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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN M. RINI,

Defendant and Appellant.

B232722

(Los Angeles County  
Super. Ct. No. MA050533)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Charles A. Chung, Judge. Affirmed as modified.

California Appellate Project, Jonathan Steiner, Executive Director, Ann Krausz,  
under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and  
Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

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John Rini was convicted of commercial burglary and grand theft. On appeal, Rini argues—and the government concedes—that his conviction for grand theft should be reduced to petty theft because a 2010 amendment of the grand theft statute increased the minimum value of the stolen property from \$400 to \$950. (Pen. Code, § 487.) We agree that the amendment operates retroactively. Because the evidence does not show that appellant stole \$950 worth of property, we reduce appellant’s conviction on count 2 to petty theft. In all other respects, we affirm the judgment.

### **FACTS**

Bonnie Johnston and her husband own 60 acres on 60th Street East in Lancaster. The Johnstons’ land contains a boarded-up house where they lived until it was irreparably damaged by a flood. They now live in a new home on their land. Since the flood, the Johnstons use their old home and a nearby machine shed to store furniture, tools and farm implements.

The Johnstons’ neighbor Andres Angeles lives about one-quarter of a mile away from the Johnstons’ shed. On March 19, 2010, Angeles saw a van pull up. Appellant (the passenger) got out and opened up mail boxes. This was the tenth time Angeles had seen the van. One day earlier, Angeles saw appellant and another man loading metal objects and shelving into the van from the Johnstons’ shed. Appellant was also inside of the Johnstons’ boarded-up house. Angeles chased the van as it drove away and confronted its occupants: appellant denied stealing mail, and maintained that the Johnstons’ house was abandoned. Angeles recorded the van’s license plate number and notified the Johnstons about the activities he witnessed.

The Johnstons, who were on vacation, curtailed their trip and returned home. They observed that the bathroom window of the old house was unboarded and broken; it was intact when they left on vacation. Mrs. Johnston called the sheriff’s department. She reported that a stereo cabinet worth \$100 was missing from the old house. Missing from the machine shed were a tool box; a cabinet containing welding rods; a metal chain and hook for a motor hoist; a tiered lazy susan containing pipe fittings; railroad ties; and

about 25 sheets of corrugated steel. The Johnstons do not know appellant and did not give him permission to enter their property or take items from it.

Angeles was asked in court about the value of the stolen items. He testified that railroad ties are worth \$20 to \$40 each, and sheet metal is worth \$20 to \$40 per sheet, depending on size. Defense counsel objected that this testimony lacked foundation.

Sheriff's Deputy Jeffrey Bishop investigated the reported theft at the Johnstons' property. On March 23, 2010, Bishop traced the license plate number recorded by Angeles to a white van parked at a residence in Lancaster. Appellant was at the residence. He told Bishop that he and a man named Reagan used the van on March 19, in the area of the Johnstons' property, while scrapping for metal to recycle. They received about \$80 for the recycled items. Bishop conducted a photographic lineup with the Johnstons' neighbor Angeles, showing him 18 photographs. Angeles identified appellant as one of the occupants of the vehicle he saw at the Johnstons' property. Angeles confirmed in court that he identified appellant's photograph from the lineup.

Appellant testified in his own defense. He stated that he went scrapping with an acquaintance named Reagan "in the middle of the desert" on one occasion, in a white van on the east side of the Antelope Valley, but is not sure if it was 60th Street East. He picked up some sheet metal that was buried in the dirt, not in a shed or building, and took it to a scrap yard. Appellant received \$25 as his share. He denied speaking to Angeles. He told Deputy Bishop that he collected and sold scrap metal from the desert.

### **PROCEDURAL HISTORY**

Appellant pleaded not guilty to charges of second degree commercial burglary and grand theft of personal property. (Pen. Code, §§ 459, 487.) A jury convicted appellant of both charges on March 16, 2011. The trial court placed appellant on three years' formal probation, on condition that he serve one year in county jail.

### **DISCUSSION**

On January 1, 2011, an amendment to Penal Code section 487 took effect, altering the definition of grand theft. Before the amendment, grand theft occurred if someone took property valued at more than \$400. Under the new law, the value of the purloined

property must exceed \$950. The grand theft charges against appellant were filed on December 16, 2010, two weeks before the amendment took effect. Appellant contends that he is entitled to benefit from the amendment, so that the prosecution had to prove he stole personal property worth more than \$950. The Attorney General agrees with appellant.

The Legislature may amend a criminal statute to diminish punishment when, in its judgment, a lesser penalty “is sufficient to meet the legitimate ends of the criminal law.” (*In re Estrada* (1965) 63 Cal.2d 740, 745.) There is a “reasonable presumption that a legislative act mitigating the punishment for a particular criminal offense is intended to apply to all nonfinal judgments.” (*People v. Brown* (2012) 54 Cal.4th 314, 324.) Thus, the courts retroactively apply amendments that reduce punishment, absent indicia of a contrary legislative intent. (*People v. Nasalga* (1996) 12 Cal.4th 784, 793.) For example, an amendment increasing the dollar loss required for imposition of a sentence enhancement applies to cases in which the conviction is not final. (*Id.* at p. 787.) An amendment is retroactive if it increases the penal threshold for “insufficient funds” checks from \$50 to \$100. (*In re Kirk* (1965) 63 Cal.2d 761, 762-763.)

A Penal Code amendment that by its own terms “shall be applied prospectively” does not apply to a pending criminal case. (*People v. Floyd* (2003) 31 Cal.4th 179, 182-183.) The 2010 amendment to Penal Code section 487 does not contain any indicia that the Legislature intended its provisions to apply prospectively. As a result, the increased threshold of \$950 for grand theft applies to appellant’s case, because he was tried, convicted and sentenced after the amendment took effect.

The Attorney General concedes the insufficiency of evidence showing that the value of the property appellant took from the Johnstons exceeded \$950. A theft that does not qualify as “grand” (because the value of the property taken is too low) qualifies instead as “petty” theft. (Pen. Code, § 486; *People v. Cuellar* (2008) 165 Cal.App.4th 833, 837.) Essential to the commission of petty theft is that the stolen property have some intrinsic value, however small. (*People v. Cuellar, supra*, 165 Cal.App.4th at pp. 838-839 [fictitious check has intrinsic value “by virtue of the paper it was printed on.”])

Accord: *People v. Caridis* (1915) 29 Cal.App. 166, 169 [stolen ticket for an illegal lottery had some slight intrinsic value as a piece of paper, sufficient to show petty larceny].) The property taken from the Johnstons—a stereo cabinet, a tool box, a cabinet with welding rods, a motor hoist, a lazy susan, railroad ties, and corrugated steel sheets—had intrinsic value. Indeed, appellant told the investigating officer that he received \$80 from the sale of that property, and testified that his share was \$25.

An appellate court may modify a judgment to reduce the degree of an offense when there is insufficient evidence to support the higher offense. (Pen. Code, § 1260; *People v. Navarro* (2007) 40 Cal.4th 668, 677-678; *People v. Bassett* (1968) 69 Cal.2d 122, 137-138.) Specifically, if the evidence does not support a conviction for grand theft, the appellate court may reduce the offense to petty theft. (*People v. Simpson* (1938) 26 Cal.App.2d 223, 229-230.) There is sufficient evidence in this case to support a finding of petty theft. No resentencing is required because the sentence on count 2 was stayed pursuant to Penal Code section 654.

### **DISPOSITION**

The judgment is modified to reflect a conviction for petty theft on count 2. In all other respects, the judgment is affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.