case. Thus, the court below's finding that *Flores* does not apply to this case is error.

Further, this court has recognized that when "when a wobbler is reduced to a misdemeanor in accordance with the statutory procedures, the offense thereafter is deemed a misdemeanor for all purposes, except when the Legislature has

specifically directed otherwise." (*People v. Park* (2013) 56 Cal.4th 782, 795, internal quotations omitted.) Indeed, subdivision (k) of section 1170.18 states that "[a]ny felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6." Here, the voters did not "direct otherwise." Thus phrase "for all purposes" should include the consideration that sentencing enhancements such as section 667.5, subdivision (b) stricken where the underlying conviction is no longer a felony.

As noted above, the language of Proposition 47 demonstrates that the electorate wanted eligible offenders like appellant to be shielded from the collateral consequences of prior prison terms stemming from felonies that the law now recognizes as misdemeanors. This is apparent by the sole limitation contained within the Proposition 47 sentencing reform, which maintains the continued ban on the ownership of firearms stemming from the prior felony status. This interpretation is in line with this court's reasoning in *People v. Park, supra*, 56 Cal.4th at p. 799, ["we conclude that when a wobbler has been reduced to a

misdemeanor the prior conviction does not constitute a prior felony conviction within the meaning of section 667(a)"].) Thus, appellant's prison sentence should not have been enhanced for her past prison conviction.

D. Reasons to Grant Review on this Issue

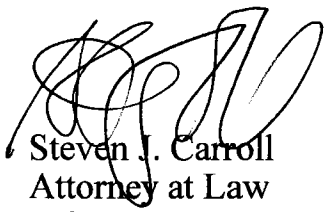
This court should accept this petition for review to address an important issue of law: Was it the intent of the voters that Penal Code section 1170.18 have retroactive effect and preclude the imposition of section 667.5, subdivision (b) enhancements at the time a defendant is re-sentenced following a hearing where a prior conviction is reduced to a misdemeanor?

The goal of Proposition 47 was to ensure that prison spending was focused on violent and serious offenses. To that end, drug and theft-related offenses were reduced from felonies to misdemeanors. Proposition 47 has had far ranging, statewide impact on the resentencings of numerous convicted defendants. A wide variety of issues and appeals have followed its implementation. This issue is one which carries statewide implications for criminal defendants, for the court's and for the criminal justice system as a whole. Thus resolution of the question presented is important not only for this appellant but for many other defendants in California's appellate divisions where this issue has yet to be addressed.

CONCLUSION

For the reasons set forth herein, appellant requests this court to accept her petition to resolve the question presented that Proposition 47was intended to have retroactive effect on sentence enhancements where the underlying felony has been reduced to a misdemeanor. Further, appellant requests that her case be remanded to the trial court for re-sentencing as provided for in section 1170.18.

Respectfully submitted,



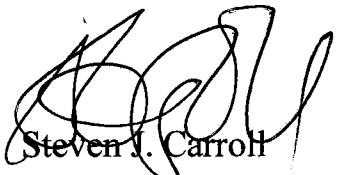
Steven J. Carroll
Attorney at Law
P.O. Box 45338
San Diego, CA 92145-0338
(858) 368-9181
sjcarrollesq@gmail.com
State Bar # 60761

CERTIFICATE OF WORD COUNT

I am the attorney for appellant. Based upon the word-count of the Word Perfect program, I hereby certify the length of the text of the foregoing brief, including footnotes, but not including tables, proof of service or this certificate is 2,258 words. (California Rules of Court, rule 8.360.)

I declare under penalty of perjury of the laws of the State of California that the foregoing is true.

Date: February 4, 2016



Steven J. Carroll
Attorney at Law
P.O. Box 45338
San Diego, CA 92145-0338
sjcarrollesq@gmail.com
CA State Bar # 60761

APPENDIX A

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CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. LAURA REYNOSO VALENZUELA, Defendant and Appellant.	D066907 (Super. Ct. No. JCF32712)

APPEAL from a judgment of the Superior Court of Imperial County, Christopher J. Plourd, Judge. Affirmed.

Steven J. Carrol, 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, Charles C. Ragland, Scott C. Taylor and Marvin E. Mizell Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Laura Reynoso Valenzuela of carjacking (Pen. Code, § 215, subd. (a)[1]; count 1), reckless evasion of a peace officer (Veh. Code, § 2800.2, subd. (a); count 2), and possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a),

1 Unless otherwise specified, subsequent references are to the Penal Code.

count 3.) Valenzuela waived a jury trial on two alleged prison priors. The trial court found one alleged prison prior true and the other not true. The court sentenced Valenzuela to a total term of six years eight months in prison, consisting of the middle term of five years on count 1, eight months (one-third the middle term) on count 2, one year for the prison prior conviction, and the middle term of two years, concurrent, on count 3.

On appeal, Valenzuela asserts that the trial court erred by allowing the prosecutor to ask her whether she had a prior conviction for reckless evasion. Valenzuela also asserts that Proposition 47 requires this court to reduce count 3 to a misdemeanor and strike the one-year sentence enhancement imposed for her prison prior. We reject Valenzuela's contentions and affirm the judgment.

FACTUAL BACKGROUND

A. *The People's Evidence*

At around 7:30 a.m. on March 7, 2014, Ana Lopez turned on her car to warm it up before taking her six-year-old son to school. The car was parked in her driveway in front of her house in Brawley. After starting her car Lopez went inside her residence, and came back outside two or three minutes later with her son. At trial Lopez testified that as she started to open the rear door on the driver's side to put her son into his car seat, Valenzuela ran up to her and pushed her out of the way. Lopez fell to the ground while her son stood nearby crying. Valenzuela jumped into the car and quickly drove off. Lopez watched Valenzuela drive down the alley, turn onto Fifth Street and then onto K Street. Lopez went back inside to get her phone and immediately called 911.

Lopez came back outside while on the phone with a 911 operator. A neighbor who Lopez had never met before, Rudy Ortiz, approached Lopez and told her that he had seen Valenzuela take the car and that Valenzuela had almost run him over. Brawley Police Officer Frank Morales was dispatched to the area. After performing a preliminary search for the stolen car, Officer Morales drove to Lopez's house, where he spoke with Lopez, her son, Lopez's husband (who arrived home after Valenzuela took the car), and Ortiz.

In the meantime, other police officers in the area continued to search for Valenzuela. Sergeant Jeff Caudill, who was in uniform, was on patrol nearby in his marked police car. About 20 minutes after the incident was reported, Caudill spotted Valenzuela driving Lopez's car. Caudill made a U-turn to head in the direction that Valenzuela was driving and turned on his car's overhead lights. Valenzuela sped ahead and Caudill turned on his car's sirens and followed her. Two officers in a second marked police car, including Morales, saw Caudill and followed behind with lights and sirens on. As the police pursued her, Valenzuela crossed into oncoming traffic to pass cars, skidded into a field, then drove back onto a residential street where she drove at a speed of up to 65 miles per hour. Valenzuela ran through several stop signs and through an intersection with crossing guards as children walking to school scrambled to get out of her way. Valenzuela continued speeding through the residential neighborhood until the car's wheels locked and she crashed head on into a telephone pole.

After Valenzuela hit the telephone pole, the second police car pulled up to the stopped car. Valenzuela threw open the driver's door, hitting the police car, and

attempted to run away. Caudill yelled to Valenzuela to stop. As she tried to run past Caudill, he grabbed her and tackled her to the ground. After Valenzuela was in custody, Morales searched Lopez's car. Inside he found a backpack containing Valenzuela's property. Morales also searched Valenzuela and found a plastic bag containing crystal methamphetamine in a front pocket of her pants. Valenzuela was arrested and taken to the hospital. At the hospital, Morales read Valenzuela her rights under *Miranda v. Arizona* (1966) 384 U.S. 436, which she waived, and interviewed her. When Morales asked Valenzuela what happened, she responded "I panicked. I fucked up." She said she took Lopez's car because she was homeless and "it beat walking."

At trial, Morales testified that Valenzuela told him that she noticed Lopez's running car as she walked down an alley. She denied having pushed Lopez and told Morales that no one was present when she took the car. Morales also testified that Valenzuela told him that she knew she should have stopped when the police began pursuing her but that she couldn't, and that she felt like she had blacked out.

B. *Defense Evidence*

Valenzuela testified that she saw Lopez's running car while she was riding her bicycle in the area. After spotting the car, she rode to the house where Ortiz was watering plants and left her bicycle and other possessions there. Valenzuela testified that she went back on foot and took Lopez's car. She denied that Lopez was present at the time she took the car. Valenzuela stated that she had never seen Lopez prior to their first encounter in court in this case. Valenzuela admitted running from the police and driving recklessly during the pursuit. She said that she fled because she did not want to go back

to jail. Valenzuela also admitted having suffered prior felony convictions for car theft in 2010 and receiving stolen property in 2012. In addition, Valenzuela admitted that she had methamphetamine in her possession at the time she was arrested.

Ortiz testified that he knew Valenzuela through his cousin, who lived near Lopez. He had met Valenzuela two or three times prior to the morning of the incident. That morning, Ortiz was outside his cousin's home watering the lawn. Valenzuela approached Ortiz and asked him if he would watch her belongings. Valenzuela left her bicycle and a bag with Ortiz, and quickly left. Shortly after that, Ortiz heard tires spinning and saw Valenzuela drive past him in Lopez's car. He then saw Lopez yelling hysterically that someone had taken her car. Ortiz did not want to talk to the police because of a recent interaction with the police and because of his prior felony convictions.

DISCUSSION

I

Admission of Prior Felony Conviction

Valenzuela first contends that the trial court erred by admitting her prior felony conviction for reckless evasion. She asserts that without the admission of this evidence, it is reasonably probable that she would not have been convicted of carjacking, and that reversal of the conviction is therefore required.

A

Before trial, the district attorney filed a motion in limine seeking permission to impeach Valenzuela with her prior felony convictions for reckless evasion (Veh. Code, § 2800.2, subd. (a)) and vehicle theft (Veh. Code, §10851, subd. (a)) in 2010, and

receiving stolen property (§ 496, subd. (a)) in 2012. The prosecution's motion stated that impeachment would be limited to the fact of the convictions, and conceded that the underlying facts would not be relevant unless Valenzuela attempted to mislead the jury or minimize the facts of her earlier conviction. The motion stated that "[t]he People intend to admit the defendant's certified prior convictions; or certified RAP sheet . . . to impeach in the event she testifies," and that if the defendant "admits the prior convictions on direct examination, the [P]eople will not inquire regarding these convictions on cross examination." The trial court deferred ruling on the motion until the close of the prosecution's case.

The prosecution also filed a motion in limine to admit Valenzuela's prior convictions for vehicle theft and reckless evasion under Evidence Code section 1101, subdivision (b).[2] The prosecution sought admission of the evidence on this basis to prove (1) Valenzuela's knowledge that she was required to yield to the police and (2) that she had the specific intent to evade the officers during the pursuit. The motion detailed the facts of Valenzuela's prior convictions for vehicle theft and reckless evasion, which stemmed from an incident in 2010 that was factually similar to the instant case.

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2 Evidence Code section 1101, subdivision (a), requires the exclusion of evidence of a "person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) . . . to prove his or her conduct on a specified occasion." (Evid. Code, § 1101, subd. (a).) Subdivision (b) permits "the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident . . . .) other than his or her disposition to commit such an act." (Evid. Code, § 1101, subd. (b).) The final subdivision of the statute, (c), provides: "Nothing in this section affects the admissibility of evidence offered to support or attack the credibility of a witness." (Evid. Code, § 1101, subd. (c).)

Valenzuela opposed the motion, arguing that the evidence was not relevant and that even if it were, its probative value was outweighed by its prejudicial effect. The trial court ruled that the evidence would not be admissible to show that Valenzuela knowingly evaded police and had the specific intent to do so because other evidence—including Morales's testimony that Valenzuela admitted to stealing the vehicle and fleeing from the pursuing police officers, and Caudill's testimony concerning the dangerousness of Valenzuela's driving during the chase—established Valenzuela's specific intent to evade law enforcement officers.

After the prosecution finished presenting its case in chief, the district attorney renewed the motion seeking permission to impeach Valenzuela with her prior conviction for reckless evasion. The prosecutor argued that there was no question that the prior offense was a crime of moral turpitude and, therefore, could properly be admitted to show that Valenzuela had not been truthful in her account of the crime. The prosecutor further argued that the admission of the prior conviction would not be unduly prejudicial because the defense's opening statement and Valenzuela's anticipated testimony established that Valenzuela was not challenging the current charge of reckless evasion. The only issue that was in dispute was the allegation that Valenzuela had used force to take Lopez's car. In response, Valenzuela's counsel argued that the prior conviction should be excluded under Evidence Code section 352. The court stated "I'm going to tentatively find that under [Evidence Code section] 352 there is some prejudice or there could be some prejudice, depending upon what her trial testimony is. I'll leave it open . . . for reconsideration once we hear a portion of her cross-examination or direct exam,

depending upon whether [the evasion charge is] contested or not." The trial court went on to state that it would allow the evidence under Evidence Code section 1101, subdivision (b), only if Valenzuela's testimony brought into question her intent to evade or her knowledge that she was being pursued.

On direct examination, Valenzuela admitted that she had been convicted of car theft in 2010 and receiving stolen property in 2012. During cross-examination, Valenzuela testified that she did not know Ortiz. Directly following this testimony, the prosecutor requested a sidebar conference, which was not reported. Immediately after the sidebar conference, the prosecutor asked Valenzuela whether it was true that she had been convicted of felony reckless evasion of a police officer in 2010. Valenzuela responded "[y]es." No further questions about the conviction were posed.

During closing arguments, both sides asserted that the primary issue at trial was whether Valenzuela had used force when taking Lopez's car. The District Attorney asserted that Lopez's testimony proved this element and Valenzuela's attorney argued that it was Lopez, and not Valenzuela, who was lying. In his rebuttal closing statement, the prosecutor argued that Lopez had no reason to lie, and that photographs taken shortly after the incident showing dirt on Lopez's pants from falling on the ground and Lopez's son crying on the recording of the 911 call, corroborated Lopez's testimony. The prosecutor also told the jury that they could consider Valenzuela's prior felony convictions for car theft and evading police in determining her credibility.