

2011

Utah v. Manuel Hurtado Rincon : Brief of Appellee

Utah Court of Appeals

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Case No. 20110897-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

vs.

MANUEL HURTADO RINCON,
Defendant/Appellant.

Brief of Appellee

Appeal from a conviction for identity fraud, a second degree felony, in the Second Judicial District Court of Utah, Weber County, the Honorable Michael Direda presiding

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UTAH APPELLATE COURTS

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Case No. 20110897

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

vs.

MANUEL HURTADO RINCON,
Defendant/Appellant.

Brief of Appellee

STATEMENT OF JURISDICTION

Defendant appeals from a conviction for identity fraud, a second degree felony, in violation of Utah Code Ann. § 76-6-1102 (West 2009). This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West 2009).

STATEMENT OF THE ISSUES

The identity fraud statute prohibits obtaining the personal identifying information of another person and using that information with fraudulent intent. Ignorance that the information belonged to someone is not a defense.

1. Is the identity fraud statute's prohibition on obtaining and fraudulently using another's personal identifying information vague as applied to Defendant, where the social security number he fabricated to get a job and money in Utah belonged to a woman in Nevada?

Standard of Review. A trial court's vagueness ruling presents a question of law, reviewed for correctness. *State v. Gallegos*, 2009 UT 42, ¶ 10, 220 P.3d 136. Nevertheless, this Court presumes that the statute is constitutional, and places the burden on Defendant to show unconstitutionality beyond a reasonable doubt. *State v. Shepherd*, 1999 UT App 305, ¶ 8, 989 P.2d 503; *see also Due South, Inc. v. Dep't of Alcoholic Beverage Control*, 2008 UT 71, ¶ 39, 197 P.3d 82; *State v. MacGuire*, 2004 UT 4, ¶ 8, 84 P.3d 1171 (calling this burden "a heavy one") (citation and additional quotation marks omitted).

2. Was there sufficient evidence for the trial judge to convict Defendant of identity fraud where he used a Nevada woman's social security number to get a job in Utah?

Standard of Review. "When reviewing a bench trial for sufficiency of the evidence," this Court "must sustain the trial court's judgment unless it is against the clear weight of the evidence, or if [it] otherwise reaches a definite and firm conviction that a mistake has been made." *State v. Gordon*, 2004 UT 2, ¶ 5, 84 P.3d 1167 (citations, additional quotation marks, and alteration omitted).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah Code Ann. § 76-6-1102. **Identity fraud crime**

- (1) As used in this part, "personal identifying information" may include:
 - (a) name;
 - (b) birth date;

- (c) address;
 - (d) telephone number;
 - (e) drivers license number;
 - (f) Social Security number;
 - (g) place of employment;
 - (h) employee identification numbers or other personal identification numbers;
 - (i) mother's maiden name;
 - (j) electronic identification numbers;
 - (k) electronic signatures under Title 46, Chapter 4, Uniform Electronic Transactions Act; or
 - (l) any other numbers or information that can be used to access a person's financial resources or medical information, except for numbers or information that can be prosecuted as financial transaction card offenses under Sections 76-6-506 through 76-6-506.4.
- (2) (a) A person is guilty of identity fraud when that person:
- (i) obtains personal identifying information of another person whether that person is alive or deceased; and
 - (ii) knowingly or intentionally uses, or attempts to use, that information with fraudulent intent, including to obtain, or attempt to obtain, credit, goods, services, employment, any other thing of value, or medical information.
- (b) It is not a defense to a violation of Subsection (2)(a) that the person did not know that the personal information belonged to another person.
- (3) Identity fraud is:
- (a) except as provided in Subsection (3)(b)(ii), a third degree felony if the value of the credit, goods, services, employment, or any other thing of value is less than \$5,000; or
 - (b) a second degree felony if:
 - (i) the value of the credit, goods, services, employment, or any other thing of value is or exceeds \$5,000; or
 - (ii) the use described in Subsection (2)(a)(ii) of personal identifying information results, directly or indirectly, in bodily injury to another person.
- (4) Multiple violations may be aggregated into a single offense, and the degree of the offense is determined by the total value of all credit, goods, services, or any other thing of value used, or attempted to be used, through multiple violations.
- (5) When a defendant is convicted of a violation of this section, the court shall order the defendant to make restitution to any victim of the offense or state on

the record the reason the court does not find ordering restitution to be appropriate.

(6) Restitution under Subsection (5) may include:

(a) payment for any costs incurred, including attorney fees, lost wages, and replacement of checks; and

(b) the value of the victim's time incurred due to the offense;

(i) in clearing the victim's credit history or credit rating;

(ii) in any civil or administrative proceedings necessary to satisfy or resolve any debt, lien, or other obligation of the victim or imputed to the victim and arising from the offense; and

(iii) in attempting to remedy any other intended or actual harm to the victim incurred as a result of the offense.

STATEMENT OF THE FACTS AND CASE¹

Gertrude Wilson lost her job in Nevada on May 3, 2010, and began receiving unemployment benefits a short time later. R72:13, 15. After six months, still unable to find a job, she called a social security claims representative to request an extension of her benefits. *Id.* at 15. The claims representative told Ms. Wilson that her benefits would not be extended because her social security number showed that she was employed at Jay Morgan Confections in Ogden, Utah. *Id.* This was news to Ms. Wilson, who was living in Arizona at the time, and had never been to Ogden; she "actually had to look it up on the map." R72:15-16.

Almost two years earlier, Defendant had gone to Brian Squire, owner of Jay Morgan Confections, looking for a job. When Mr. Squire asked for

¹ The State combines the fact and case summaries to aid the Court's understanding of the issues in this case.

Defendant's social security number, Defendant gave him Ms. Wilson's. *Id.* at 5-7, 32-33. This was not the first time he had used Ms. Wilson's social security number to get work; he had also used it at Anderson Lumber Company and Intelligent Employment Solutions. *See* State's Exhibits 1-5, R72:19-20. Over nearly a decade, he had earned tens of thousands of dollars using Ms. Wilson's social security number. *Id.*

The State charged Defendant with identity fraud, a second degree felony, in violation of Utah Code Ann. § 76-6-1102 (West 2009). R1-2. Defendant waived both preliminary hearing and a jury trial. R21, 46. At a bench trial, after the close of the State's case-in-chief, Defendant moved to dismiss for lack of evidence of "how [he] obtained or that he came into possession of any personal or identifying information from the victim." R72:37. The trial court denied the motion. R72:41. Defendant again moved to dismiss after his own case, claiming that there was "no evidence" or at least "reasonable doubt as to whether [he] actually was ever in possession of a Social Security card," because he testified that he simply made up the number. R72:59. He also claimed, relying on an earlier motion, that the statute was "unconstitutionally vague" as applied to him. R72:10-11, 59-60.²

² Defendant earlier filed a motion to dismiss for vagueness, but withdrew it. R33-43, 44. He renewed this motion at trial, asking the court to treat his motion and memorandum to dismiss "as a trial brief." R72:7, 53-60.

The trial court denied both motions and found Defendant guilty, concluding that Defendant had at least recklessly obtained the victim's social security number by fabricating it and that he then knowingly used it with fraudulent intent. *See* R72:58, 61-66. Defendant timely appealed. R68-69.

SUMMARY OF ARGUMENT

Point I: The plain language of the identity fraud statute gave Defendant adequate notice that making up and fraudulently using a social security number that belonged to someone else to get employment violated the statute. The statute is therefore not vague as applied to Defendant.

Point II: Because the statute was properly applied to his conduct, the trial court had sufficient evidence to convict Defendant.

ARGUMENT

I.

THE IDENTITY FRAUD STATUTE IS NOT VAGUE AS APPLIED TO DEFENDANT WHERE HE "OBTAINED" THE VICTIM'S SOCIAL SECURITY NUMBER THROUGH FABRICATION

Defendant argues that the trial court erred in denying his motion to dismiss because the identity fraud statute is "vague and unclear" on what "obtain" means. *Aplt. Br.* at 9-10 (caps and boldface omitted). Defendant asserts the word "obtain" does not put a person of ordinary intelligence on notice that making up and fraudulently using another's social security number

violates the identity fraud statute. *Id.* at 12, 15-16, 20. When “obtain” is read in context according to its plain and ordinary meaning, however, the statute is not vague as applied to Defendant’s conduct.

A. Defendant can only challenge the statute as applied to him.

The Due Process Clause of the Fifth Amendment requires that a statute “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited”; that is, it must give “fair warning” to the public of what constitutes a violation. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). It must also “provide explicit standards for those who apply them”; that is, it must provide law enforcement with neutral, predictable standards to enforce. *Id.* at 109; *see also State v. Green*, 2004 UT 76 ¶ 43, 99 P.3d 820. A statute need not define an offense with “mathematical certainty,” but may use terms “marked by ‘flexibility and reasonable breadth, rather than meticulous specificity,’” as long as “it is clear what the ordinance as a whole prohibits.” *Id.* at 110 (citation omitted).

A “court will uphold a facial vagueness challenge ‘only if the [statute] is impermissibly vague in *all* of its applications.’” *State v. MacGuire*, 2004 UT 4, ¶ 12, 84 P.3d 1171 (emphasis added). Thus, ordinarily, a defendant “who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.” *United States v. Williams*, 553 U.S.

285, 304 (2008) (citation and additional quotation marks omitted). That requirement, however, has been “relaxed . . . in the First Amendment context, permitting plaintiffs to argue that a statute is overbroad because it is unclear whether it regulates a substantial amount of protected speech.” *Id.* Consequently, vagueness challenges “which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand.” *Green*, 2004 UT 76, ¶ 44 (quoting *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 n.7 (1982)).

Defendant does not claim that any vagueness in the identity fraud statute implicates a First Amendment right. *Aplt. Br.* at 9-20. Therefore, he may not challenge the statute as overbroad or as facially invalid. He may challenge the statute as vague only as applied to himself.³ Thus, he must show that the statute did not give a person of ordinary intelligence adequate notice that making up a social security number that belonged to another and fraudulently using it to gain employment and pay would violate the statute. *See State v. Shepherd*, 1999 UT App 305, ¶ 9, 989 P.2d 503.

³ In a facial challenge, the party “avers that the statute is so constitutionally flawed that *no set of circumstances* exists under which the [statute] would be valid.” *State v. Gallegos*, 2009 UT 42, ¶ 14, 220 P.3d 136 (emphasis added, citation and additional quotation marks omitted). Defendant admits that the identity fraud statute has proper application to those who obtain personal identifying information from another person, rather than make it up. *Aplt. Br.* at 8, 10-16, 20. He thus concedes that the statute is facially valid.

B. The identity fraud statute is not vague as applied to Defendant's conduct

When construing a statute, this Court seeks to give effect to the intent of the legislature. It begins by looking at the statute's plain language. *State v. Germanto*, 2003 UT App 217, ¶ 7, 73 P.3d 978. "[W]hen the words of a statute consist of common, daily, nontechnical speech, they are construed in accordance with the[ir] ordinary meaning." *Olsen v. Eagle Mountain City*, 2011 UT 10, ¶ 9, 248 P.3d 465 (quotation marks omitted); *see also In re J.M.S.*, 2011 UT 75, ¶ 13, 697 Utah Adv. Rep. 60; Utah Code Ann. § 68-3-11 (West 2004) (Non-technical "[w]ords and phrases are to be construed according to the context and the approved usage of the language"). Each term must be read in harmony and context with the others, lest isolation render it ambiguous. *See In re J.M.S.*, 2011 UT 75, ¶¶ 14-15. Each term is also presumed meaningful and interpreted so as to avoid absurd results. *See Labelle v. McKay Dee Hosp. Center*, 2004 UT 15, ¶ 16, 89 P.3d 113 (Appellate courts "will avoid an interpretation which renders portions of, or words in, a statute superfluous or inoperative.") (citations and additional quotation marks omitted); *See Carranza v. United States*, 2011 UT 80, ¶ 11, 267 P.3d 912 ("When statutory language plausibly presents the court with two alternative readings, we prefer the reading that avoids absurd results.") (citation omitted). Even though legislative intent is clear from the plain language in context, the Court may also refer to legislative history to support the

conclusion that the statutory language is unambiguous. *See Gottling v. P.R., Inc.*, 2002 UT 95, ¶ 15, 61 P.3d 989.

Here, the plain meaning and context show – and the legislative history confirms – that a person of ordinary intelligence would be on notice that making up a social security number that in fact belonged to someone else constituted obtaining another’s personal identification information. Holding otherwise would render subsection 2(b) of the statute superfluous and lead to absurd results.

Utah Code Ann. § 76-6-1102(2)(a) prohibits “obtain[ing] personal identifying information of another person,” such as their social security number, “whether that person is alive or deceased; and knowingly or intentionally us[ing] . . . that information with fraudulent intent, including to obtain . . . employment, [or] any other thing of value” “It is not a defense” to this section “that the person did not know that the personal information belonged to another person.” *Id.* at (2)(b).

Identity fraud thus consists of two elements: (1) obtaining another’s personal identifying information and (2) fraudulently using it. Each element has a different mental state. The fraudulent use under the express language of (2) must be knowing or intentional. The obtaining, because the statute specifies no mental state, must be at least reckless. *See* Utah Code Ann. § 76-2-102 (West

2004); *see also* *Due South, Inc. v. Dep't of Alcoholic Beverage Control*, 2008 UT 71, ¶ 43, 197 P.3d 82 ("In the absence of an articulated mental state, it is appropriate to defer to the default mens rea requirements supplied by section 76-2-102."). Recklessness means being "aware of but consciously disregard[ing] a substantial and unjustifiable risk that the circumstances exist or the result will occur." Utah Code Ann. § 76-2-103(3) (West 2007). Disregarding that risk must "constitute[] a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's viewpoint." *Id.*

"Obtain," in ordinary English usage, means to "get." *See* WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 1338 (1996) ("1. to come into possession of; get, acquire, or procure, as through an effort or by a request"); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1559 (1993) ("fr[om] [the] L[atin] *obtinēre* to take hold of"; "1a: to gain or attain possession or disposal of usu[ally] by some planned action or method"; "b: to bring about or call into being."). *See also* Corpus of Contemporary American English (COCA) [search: "obtain"], at <http://corpus.byu.edu/coca>; last accessed January 31, 2012 (showing 9593 uses of "obtain" in between 1990 and 2011, most, if not all, of which may be read as to "get"). Getting can be accomplished through many means: taking, receiving, finding, or, as here, fabricating. Making up a social

security number belonging to someone else gets you that person's number as surely as if you had snatched their purse or sifted through their garbage for it.

When Defendant applied for a job in Ogden, he was an uninvited guest in a country of approximately 300 million people. R72:42-47; *see also* U.S. & World Population Clock at <http://www.census.gov/main/www/popclock.html>; last accessed February 2, 2012. By making up a nine-digit social security number and fraudulently presenting it as his own, he knew of the risk that the number belonged or would eventually belong to a lawful citizen, but consciously disregarded that risk. He therefore recklessly got Ms. Wilson's number by his fabrication.

It is of no moment that the getting here was accomplished through fabrication and chance rather than old-fashioned theft. Stealing another's information is one way—but by no means the only way—to fraudulently assume another's identity. To limit the identity fraud statute, as Defendant suggests, to obtaining information from an external source would frustrate the purposes of the legislature in ruling out ignorance that the personal identifying information belongs to another as a defense. *See* Utah Code Ann. 76-6-1102(2)(b). That subsection only makes sense if obtaining applies to more than stealing a wallet or a piece of mail. With an outright theft of the information, it is always clear that the information belongs to another person. Limiting the

statute as Defendant proposes would render section 76-6-1102(2)(b) mere surplusage and meaningless. *See Labelle*, 2004 UT 15, ¶ 16, (Appellate courts “will avoid an interpretation which renders portions of, or words in, a statute superfluous or inoperative.”) (citations and additional quotation marks omitted).

Moreover, even under Defendant’s argument, fabrication is a means to obtain, so long as the defendant is not the fabricator. Defendant argues that “obtain” means to receive from another source. *See* Aplt. Br. at 11-12, 15-16. That argument implies that had another person fabricated Ms. Wilson’s number and then given or sold it to him, he would have “obtained” it for purposes of the statute. This would work the absurd result of criminalizing the fraudulent use of a second- or third-hand, but not first-hand, fabricated personal identifying information belonging to someone else. *See Carranza*, 2011 UT 80, ¶ 11 (“When statutory language plausibly presents the court with two alternative readings, we prefer the reading that avoids absurd results.”) (citation omitted).

The statute’s purpose is to protect individuals and their possessions, entitlements, credit, and good name from fraudulent misappropriation by another for gain. The structure of the statute gives effect to this purpose by criminalizing the obtaining and fraudulent use of another’s personal identifying information, whatever the source of the information facilitating the fraud,

whether the lawful owner of the information is alive or dead, and regardless of a defendant's knowledge of the information's ownership. See Utah Code Ann. § 76-6-1102(2)(a), (b). Cf. *State v. Manwaring*, 2011 UT App 443, 698 Utah Adv. Rep. 34 (looking to legislative purpose in motor vehicle code of encouraging safe driving and holding prohibition on certain alcohol levels during driving as a means properly employed to give effect to that purpose).

The legislative history supports this conclusion. Before 2006, the statute required proof that a defendant "knowingly or intentionally obtained" another's personal identifying information. See *State v. Chukes*, 2003 UT App 155, 71 P.3d 624. But the legislature amended the statute in 2006 to remove the knowing and intentional mental state from the obtaining element and to add subsection (2)(b) that ignorance of the information's ownership was not a defense. R72:50-51; see 2006 Utah Laws 1708. The floor debates in both the House and the Senate demonstrate that their intent in doing so was to remove the very defense Defendant implicitly asserts: ignorance that the number used belonged to another person. See Senate Floor Debate on Senate Bill 184, February 14, 2006, Senator Walker, available at <http://le.utah.gov/asp/audio/index.asp?Sess=2006GS&Bill=SB0184&Day=0&House=S>, last accessed February 1, 2012; House Floor Debate on Senate Bill 184, March 1, 2006, Representative Clark, available at

<http://le.utah.gov/asp/audio/index.asp?Sess=2006GS&Day=0&Bill=SB0184&House=H>, last accessed February 1, 2012; transcript attached as Addendum A.

Contrary to Defendant's assertion, this does not "misconstrue[]" his position, *Aplt. Br.* at 16 — it goes to the very heart of his claim: whether someone can recklessly obtain a number belonging to someone else by making it up. Making something up presupposes a lack of knowledge. By eliminating this as a defense, the legislature rejected Defendant's argument.

The legislative history also shows that the legislature is particularly concerned with the specific crime committed in this case: using another's identifying information to get employment. *See* 2009 Utah Laws 623; House Floor Debate of House Bill 87, January 29, 2009, Representative Fisher, available at <http://le.utah.gov/asp/audio/index.asp?Sess=2009GS&Bill=HB0087&Day=0&House=H>, last accessed February 1, 2012; Senate Floor Debate of House Bill 87, February 13, 2009, Senator Greiner, available at <http://le.utah.gov/asp/audio/index.asp?Sess=2009GS&Bill=HB0087&Day=0&House=S>, last accessed February 1, 2012; transcript attached as Addendum B.⁴

Defendant claims that *State v. Chukes*, 2003 UT App 155, "defines the elements of Identity Fraud" as "(1) intentionally or knowingly; (2) obtain[ing]

⁴ The 2009 amendments, though they took effect during the time of the alleged offense, do not affect the issues on appeal.

personal identifying information of another person without that person's authorization." Aplt. Br. at 9-10; *see also id.* at 20. *Chukes*, however, quoted the statute as it existed in 2003. *Chukes* did not impose a mental state on the obtaining element; it merely applied what the legislature had enacted at that point. The legislature enacted something different in 2006, removing the knowing or intentional mental state and adding that ignorance that the information belonged to someone else was not a defense.⁵ *See generally State v. Drej*, 2010 UT 35, ¶ 23, 233 P.3d 476 ("Utah law is unambiguous when it comes to establishing criminal offenses. Legislatures are free to declare what constitutes an offense against society and to define the elements that constitute such an offense.") (citations and additional quotation marks omitted).

⁵ *Chukes* used another's name, social security number, driver license number, and address to fraudulently get bedroom furniture. 2003 UT App 155, ¶ 2. *Chukes* contains dicta in a footnote stating that had the defendant instead "represented himself as a fictional [person] and created personal identifying information, he [might] not [have been] guilty of identity fraud even if there existed a real person" with the made-up name. *Id.* at ¶ 12 n.4.

But this hypothetical assumes that the fabricated personal information (other than the name) did not belong to anyone. At most, the *Chukes* court appears to have opined that fabricating a name that existed and other information that did not may not have sufficed under the pre-2006 amendment version of the statute to knowingly obtain another's personal identifying information. But given the 2006 amendments removing the intentional or knowing mental state requirement for obtain and adding that ignorance is not a defense, that dicta could have no application here. Moreover, the personal information in this case—a social security number—unlike a name, can only belong to a single individual.

For the same reason, Defendant's reliance on *Flores-Figueroa v. United States*, 129 S.Ct. 1886 (2009) is misplaced. See Aplt. Br. at 16-19. There, the Supreme Court interpreted a federal identity theft statute. Flores-Figueroa argued that the government was required to prove that he knew the identifying information he had belonged to another person, and the Supreme Court agreed. 129 S.Ct. at 1888. But the language of the federal statute at issue there — like the Utah statute before 2006 — required knowledge that the information belonged to another person. In contrast, Utah's statute now requires only recklessness. This change addressed the likelihood that many people will obtain social security numbers belonging to others through fabrication (whether through their own or someone else's) for fraudulent use. The change also stresses practical enforcement because of the difficulty of proving knowledge. Had Congress done the same in the statute at issue in *Flores-Figueroa*, the result there likely would have been different. See *id.* at 1893-94 (“[H]ad Congress placed conclusive weight upon practical enforcement, the statute would likely not read the way it now reads. Instead, Congress used the word ‘knowingly’ followed by a list of offense elements.”).

Moreover, the legislative history in *Flores-Figueroa* showed that Congress' focus in enacting the statute at issue was on the direct theft of personal information. *Id.* at 1893 (discussing legislative history containing only examples

where “the offender would know that what he has taken identifies a different real person,” such as “dumpster diving” and “steal[ing] paperwork likely to contain personal information.”) (alteration in original, citations and additional quotation marks omitted). As discussed above, the Utah current statutory focus is more broad: it includes, but is not limited to, direct theft.

The plain language and structure of the identity fraud statute shows that a reasonable person of ordinary intelligence would understand that Defendant’s conduct falls well within the statute: he made up (recklessly obtained) a social security number (personal identifying information) belonging to another person (Ms. Wilson), and falsely (with fraudulent intent) claimed it was his in order to get a job (employment) and thousands of dollars (something of value). It “is not a defense that [he] did not know that the [social security number] belonged to [Ms. Wilson].” Utah Code Ann. § 76-6-1102(2)(b). The legislative history supports this conclusion. Because making up a social security number belonging to someone else amounts to recklessly obtaining that number, Defendant has not met his burden to show the identity fraud statute vague beyond a reasonable doubt as applied to his conduct. *See State v. Shepherd*, 1999 UT App 305, ¶ 8, 989 P.2d 503; *see also Holder v. Humanitarian Law Project*, 130 S.Ct. 2705, 2720 (2010) (“Of course, the scope of the . . . statute may not be clear in every application. But the dispositive point here is that the statutory terms

are clear in their application to [Defendant's] . . . conduct, which means that [his] vagueness challenge must fail.").

II.

THE EVIDENCE WAS SUFFICIENT TO CONVICT DEFENDANT OF IDENTITY FRAUD WHERE HE FRADULENTLY PRESENTED THE VICTIM'S SOCIAL SECURITY NUMBER AS HIS OWN TO GET EMPLOYMENT

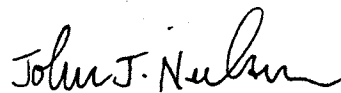
As a corollary to his first claim, Defendant claims that because the State did not prove that he "obtained" Ms. Wilson's social security number, the evidence at trial was insufficient to convict him. Aplt. Br. at 22-23. He claims no other insufficiency in the evidence. As shown above, his making up a social security number that belonged to Ms. Wilson sufficed to meet the recklessly obtaining element. Because the statute was properly applied to his conduct, the evidence was sufficient to convict him. The trial court's decision was thus not against "the clear weight of the evidence." *State v. Gordon*, 2004 UT 2, ¶ 5, 84 P.3d 1167 (citations and additional quotation marks omitted). This Court should thus affirm Defendant's conviction for identity fraud.

CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted February 21, 2012.

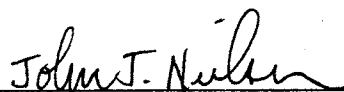
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RULE 24 CERTIFICATE OF COMPLIANCE

Pursuant to rule 24(f)(1)(C), Utah Rules of Appellate Procedure, I certify that this brief has been prepared in a proportionally-spaced font using Microsoft Word 2010 in Book Antiqua 13 point, and contains 4480 words, excluding the table of contents, table of authorities, and addenda.



JOHN J. NIELSEN
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that on February 22, 2012, two copies of the foregoing brief were ~~4~~ mailed ☐ hand-delivered to:

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Ogden, Utah 84401

A digital copy of the brief was also included: ~~4~~ Yes ☐ No

Melina Fryer

Addendum A

Senate Bill 184, 2006 Utah Laws § 345

Senate Floor Debate

02/14/2006

President: The next item on consent is Senate Bill 184.

Reading Clerk: Senate Bill 184, criminal identity fraud amendments, Senator Walker.

President: Senator Walker?

Senator Walker: This is a very simple one. Basically, it says that you cannot use as a defense, when you steal someone's identity, that you didn't know it was somebody else's. If it's not yours, it's somebody else's. This, kinda goes back to the two-year-olds' social security number that's stolen. Probably, when it was stolen, maybe nobody else had that number, but eventually it crops up. And so the AG's office says that this is a problem, that people claim, "Oh, woops, I didn't know that belonged to somebody else." So that's what it takes care of.

President: Thank you, Senator.

Passed 27-0.

House Floor Debate

03/01/2006

Speaker: Madam Reading Clerk?

Reading Clerk: Senate Bill 184, criminal identity fraud amendments, Carlene Walker. This bill was in law enforcement, but there's no report.

Speaker: Representative Clark?

Representative Clark: Thank you, Mister Speaker. This is another quick bill, one line. Simply it just says that it's not a legal defense for a person to say he didn't know the identification that he was using belonged to another person. Quite frankly, ignorance is not a proper defense. I believe they know if it's not theirs, it

belongs to somebody else. And that's what this does is clarify that that's no longer a proper defense. Thank you, Mister Speaker.

Speaker: Thank you, Representative Clark. Further discussion to Senate Bill 184, Criminal Identity Fraud amendments? Seeing no further lights . . .

Representative Clark: Waive [summation].

Speaker: Voting will be open on Senate Bill 184.

Passed 64-2.

Addendum B

House Bill 87, 2009 Utah Laws § 164

House Floor Debate

01/29/2009

Speaker: Madame Reading Clerk?

Reading Clerk: House Bill 87, identity theft amendment, Julie Fisher. This bill was heard in law enforcement and criminal justice [committee].

Speaker: Representative Fisher?

Representative Fisher: Thank you, Mister Speaker. I'm ready to go. This has a fiscal note on it; or, it doesn't have a fiscal note, but it's there. Why is this legislation needed? It's a simple adjustment. When, in 2008, they passed a bill that added employment as a means by which identity theft would be counted, they omitted in paragraphs 2(a) and 3(a) the word "employment." So this simply adds it into those two paragraphs. And if you want to ask a lot of questions, great, but it's as simple as that. And I will point out that in Utah, about 14% of the identity theft cases are employment-related. Thank you, Mister Speaker.

Speaker: Thank you, Representative. Discussion to H.B. 87? Seeing none, we come back to you, Representative, for summation.

Representative Fisher: Waive.

Speaker: Summation has been waived. Voting will be open on H.B. 87, identity theft amendment.

Passed 72-0.

Senate Floor Debate

02/13/2009

President: House Bill 87.

Reading Clerk: House Bill 87, identity theft amendments. Senator Greiner.

President: Thank you, Senator Greiner again. I know you're getting stronger, I can hear it. We heard some mumbling in the background that they were having a struggle hearing you last time, so . . .

Senator Greiner: I'll try to not let that happen anymore. In any event, what this bill does is it modifies the criminal code regarding the crime of identity fraud. A number of situations have come about where people are stealing people's identity in the area of their employment. So what this bill does on line 44 and 51 is just simply add in employment as the condition for something that you can be charged with in identity fraud.

President: Thank you.

Passed 26-0.