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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN GLOVER,

Defendant and Appellant.

B267239

(Los Angeles County  
Super. Ct. No. NA094017)

APPEAL from an order of the Superior Court of Los Angeles County. Laura Laesecke, Judge. Reversed and remanded.

Stephen M. Vasil, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Kathleen Kenealy, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Mary Sanchez and Paul S. Thies, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Brian Glover appeals from the denial of his petition for relief under Proposition 47, the Safe Neighborhoods and Schools Act. In 2012, Glover stole a laptop computer from an employee's office within a furniture store. He pled no contest to second degree burglary. After completing his sentence, Glover petitioned to have the conviction designated as a misdemeanor under Penal Code section 459.5 (shoplifting), which was enacted pursuant to Proposition 47.<sup>1</sup> The trial court denied the petition on the ground section 459.5 did not apply because Glover's criminal conduct did not amount to shoplifting. We conclude Glover's criminal conduct met the elements of section 459.5 and reverse.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On November 20, 2012, Glover entered Ward's Furniture store. While the store's owner was assisting a customer in the back of store, Glover took a laptop from the store office. Police officers subsequently found Glover sitting next to a broken-down vehicle at a nearby gas station. He admitted to stealing the laptop in hopes he could sell it and use the money to repair his vehicle. On November 30, 2012, he pled no contest to second degree burglary (§ 459), and was ordered to serve three years in county jail.

On November 4, 2014, voters enacted Proposition 47, which reduced to misdemeanors certain possessory drug offenses and thefts of property valued at \$950 or less. (See *People v. Hall* (2016) 247 Cal.App.4th 1255, 1260.) Proposition 47 also created a new resentencing provision, section 1170.18, under which persons

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<sup>1</sup> All further undesignated statutory references are to the Penal Code.

previously convicted of felonies that were reclassified as misdemeanors, who have completed their sentences, may petition to have their felony convictions designated as misdemeanors. (§ 1170.18, subd. (f).)

In June 2015, Glover filed a section 1170.18 petition seeking to have his burglary conviction designated a misdemeanor pursuant to the newly-enacted section 459.5. Section 459.5 redefined as misdemeanors certain burglaries that fit the definition of “shoplifting”—that is, “entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$ 950).” (§ 459.5, subd. (a).)

The trial court denied the petition on the ground that Glover’s activity did not fall within the parameters of section 459.5 because the laptop was stolen from the store office. Glover timely appealed.

### DISCUSSION

The issue here is the proper interpretation of section 459.5 and we apply the familiar principles of both statutory and initiative interpretation, which are identical. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1099.) “ ‘The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.]’ ” [Citation.] In the case of a provision adopted by the voters, ‘their intent governs.’ [Citation.] [¶] ‘In determining such intent, we begin with the language of the statute itself.’ [Citation.] We look first to the words the voters used, giving them their usual and ordinary meaning. ‘If there is no ambiguity in the language of the statute, ‘then . . . the plain

meaning of the language governs.’ ” [Citation.] “But when the statutory language is ambiguous, ‘the court may examine the context in which the language appears, adopting the construction that best harmonizes the statute internally and with related statutes.’ ” [Citation.] [¶] In construing a statute, we must also consider “ ‘the object to be achieved and the evil to be prevented by the legislation.’ ” ’ ” (*Id.* at pp. 1099-1100.)

According to respondent, the voters intended section 459.5 to incorporate the “common understanding” of shoplifting, that is, entry into a retail establishment to steal displayed merchandise.<sup>2</sup> Glover argues this interpretation is too narrow, and his theft of the laptop meets all the elements set forth by section 459.5.

Although the lay person might understand “shoplifting” to mean entry into a retail store during regular business hours with the intent to steal displayed merchandise, that is not how the voters defined “shoplifting” in section 459.5. Whatever the common definition of shoplifting, the voters defined “shoplifting” in section 459.5 to mean entry into a commercial establishment during regular business hours with the intent to commit larceny where the property taken or intended to be taken is not worth more than \$950, not—in respondent’s proposed revision of the statute—the entry into a retail establishment, while the establishment is open during regular business hours, with the intent to steal openly-displayed merchandise valuing not more

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<sup>2</sup> This issue is currently pending before the Supreme Court. (See, e.g., *People v. Vargas* (2016) 243 Cal.App.4th 1416, review granted March 30, 2016, S232673, authored by Justice Flier of this division.) The Supreme Court has granted review in virtually every published and nonpublished opinion construing this section.

than \$950. (See *People v. Fusting* (2016) 1 Cal.App.5th 404, 410 [“The statute does not contain any definition of shoplifting other than setting forth the elements of the offense in the specific language of section 459.5.”].) Had the voters intended to adopt the common understanding of shoplifting, we should be able to find some indication of that in the text. We have not. Instead, we would have to rewrite the statute to accept respondent’s interpretation, which is beyond both our charge and our power as a judicial body.

Here, Glover’s criminal conduct involved the entry into a store with the intent to steal property while the store was open for business.<sup>3</sup> Accordingly, Glover’s criminal conduct fell within the definition of “shoplifting” to the extent it met section 459.5’s elements of (1) entry into a commercial establishment, (2) during regular business hours, and (3) with the intent to commit larceny. However, remand is required because the trial court did not decide whether Glover’s theft involved property worth \$950 or less.

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<sup>3</sup> Respondent agrees the evidence established Glover formed the intent to commit larceny prior to entering the store.

### **DISPOSITION**

The order is reversed and the matter remanded for the trial court to determine whether the value of the property involved in Glover's conviction pursuant to section 459 did not exceed \$950.

SORTINO, J.\*

WE CONCUR:

FLIER, Acting P. J.

GRIMES, 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.