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2014 IL App (3d) 120831-U

Order filed April 4, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 13th Judicial Circuit,
)	La Salle County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-12-0831
v.)	Circuit No. 11-CF-397
)	
CHANCE T. BROWN,)	Honorable
)	H. Chris Ryan, Jr.,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for unlawful use of a debit card was based on an offense which was in existence at the time he committed the crime.

¶ 2 Following a bench trial, defendant, Chance T. Brown, was convicted of unlawful use of a debit card (720 ILCS 250/8 (West 2010)) and forgery (720 ILCS 5/17-3(a)(1) (West 2010)). He was sentenced to concurrent terms of three years' imprisonment. Defendant appeals, arguing that his conviction for unlawful use of a debit card must be reversed because he was prosecuted under a statute which was not in effect at the time the offense was committed. We affirm.

¶ 3

FACTS

¶ 4

On August 16, 2011, defendant was charged by indictment with unlawful use of a debit card (count I) (720 ILCS 250/8 (West 2010)) and forgery (count II) (720 ILCS 5/17-3(a)(1) (West 2010)). Count I alleged that on July 12, 2011, defendant, with the intent to defraud the issuer, Centru Bank, obtained goods, namely gasoline, having a total value not exceeding \$300, by representing, without the consent of the cardholder, that he was the holder of the Centru Bank debit card issued to Lauren Rothrock.

¶ 5

On April 20, 2012, the cause proceeded to a bench trial. The evidence indicated that defendant used Rothrock's debit card to purchase \$40.01 of gasoline and signed the debit card slip as Carl Riffin. Rothrock testified that she lost her debit card and did not give defendant permission to use it. The trial court found defendant guilty of both counts.

¶ 6

On September 28, 2012, the trial court sentenced defendant to concurrent terms of three years' imprisonment. Defendant appeals.

¶ 7

ANALYSIS

¶ 8

Defendant argues for the first time on appeal that his conviction for unlawful use of a debit card must be reversed because the statute under which he was prosecuted was no longer in effect at the time he committed the offense and there was also no substantially similar statute in effect at that time.

¶ 9

Defendant admits that he forfeited this issue by failing to raise it with the trial court, but argues that the plain error doctrine permits review of this issue because the error affected his substantial rights. However, before addressing whether defendant's claim satisfies the plain error doctrine, we must first determine whether a clear or obvious error occurred. *People v. Thompson*, 238 Ill. 2d 598 (2010).

¶ 10 The sufficiency of the charging instrument presents a question of law which we review *de novo*. *People v. Rowell*, 229 Ill. 2d 82 (2008). An indictment, attacked for the first time on appeal, is sufficient where it "apprised the accused of the precise offense charged with sufficient specificity to prepare his defense and allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct." *People v. Gilmore*, 63 Ill. 2d 23, 29 (1976). Only where defendant demonstrates prejudice will the mere fact that an indictment containing an incorrect citation to the criminal statute be grounds for reversal. *People v. Melton*, 282 Ill. App. 3d 408 (1996).

¶ 11 In the present case, count I of the indictment charged defendant with unlawful use of a debit card, a Class 4 felony, under section 8 of the Illinois Credit Card and Debit Card Act (Act). Section 8 provides:

"250/8. Prohibited uses; penalties; presumption of knowledge of revocation

§ 8. A person who, with intent to defraud either the issuer, or a person providing money, goods, property, services or anything else of value, or any other person, (i) uses, for the purpose of obtaining money, goods, property, services or anything else of value a credit card or debit card obtained or retained in violation of this Act or without the cardholder's consent, or a credit card or debit card which he knows is counterfeited, or forged, or expired, or revoked *** is guilty of a Class 4 felony if the value of all money, goods, property, services and other things of value obtained or sought in violation of this Section does not exceed \$300 in any 6-month period[.]" 720 ILCS 250/8 (West 2010).

¶ 12 Effective July 1, 2011, Public Act 96-1551 repealed section 8 of the Act. Since defendant's offense was committed on July 12, 2011, he could not have been prosecuted under the repealed statute. However, the same public act that repealed section 8 also added section 17-36 of the Criminal Code of 1961 (Code), which provides:

"5/17-36. Use of counterfeited, forged, expired, revoked, or unissued credit or debit card

§ 17-36. Use of counterfeited, forged, expired, revoked, or unissued credit or debit card. A person who, with intent to defraud either the issuer, or a person providing an item or items of value, or any other person, (i) uses, with the intent to obtain an item or items of value, a credit card or debit card obtained or retained in violation of this Subdivision 25 or without the cardholder's consent, or a credit card or debit card which he or she knows is counterfeited, or forged, or expired, or revoked *** is guilty of a Class 4 felony if the value of all items of value obtained or sought in violation of this Section does not exceed \$300 in any 6-month period[.]" 720 ILCS 5/17-36 (West 2010) (added by Public Act 96-1551 (eff. July 1, 2011)).

¶ 13 Defendant argues that his conviction should be reversed because he was charged with a crime that did not exist when he committed the offense. Defendant, however, overlooks the fact that section 17-36 contains nearly identical statutory language as section 8 and was in effect at the time defendant committed the offense. See *Melton*, 282 Ill. App. 3d 408 (finding that although statute cited in charging documents was no longer in effect, the criminal offense was still embodied in the Code, and thus, defendants' claim that they were convicted of a nonexistent crime was without merit). Section 17-36 merely (1) made changes to the title, (2) replaced "money, goods, property, services or anything else of value" with "an item or items of value," and (3) added a reference to Subdivision 25. Compare 720 ILCS 250/8 (West 2010) with 720 ILCS 5/17-36 (West 2010).

¶ 14 Despite the reorganization of the instant offense under section 17-36, defendant maintains that this new statute is not substantially similar to the offense under section 8, claiming that the title of section 17-36 reveals that it addresses only the use of counterfeited, forged, expired,

revoked, or unissued cards. See 720 ILCS 5/17-36 (West 2010). We are not persuaded by defendant's undue emphasis on the title in order to distort the meaning of the statute. Headings and titles are of use only when they shed light on some ambiguous word or phrase within the text; however, they cannot undo or limit the plain meaning of the text. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414 (2002); *Brotherhood of R.R. Trainmen v. Baltimore & O.R. Co.*, 331 U.S. 519, 528 (1947) ("[H]eadings and titles are not meant to take the place of the detailed provisions of the text.") Here, defendant does not argue that the text of section 17-36 is ambiguous, yet he claims that his conviction cannot stand because his use of the debit card does not meet the descriptions encompassed in the title of section 17-36. Nevertheless, the plain language of section 17-36 not only criminalizes the use of counterfeited debit cards and the like, but also the use of debit cards "without the cardholder's consent," which is the conduct that defendant was found guilty of committing. 720 ILCS 5/17-36 (West 2010).

¶ 15 Although defendant claims that the new statute did not create substantially the same offense as the former version, he admits that if it were substantially similar, the State's erroneous citation to the former statute would be a mere formal defect and would not warrant relief. We conclude that the former version of the unlawful use of a debit card statute was succeeded by section 17-36, which created a substantially similar offense and was in effect at the time defendant committed the offense. Therefore, we find no prejudicial error in the State's incorrect citation in the indictment. Since we have found no error in defendant's conviction, the plain error exception does not apply, and we must therefore honor defendant's forfeiture of this issue. See *Thompson*, 238 Ill. 2d 598.

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, the judgment of the circuit court of La Salle County is affirmed.

¶ 18

Affirmed.