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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GUADALUPE N. CABRERA,

Defendant and Appellant.

B276645

Los Angeles County  
Super. Ct. No. KA095642

APPEAL from an order of the Superior Court of Los Angeles County, Patricia Nieto, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell and Nicholas J. Webster, Deputy Attorneys General, for Plaintiff and Respondent.

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## **INTRODUCTION**

Defendant Guadalupe N. Cabrera pled no contest to a felony, receiving stolen property, after the police recovered from her home numerous electronic items, including several computers, that were stolen from a local school. After California voters passed the Safe Neighborhoods and Schools Act, commonly known as Proposition 47, defendant petitioned the trial court to reduce her conviction to a misdemeanor. Following a hearing, the court denied defendant's petition, finding the total value of the stolen property in her possession exceeded \$950. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **1. Defendant's Receiving Stolen Property Conviction**

In July 2011, someone stole more than 40 electronic items, including several laptop computers, computer towers, projectors, and speakers, from Cogswell Elementary School in El Monte. Around August 2011, defendant's brother and roommate, Anthony Cabrera, received several of the stolen items from one of his friends. In September 2011, El Monte Police Department officers traced one of the stolen computers to defendant's home after she and Anthony used it to access the internet.

Three officers went to defendant's home to investigate the theft of the stolen items. Defendant initially refused to allow the officers to enter her home, but retrieved for them a Dell laptop that had been stolen from the school. When the officers told defendant they were looking for a Hewlett Packard (HP), and not a Dell, computer, she told them there was another computer in her kitchen. Defendant then signed a consent-to-search form, allowing the officers to enter the kitchen to retrieve the other computer. Inside the kitchen, the officers found an HP computer with a keyboard and mouse attached. As the officers left the

kitchen, they saw an ELMO projector that had been reported stolen from the school sitting in plain sight on a table in the living room. The officers retrieved the HP computer, keyboard, mouse, and projector. Defendant denied that any other stolen items were inside her home.

After leaving defendant's home, the police obtained a warrant to search the rest of the home for additional items that were stolen from the school. When they executed the search warrant, the officers found the following items that had been reported stolen: two Sony speakers, a Linksys internet router, a scanner, a computer keyboard, a computer mouse, two sets of headphones, and two Dell computer towers. All the items were found in the living room, where Anthony slept. The speakers were found inside an armoire that had Anthony's name written on it, and the other items were found inside a cardboard box at the foot of Anthony's bed.<sup>1</sup>

The officers arrested defendant and Anthony on suspicion of receiving stolen property. During a jailhouse interview, Anthony told the police that his friend gave him the electronic

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<sup>1</sup> The value of each stolen item found in defendant's home is not clear from the record. An "Original Crime Report" generated shortly after the burglary of the school was reported lists the following values for some of the stolen items: 20 Dell laptop computers valued at \$500 each, an ELMO projector valued at \$300, and two speakers valued at \$600 each. The report lists one computer tower of unknown make valued at \$300 and six sets of "HP SCREEN W/KEYBOARD" valued at \$1,000 each. The report does not specify whether the HP screen and keyboard sets also included HP computer towers, and there is nothing in the record that expressly states a value for the HP computer tower, the keyboard, the mouse, the scanner, the two pairs of headphones, and the internet router recovered from defendant's home. Defendant does not dispute, however, that the total value of the stolen property recovered from her home exceeded \$950.

items to “hold on” to about a month and a half before the officers searched defendant’s home. Anthony believed the items had been stolen when he received them. He stored most of the items in the living room, and he set up the HP computer in the kitchen for him and defendant to use.

After she was arrested, defendant told the police that she first saw the HP desktop computer, the Dell laptop, the projector, and a cardboard box containing other electronic items inside her living room after she returned from school one day. When she asked Anthony where the items came from, he told her that his friend had stolen them from a school. Defendant did not intend to use the stolen items at first because she did not want to leave her fingerprints on them. However, she later decided to use the Dell laptop and the HP desktop computers to access Facebook, her school’s website, and her bank account. Defendant told the police she did not return the computers to the school because she did not want to be accused of stealing them.

The People charged defendant with one count of felony receiving stolen property (Pen. Code,<sup>2</sup> § 496, subd. (a)), to which she pled no contest in October 2011. The court suspended imposition of defendant’s sentence and placed her on three years of formal probation.

## **2. Defendant’s Proposition 47 Petition**

On April 12, 2016, defendant filed a petition under Proposition 47 seeking to reduce her conviction from a felony to a misdemeanor. On May 10, 2016, the court commenced a hearing on defendant’s petition. Defense counsel argued defendant had possessed only the two computers she admitted she had used when the police spoke to her at her home and at the jail shortly

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<sup>2</sup> All undesignated statutory references are to the Penal Code.

after she was arrested. Counsel stated the police reports from defendant's receiving stolen property conviction established that one of the computers was worth \$500 but that there was nothing in the reports that established the value of the other computer. The court continued the hearing on defendant's petition to allow both sides to research the value of the other computer.

On May 16, 2016, the court resumed the hearing on defendant's petition. Defense counsel argued the court should reduce defendant's conviction to a misdemeanor because the total value of the property at issue did not exceed \$950. Counsel again asserted defendant had possessed only the two computers she admitted she had used during the police's investigation. Counsel claimed the police reports from that investigation established the two computers were valued at \$500 and \$300 each.<sup>3</sup> The court denied defendant's petition, finding defendant actually or constructively possessed all of the stolen items found in her home, the total value of which exceeded \$950.

Defendant filed a timely notice of appeal.

## DISCUSSION

### 1. **Proposition 47 and Standard of Review**

In November 2014, California voters enacted Proposition 47, making certain drug and theft-related offenses misdemeanors, unless the defendants were otherwise ineligible. (§ 1170.18, subds.(a)–(c).) “These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*People v. Rivera*

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<sup>3</sup> Counsel did not identify what value she believed should be assigned to each computer, and she did not specify from which part of the police reports she determined one of the computers was worth \$300.

(2015) 233 Cal.App.4th 1085, 1091.) The statute also contains a resentencing provision, whereby persons “ ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47.” (*Id.* at p. 1092.) “A person who satisfies the statutory criteria [in section 1170.18] shall have his or her sentence recalled and be ‘resentenced to a misdemeanor . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.’ [Citation.]” (*People v. Lynall* (2015) 233 Cal.App.4th 1102, 1109.)

“The ultimate burden of proving section 1170.18 eligibility lies with the petitioner.” (*People v. Romanowski* (2017) 2 Cal.5th 903, 916.) On appeal from an order denying a Proposition 47 petition, we review the trial court's legal conclusions de novo and its findings of fact for substantial evidence. (*People v. Perkins* (2016) 244 Cal.App.4th 129, 136.)

## **2. The trial court properly denied defendant’s Proposition 47 petition.**

“[T]o sustain a conviction for receiving stolen property, the prosecution must prove (1) the property was stolen; (2) the defendant knew the property was stolen; and, (3) the defendant had possession of the stolen property.” (*People v. Land* (1994) 30 Cal.App.4th 220, 223.) With the passage of Proposition 47, section 496 now provides that “if the value of the [stolen] property does not exceed nine hundred fifty dollars (\$950), the offense shall be a misdemeanor.” (§ 496, subd. (a); see also *People v. Shabazz* (2015) 237 Cal.App.4th 303, 308.)

Defendant does not dispute that the first two elements of the crime of receiving stolen property are satisfied in this case with respect to all of the property recovered from inside her

home. Instead, she contends the evidence establishes she possessed only the two computers she admitted to the police she had used, and the court therefore erred in finding she also possessed the other stolen electronic items found inside her home. Specifically, she argues she could not have constructively possessed the items recovered from her living room because they were under Anthony's exclusive control. According to defendant, because the combined value of the two computers she admitted she had used was only \$800, the court erred in finding she was ineligible to have her receiving stolen property conviction reduced from a felony to a misdemeanor. As we explain, the court properly denied defendant's Proposition 47 petition.

To establish the third element of the crime of receiving stolen property, "[t]he requisite possession of the stolen property may be either actual or constructive, and need not be exclusive." (*In re Anthony J.* (2004) 117 Cal.App.4th 718, 728.) Physical possession also is not required, "as it is sufficient if the defendant acquires a measure of control or dominion over the stolen property. However, mere presence near the stolen property in and of itself is insufficient evidence of possession to sustain a conviction for receiving stolen property." (*Ibid.*)

Here, the court properly found defendant actually or constructively possessed all of the stolen property recovered from her home. As noted, defendant admitted she used the Dell laptop computer, the HP desktop computer, the keyboard, and the mouse. Thus, there is no dispute she actually possessed those items.

The evidence also supports an inference that defendant constructively possessed the other items found inside her home. While she was in custody, defendant told the police she first saw the Dell and HP computers as well as the video projector and a cardboard box containing other electronic items in her living

room after she came home from school one day. When defendant asked her brother where the items came from, he told her that they had been stolen from the local elementary school. Despite knowing the items were stolen, defendant did not report the theft, and took no steps to remove the stolen items from her home. The fact that defendant was aware that the stolen items were being stored in her living room was sufficient to support a finding that she constructively possessed those items. (See *In re Richard T.* (1978) 79 Cal.App.3d 382, 388 “[physical] possession of the property in the accused is not necessary to constitute receipt of stolen goods if they were concealed on [her] premises by others with [her] knowledge or consent”), internal quotations and citations omitted.)

The evidence that the living room also served as Anthony’s bedroom does not establish that defendant lacked any measure of control or dominion over the property found in that room. In fact, the evidence supports the opposite inference—that is, that defendant was able to use all of the items stored in the living room. Defendant admitted to the police that she decided to use the Dell laptop computer, which, like all of the items aside from the HP computer, had been stored in the living room. There is nothing in the record demonstrating Anthony had restricted defendant from accessing the other property stored in that room. Because the parties do not dispute that the combined value of all of the stolen property recovered from defendant’s home exceeded \$950, the court properly denied defendant’s Proposition 47 petition.



## **DISPOSITION**

The May 16, 2016 order denying defendant's Proposition 47 petition is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

CURREY, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.