ADVANCE SHEET HEADNOTE
September 8, 2025

2025 CO 52

No. 23SC942, *People v. Hudson*—Criminal Possession of a Financial Device—Statutory Construction.

The supreme court granted certiorari to decide whether the division below erred in holding that, to prove criminal possession of a financial device, the prosecution must separately prove that a statutorily enumerated financial device (here, a debit card) is capable of use at the time of possession.

The court now concludes, contrary to the division majority's determination, that the inclusion of debit cards, without qualification, in the definition of a financial device set forth in section 18-5-901(6)(a), C.R.S. (2024), demonstrates, without more, that a debit card is a financial device for purposes of section 18-5-901(6). Accordingly, the court further concludes that sections 18-5-903(1), C.R.S. (2024), and 18-5-901(6) do not require that the prosecution prove that a financial device was capable of use at the time of possession to support a conviction for criminal possession of a financial device.

The court therefore reverses the judgment of the division below.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 52

Supreme Court Case No. 23SC942
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 21CA749

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Garry Allen Hudson.

Judgment Reversed
en banc
September 8, 2025

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JUSTICE GABRIEL delivered the Opinion of the Court, in which **JUSTICE BOATRIGHT**, **JUSTICE HART**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.

CHIEF JUSTICE MÁRQUEZ, joined by **JUSTICE HOOD**, dissented.

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 We granted certiorari to decide whether the division below erred in holding that, to prove criminal possession of a financial device, the prosecution must separately prove that a statutorily enumerated financial device is capable of use at the time of possession. A majority of the division concluded, as pertinent here, that the prosecution had presented insufficient evidence to show that defendant Garry Allen Hudson unlawfully possessed a financial device, namely, a debit card in someone else's name, because the prosecution did not prove beyond a reasonable doubt that the device could be used to obtain a thing of value, as the majority believed to be required under section 18-5-903(1), C.R.S. (2024), and section 18-5-901(6), C.R.S. (2024). *People v. Hudson*, No. 21CA749, ¶¶ 54, 61–63 (Nov. 9, 2023). The division thus vacated Hudson's conviction and sentence for criminal possession of a financial device. *Id.* at ¶¶ 54, 63.

¶2 We now conclude, contrary to the division majority's determination, that the inclusion of debit cards, without qualification, in section 18-5-901(6)(a)'s definition of a financial device demonstrates, without more, that a debit card is a financial device for purposes of section 18-5-901(6). Accordingly, we further conclude that sections 18-5-903(1) and 18-5-901(6) do not require that the prosecution prove that a financial device was capable of use at the time of possession to support a conviction for criminal possession of a financial device.

¶3 We therefore reverse the division's judgment.

I. Facts and Procedural History

¶4 When police officers contacted Hudson in a motel room, they found, among other things, a debit card in someone else's name. Hudson denied knowing this person. Officers subsequently arrested Hudson, and during a search incident to the arrest, they found another debit card in Hudson's back pocket, this one in a different person's name.

¶5 Hudson was later charged with criminal possession of two or more financial devices, along with other counts not pertinent here.

¶6 The matter proceeded to trial, and at trial, a detective with the Lakewood Police Department's economic crimes unit testified that she was unable to contact either person whose names were on the debit cards and that she did not know whether Hudson knew either of them. The detective further testified that she did not know whether either card was active or capable of being used or whether there was any money in either account. The detective testified, however, that to her knowledge, at least one of the cards had not been reported stolen in Colorado.

¶7 The jury ultimately convicted Hudson of, among other things, one count of criminal possession of a financial device. The verdict form indicated the jury's finding that Hudson did not possess multiple devices, but the form did not indicate which of the two debit cards the jury relied on to find Hudson guilty. The

trial court subsequently sentenced Hudson on this count to eighteen months in the Department of Corrections.

¶8 Hudson then appealed, arguing, as pertinent here, that the prosecution was required to prove that the financial device at issue could be used to obtain a thing of value and that the prosecution had presented insufficient evidence to establish this fact. *Hudson*, ¶ 54.

¶9 In a divided, unpublished opinion, a majority of the division below agreed with Hudson and vacated his conviction and sentence for criminal possession of a financial device. *Id.* at ¶¶ 54, 61–63. In support of this ruling, the majority observed that section 18-5-903(1), which establishes the crime of criminal possession of a financial device, when read together with the definition of a "financial device" set forth in section 18-5-901(6), required the prosecution to prove that Hudson possessed a financial device that could be used to obtain a thing of value. *Hudson*, ¶ 61. Moreover, according to the majority, the prosecution was required to prove that the debit card at issue had to be capable of use "at the time of possession." *Id.* In so concluding, the majority was unpersuaded by the People's contention that because the definition of a financial device expressly includes debit cards, simply possessing a debit card was sufficient. *Id.* at ¶ 62. In the majority's view, such an assertion was contrary both to the language of section

18-5-903(1) and to a prior division's interpretation of that statute in *People v. Reed*, 2013 COA 113, ¶ 63, 338 P.3d 364, 375.

¶10 Judge Kuhn dissented in pertinent part, concluding, contrary to the majority's opinion, that the prosecution was not required to prove separately that the debit card was capable of use at the time of possession. *Id.* at ¶ 81 (Kuhn, J., concurring in part and dissenting in part). Judge Kuhn began by noting that section 18-5-901(6) starts by defining a "financial device" as "'any instrument or device that can be used to obtain . . . any . . . thing of value'" and ends with the phrase "including but not limited to," followed by a list of enumerated items, one of which is a debit card. *Id.* at ¶ 85 (omissions in original; quoting § 18-5-901(6)). Judge Kuhn observed that the majority's analysis interpreted the list of enumerated items as "possible examples of financial devices." *Id.* at ¶ 86. Such a construction, however, required the enumerated list "to be conditionally included within the definition of financial device." *Id.* Thus, a debit card would constitute a financial device only if it could be used to obtain a thing of value at the time of possession. *Id.* In Judge Kuhn's view, such a reading would either render the enumerated list superfluous or require a court to read words into the statute. *Id.* at ¶ 87. Accordingly, Judge Kuhn opined that the better reading of the statute was to construe the items in the list as items that the legislature had determined satisfy the definition of a financial device. *Id.* at ¶ 88. Judge Kuhn therefore concluded

that a debit card, which is included in the list, is a financial device regardless of whether the prosecution proves that it is capable of obtaining a thing of value at the time it is possessed. *Id.*

¶11 The People petitioned and Hudson cross-petitioned for certiorari review. We granted the People's petition and denied Hudson's cross-petition.

II. Analysis

¶12 We begin by addressing the applicable standard of review and principles of statutory construction. We then address sections 18-5-903(1) and 18-5-901(6) to determine whether the statutory language requires the prosecution to prove that a financial device is capable of being used at the time of possession. We conclude that it does not.

A. Standard of Review and Principles of Statutory Construction

¶13 We review questions of statutory construction de novo. *McBride v. People*, 2022 CO 30, ¶ 22, 511 P.3d 613, 617.

¶14 In interpreting statutes, we seek to ascertain and give effect to the legislature's intent. *Id.* at ¶ 23, 511 P.3d at 617. In doing so, we consider the statutory language, and we give words and phrases their plain and ordinary meanings. *Id.* We read these words and phrases in context, construing them according to the rules of grammar and common usage. *Id.* We also read the statutory scheme as a whole; we give consistent, harmonious, and sensible effect

to all of its parts; and we avoid constructions that would render any words or phrases superfluous or that would lead to illogical or absurd results. *Id.* And we do not add words to a statute or subtract words from it. *Id.*

¶15 If the statutory language is unambiguous, then we apply it as written, and we need not resort to other rules of statutory construction. *Id.* If, however, a statute is ambiguous, then we may consider other aids to statutory construction, including the consequences of a given construction, the end to be achieved by the statute, and the statute's legislative history. *People v. Iannicelli*, 2019 CO 80, ¶ 21, 449 P.3d 387, 391–92. A statute is ambiguous if it is reasonably susceptible of multiple interpretations. *Id.*

B. Sections 18-5-903(1) and 18-5-901(6)

¶16 Section 18-5-903(1) provides:

> A person commits criminal possession of a financial device if the person has in his or her possession or under his or her control any financial device that the person knows, or reasonably should know, to be lost, stolen, or delivered under mistake as to the identity or address of the account holder.

¶17 A "[f]inancial device," in turn, is defined, in pertinent part, as "any instrument or device that can be used to obtain cash, credit, property, services, or any other thing of value or to make financial payments, including but not limited to . . . [a] credit card, banking card, *debit card*, electronic fund transfer card, or guaranteed check card . . . ." § 18-5-901(6)(a) (emphasis added).

¶18 As this language makes clear, and as Judge Kuhn observed below, *Hudson*, ¶ 88 (Kuhn, J., concurring in part and dissenting in part), a debit card is an enumerated example of a financial device, and the legislature did not include any qualifiers in the examples listed in section 18-5-901(6)(a). Specifically, neither section 18-5-901(6) generally nor section 18-5-901(6)(a) in particular says anything about a debit card being usable at the time of possession. This is in stark contrast to the language of section 18-5-901(7), which defines "[f]inancial identifying information" to mean "any of the following that can be used, alone or in conjunction with any other information, to obtain cash, credit, property, services, or any other thing of value or to make a financial payment" and then includes a list of items. That phrasing makes clear that the items listed qualify as financial information only if they can be used to obtain things of value. We must presume that the legislature did not adopt this different language idly. *See Nieto v. Clark's Mkt., Inc.*, 2021 CO 48, ¶ 21, 488 P.3d 1140, 1145. Moreover, as Judge Kuhn noted, *Hudson*, ¶ 87 (Kuhn, J., concurring in part and dissenting in part), were we to adopt Hudson's contention that section 18-5-901(6)'s requirement that a financial device "can be used" to obtain a thing of value applies to the enumerated list of devices in section 18-5-901(6)(a), then that list would become superfluous. As noted above, however, we must avoid such statutory constructions. *McBride*, ¶ 23, 511 P.3d at 617.

¶19 For this reason alone, we conclude that a debit card is, without more, a financial device under section 18-5-901(6).

¶20 We likewise disagree with the division majority's conclusion that under section 18-5-901(6), to constitute a "financial device," the instrument must be capable of being used to obtain a thing of value *at the time of possession*. *Hudson*, ¶ 61. Again, section 18-5-901(6) does not contain the phrase "at the time of possession," and, as noted above, we must interpret statutes as written, and we may not add language to statutes or subtract words from them. *McBride*, ¶ 23, 511 P.3d at 617. For this reason as well, we conclude that the prosecution need not prove that a financial device be capable of use at the time of possession.

¶21 Although we believe that the foregoing plain language analysis resolves this case, we acknowledge Hudson's contention that section 18-5-901(6) is ambiguous. We need not decide, however, whether the statutory language is, in fact, ambiguous because, even if it were, we would reach the same conclusion.

¶22 As noted above, if a statute is ambiguous, we may consider other aids to statutory construction, including the consequences of a given construction, the end to be achieved by the statute, and the statute's legislative history. *Iannicelli*, ¶ 21, 449 P.3d at 391–92. Here, these tools support our conclusion that the legislature did not intend that a debit card be capable of use at the time of possession in order to satisfy section 18-5-901(6)'s definition of a financial device.

¶23 Looking to protect victims of identity theft, in 2006, the legislature passed several statutes addressing identity theft and related offenses. Ch. 289, sec. 8, §§ 18-5-901 to -905, 2006 Colo. Sess. Laws 1317, 1319–23. Testimony relating to these statutes' enactment focused on the harm that identity theft causes and the inadequacy of other laws to address the problem. *See, e.g.*, *People v. Perez*, 2016 CO 12, ¶ 16, 367 P.3d 695, 699 (citing Hearings on H.B. 06-1326 before the H. Judiciary Comm., 65th Gen. Assemb., 2d Sess. (Feb. 23, 2006), and Hearings on H.B. 06-1326 before the S. Judiciary Comm., 65th Gen. Assemb., 2d Sess. (Apr. 24, 2006)). Most notably for purposes here, one senator testified at the Senate Judiciary Committee Hearing that there were incidental crimes that go along with identity theft, including criminal possession of a financial device, that would be a "precursor to identity theft." Hearings on H.B. 06-1326 before the S. Judiciary Comm., 65th Gen. Assemb., 2d Sess. (Apr. 24, 2006).

¶24 Whether expired, cancelled, or active, a debit card generally contains the cardholder's name, financial institution, and signature. This information could be used to steal the cardholder's identity, even if the card has been deactivated (e.g., after a cardholder realizes that the card is missing and calls their financial institution to report it). Accordingly, the criminal possession of a debit card establishes the very precursor to identity theft about which the legislature was concerned. And were Hudson correct that to prove criminal possession of a debit

card, the prosecution must establish that the card is capable of being used to obtain a thing of value at the time of possession, then many acts of criminal possession of a debit card would evade prosecution simply because the cardholder acted diligently to report a missing card. For all of these reasons, we believe that the legislative history underlying sections 18-5-903(1) and 18-5-901(6) undermines Hudson's contention that a debit card must be usable at the time of possession to constitute a financial device for purposes of those provisions.

¶25 We are not persuaded otherwise by Hudson's reliance on the division's opinion in *Reed*. In *Reed*, ¶¶ 57–64, 338 P.3d at 374–75, the division examined whether a gift card constitutes a "financial device" under section 18-5-901(6). *Id.* at ¶ 63, 338 P.3d at 375. There, the gift card at issue had no available funds, and the division concluded that the prosecution was required to prove that Reed "possessed something that could be used to 'obtain cash, credit, property, services, or any other thing of value or to make financial payments' at the time of possession." *Id.* at ¶¶ 55, 63, 338 P.3d at 374–75 (quoting § 18-5-901(6)). Because the cardholder testified that he had exhausted the available funds on the gift card and it could no longer be used for purchases, and because no witness testified as to how to render the card usable, the division concluded that the prosecution had not presented sufficient evidence that Reed could have used the gift card to obtain anything of value. *Id.* at ¶ 64, 338 P.3d at 375.

¶26 Although we acknowledge the perhaps overly broad language employed by the *Reed* division, as Judge Kuhn observed below, *Hudson*, ¶ 91 (Kuhn, J., concurring in part and dissenting in part), *Reed* is distinguishable from the present case. Most notably, unlike the debit card at issue here, gift cards are not on the enumerated list of financial devices found in section 18-5-901(6)(a)–(e). Accordingly, unlike a debit card, which, as noted above, the legislature has expressly deemed to satisfy the definition of a financial device, a gift card has not been deemed to satisfy that definition. Thus, in a case involving a gift card, the prosecution is required to establish that the card was capable of being used to obtain a thing of value at the time it was possessed. Indeed, such a conclusion makes sense given the facts that gift cards are often discarded when their funds have been exhausted, *see Hudson*, ¶ 90 (Kuhn, J., concurring in part and dissenting in part), and gift cards do not generally reveal personal identifying information that would render them a precursor to identity theft.

¶27 Having thus decided that the prosecution here was not required to prove that the debit card at issue was capable of being used to obtain a thing of value at the time Hudson possessed it, the question becomes whether the evidence was sufficient to support Hudson's conviction for criminal possession of a financial device. Although Hudson contends that it was not, his argument is premised exclusively on his view that the prosecution was required to prove that the debit

card at issue was capable of being used at the time of its possession. Because we disagree with Hudson's premise, we reject his assertion that the evidence did not support his conviction.

III. Conclusion

¶28 For these reasons, we conclude that the inclusion of debit cards, without qualification, in section 18-5-901(6)(a)'s definition of a financial device demonstrates, without more, that a debit card is a financial device for purposes of section 18-5-901(6). We thus further conclude that sections 18-5-903(1) and 18-5-901(6) do not require the prosecution to prove beyond a reasonable doubt that a debit card is capable of use at the time of its possession to support a conviction for criminal possession of a financial device.

¶29 Accordingly, we reverse the judgment of the division below, and we remand this case for further proceedings to reinstate Hudson's conviction for criminal possession of a financial device.

CHIEF JUSTICE MÁRQUEZ, joined by **JUSTICE HOOD**, dissented.

CHIEF JUSTICE MÁRQUEZ, joined by JUSTICE HOOD, dissenting.

¶30 The majority holds that, to support a conviction for criminal possession of a financial device, section 18-5-903(1), C.R.S. (2024), and section 18-5-901(6), C.R.S. (2024), do not require the prosecution to prove that a financial device is capable of use at the time of possession. Maj. op. ¶ 2. This holding defies the plain language of the statute. Moreover, the majority's analysis inconsistently applies the definitional requirements of section 18-5-901(6) to different types of financial devices, which not only risks confusion but may lead to unjust outcomes in future cases. Indeed, the majority's attempt to harmonize *People v. Reed*, 2013 COA 113, 338 P.3d 364, with its construction of section 18-5-901(6) betrays the majority's internally inconsistent approach. Because I cannot subscribe to the majority's statutory analysis, and because the prosecution failed to prove that the debit cards here were capable of use, I respectfully dissent.

¶31 The majority concludes that the items enumerated in section 18-5-901(6) are per se "financial devices," regardless of whether a specific item actually "can be used to obtain cash, credit, property, services, or any other thing of value or to make financial payments," as required by that provision. Maj. op. ¶¶ 17–19 (quoting § 18-5-901(6)(a)). Because Garry Allen Hudson possessed an enumerated device, the majority sees no need to further consider the statute's definitional language. *Id.* at ¶¶ 18–19, 27.

¶32 Section 18-5-901(6) defines a "[f]inancial device" as "any instrument or device that *can be used* to obtain cash, credit, property, services, or any other thing of value or to make financial payments, including but not limited to" credit cards, debit cards, checks, and money orders—among other enumerated items. (Emphasis added.) Under the plain language of this provision, an item must be capable of being used to obtain something of value to qualify as a financial device.

¶33 The majority acknowledges this requirement with regard to certain items. A gift card, for example, qualifies as a financial device only when it is capable of being used to obtain something of value. Maj. op. ¶ 25 (citing *Reed*, ¶ 64, 338 P.3d at 375). However, the majority asserts that this requirement does not apply to the enumerated items in section 18-5-901(6). *See id.* at ¶ 18. This approach defies the plain language of the statute and is inconsistent with our case law.

¶34 The majority posits that the General Assembly uses particular language to indicate when a definitional phrase applies to enumerated items. *Id.* Specifically, the majority points to the phrase "'any *of the following*'" in the definition of "'[f]inancial identifying information'" in section 18-5-901(7) and asserts that this "phrasing makes clear that the items listed qualify as financial information only if they can be used to obtain things of value." *Id.* (emphasis added) (quoting § 18-5-901(7)). This reasoning is unpersuasive.

¶35 There is no material contrast—let alone a "stark contrast," *id.*—between section 18-5-901(6) and (7) that would signal the General Assembly's intent to treat these definitional subsections of the same statute completely differently. The difference in language signals nothing more than the introduction of a nonexclusive, rather than a finite, list of examples for a given definition. Section 18-5-901(6) sets forth a nonexclusive list: a "[f]inancial device" means "any instrument or device that can be used to obtain cash . . . or any other thing of value . . . , *including but not limited to* . . . ." (Emphasis added.) Section 18-5-901(7) sets forth a finite list: "[f]inancial identifying information" means "*any of the following* [items] that can be used . . . to obtain cash . . . or any other thing of value." (Emphasis added.) Simply put, whether the list of examples is nonexclusive or finite has no bearing on whether the definitional language applies to the list. The proper interpretation of both section 18-5-901(6) and section 18-5-901(7) requires all items, including those enumerated, to satisfy the statutory definition.[1]

¶36 Our case law supports this approach. In *People v. Hollis*, 2025 CO __, ¶ 20, __ P.3d __, announced today, we hold that the definitional phrase "suffered by a

[1] I note that, if anything, the majority's logic that the enumerated examples in section 18-5-901(6) need not meet the definitional language (because they automatically qualify as "financial devices") should dictate that the enumerated examples in section 18-5-901(7) likewise automatically qualify as "financial identifying information" under that provision. Yet the majority holds the opposite. Maj. op. ¶ 18.

victim" applies to each enumerated item in section 18-1.3-602(3)(a), C.R.S. (2024). Section 18-1.3-602(3)(a) defines restitution as "any pecuniary loss suffered by a victim and includes but is not limited to" out-of-pocket expenses, anticipated future expenses, and money advanced by law enforcement agencies—among other enumerated items. The enumerated items do not automatically qualify as restitution—rather, each enumerated item must reflect (1) a pecuniary loss, (2) suffered by a victim. *See Hollis*, ¶ 20. The same approach should govern here.

¶37 To qualify as a "financial device," section 18-5-901(6) unambiguously requires an item to be capable of being used to obtain cash or some other thing of value. Logically then, if a particular item *cannot* be used to obtain cash or some other thing of value, it cannot meet the statutory definition of a "financial device," and a person cannot be held criminally liable for the possession of such an item.

¶38 Such a scenario is readily conceivable, even among the listed examples in section 18-5-901(6): a debit card or credit card may be expired on its face or obviously damaged beyond use, or a check may be stamped "VOID." Such items cannot "be used to obtain cash, credit, property, services, or any other thing of value or to make financial payments," as the statutory definition requires. The majority's reasoning criminalizes the possession of such enumerated items, even if there is no possibility that they can be used to obtain cash or anything of value.

¶39 To support this position, the majority quotes a comment by a bill sponsor during a Senate Judiciary Committee hearing. The majority concludes, based on that single comment, that the legislature intended to criminalize the possession of even patently *unusable* items (such as an expired debit card) because they may be a "precursor to identity theft." Maj. op. ¶ 23 (quoting Hearings on H.B. 06-1326 before the S. Judiciary Comm., 65th Gen. Assemb., 2d Sess. (Apr. 24, 2006)). However, nothing in the actual language of section 18-5-903 (establishing the offense of criminal possession of a financial device) signals such legislative intent or otherwise suggests there are exceptions to the unambiguous definitional requirements in section 18-5-901(6). Moreover, the majority's reasoning overlooks the distinct crime of identity theft, which includes the knowing possession of "financial identifying information," § 18-5-902(1)(b), C.R.S. (2024) (defining the crime of identity theft), such as "credit card number[s], banking card number[s], checking account number[s], [and] debit card number[s]," with the intent to obtain a thing of value, § 18-5-901(7)(a) (defining "[f]inancial identifying information").

¶40 Finally, the majority's treatment of the gift cards in *Reed* highlights the inconsistency of its approach. According to the majority, *Reed* is distinguishable from the present case because "gift cards" do not appear on the list in section 18-5-901(6). Maj. op. ¶ 26. Therefore, "in a case involving a gift card, the prosecution is required to establish that the card was capable of being used to

obtain a thing of value at the time it was possessed." *Id.*[2] The majority's reasoning means, however, that a person in possession of a patently unusable enumerated item (such as an obviously expired debit card, a credit card damaged beyond use, or a voided check) can be held criminally liable, but a person in possession of a similarly unusable gift card could not. Nothing in the language of section 18-5-901(6) supports such a distinction.

¶41 I would affirm the judgment of the court of appeals and hold that the prosecution must prove that an item is capable of being used to obtain a thing of value to qualify as a financial device. Here, although the debit cards at issue were not obviously expired or damaged (and so, in theory, were capable of being used to obtain cash), the prosecution's own witness also expressly acknowledged on cross-examination that she did not know if the cards were capable of being used. On this record, the prosecution failed to produce evidence that the cards were capable of being used to obtain anything of value.

¶42 Proving that an item is capable of being used to obtain cash or other value is not an exceptionally high bar—but it is a necessary one. The prosecution's burden under section 18-5-903 should not be lessened because the items at issue

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[2] I struggle to square this statement with the majority's holding that "sections 18-5-903(1) and 18-5-901(6) do not require that the prosecution prove that a financial device was capable of use at the time of possession to support a conviction for criminal possession of a financial device." Maj. op. ¶ 2.

happened to be debit cards instead of gift cards. Because the majority's interpretation of section 18-5-901(6) fails to give consistent, harmonious, and sensible effect to the statutory definition of "financial device," I respectfully dissent.