

SUPREME COURT
STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

On Certiorari to the Colorado Court of
Appeals
Court of Appeals Case No. 19CA915

Petitioner,

THE PEOPLE OF THE STATE OF
COLORADO,

v.

Respondent,

JESUS RODRIGUEZ-MORELOS.

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Case No. 22SC982

PEOPLE'S REPLY BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 3578 words (reply brief does not exceed 5700 words).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

Wendy J. Ritz

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ISSUE PRESENTED

Whether the court of appeals erred in holding that the crime of identity theft does not apply to a business entity's personal identifying information and applies only to information concerning single, identified human beings.

INTRODUCTION

The defendant used the name of a nonprofit organization as part of his efforts to obtain money from students hoping to become certified nursing assistants, and he was convicted of the offense of identity theft pursuant to § 18-5-902(1)(a), C.R.S. (2020). Yet the court of appeals reversed his conviction, reading the provisions of the identity theft statute and its accompanying definitions narrowly to conclude that “personal identifying information” only includes the specified information belonging to individual human beings. *People v. Rodriguez-Morelos*, 2022 COA 107M, ¶¶ 20-26. Under this reading of the statute a defendant can be convicted of identity theft for using personal identifying information of specific human individuals but cannot similarly be convicted of using information belonging to a business

entity unless it constitutes “financial identifying information” or a “financial device.”

However, when the statutory definitions are read in context with the language of the identity theft statute and considered in light of the applicable principles of statutory construction, it becomes clear that a person can commit identity theft when they use the personal identifying information not only of a natural person, but also of a business entity. Identity thieves steal from natural persons and business entities alike, using a variety of identifying information, and the court of appeals erred in so narrowly construing the applicable provisions. The decision of the court of appeals should be reversed.

ARGUMENT

I. Under the plain language of the identity theft statute and its accompanying definitions, a defendant can commit this offense by using personal identifying information of either an individual person or business entity.

A. Identity Theft Statutory Provisions

The defendant was charged pursuant to § 18-5-902(1)(a), which provides that a person commits identity theft if he knowingly uses “the

personal identifying information, financial identifying information, or financial device of another without permission or lawful authority with the intent to obtain cash, credit, property, services, or any other thing of value or to make a financial payment”

Section 18-5-901, C.R.S. (2023), defines the terms used in the identify theft statute. Section 18-5-901(11), C.R.S. (2023), provides that “Of another” means “that of a natural person, living or dead, or a business entity as defined in section 16-3-301.1(11)(b), C.R.S.”¹

Pursuant to § 18-5-901(13), C.R.S. (2023):

“Personal identifying information” means information that may be used, alone or in conjunction with any other information, to identify a specific individual, including but not limited to a name; a date of birth; a social security number; a password; a pass code; an official, government-issued driver’s license or identification card number; a government

¹ Under section 16-3-301.1(11)(b), C.R.S. (2023), “Business entity” means “a corporation or other entity that is subject to the provisions of title 7, C.R.S.; . . . a corporation or other entity that is subject to the provisions of title 11, C.R.S.; or a sole proprietorship or other association or group of individuals doing business in the state.”

passport number; biometric data; or an employer, student, or military identification number.

Section 18-5-901(7), C.R.S. (2023), defines “Financial identifying information,” as “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:”

(a) A personal identification number, credit card number, banking card number, checking account number, debit card number, electronic fund transfer card number, guaranteed check card number, or routing number; or

(b) A number representing a financial account or a number affecting the financial interest, standing, or obligation of or to the account holder.

Section 18-5-901(6), C.R.S. (2023), defines “Financial 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:”

(a) A credit card, banking card, debit card, electronic fund transfer card, or guaranteed check card;

(b) A check;

(c) A negotiable order of withdrawal;

- (d) A share draft; or
- (e) A money order.

B. Principles of Statutory Construction

This Court’s primary purpose in construing a statute is to ascertain and give effect to the legislature’s intent. *Godinez v. Williams*, 2024 CO 14, ¶ 20. The reviewing court looks first to the statutory text, “giving its words and phrases their plain and ordinary meanings,” reading them in context, and construing them “in accordance with the rules of grammar and common usage.” *Id.*; see also § 2-4-101, C.R.S. (2023). In endeavoring to effectuate the purpose of the legislative scheme, “we read that scheme as a whole, giving consistent, harmonious, and sensible effect to all of its parts, and we must avoid constructions that would render any words or phrases superfluous or lead to illogical or absurd results.” *McCoy v. People*, 2019 CO 44, ¶ 38. “If the statute is unambiguous, then we need look no further.” *Id.*

A statute is ambiguous when it is reasonably susceptible of multiple interpretations. *Id.* When statutory language is conflicting or ambiguous, this Court may rely on other factors such as legislative

history, the consequences of a given construction, and the goal of the statutory scheme to determine a statute's meaning. *Frazier v. People*, 90 P.3d 807, 811 (Colo. 2004); *see also* § 2-4-203, C.R.S. (2023).

C. Analysis

The defendant's reading of the identity theft provisions should be rejected for several reasons. Most importantly, § 18-5-902(1)(a) plainly states that the offense of identity theft is committed when a defendant uses the personal identifying information, financial identifying information, or financial device "of another." And § 18-5-901(11) makes clear that "of another" includes a business entity as well as a natural person. In choosing this language, the legislature demonstrated its intent to punish those who steal identifying information from human beings and from business entities. The plain language of this provision makes the legislative intent clear, and the accompanying statutory definitions do not require a more restrictive interpretation. *See McCulley v People*, 2020 CO 40, ¶ 10 ("We must interpret the statute as a whole and in the context of the entire statutory scheme, giving consistent, harmonious, and sensible effect to all its parts.").

Furthermore, the statutory definition of “personal identifying information” includes information that could belong to an individual person or an individual business entity, and the term “specific individual” is broad enough to include a business entity. Indeed, the court of appeals acknowledged that “the definition of ‘personal identifying information’ does not describe or affect the class of victims of identity theft; rather, it defines the types of information, documents or items that defendants may take from victims to commit that crime.”

Rodriguez-Morelos, ¶ 18.

The definition of “personal identifying information” includes categories of information that can be stolen that would apply equally to entities and persons, such as name, password, and pass code. The definition expressly provides that it includes, but is not limited to, the named categories of information. So, it is therefore broad enough to include other types of identifying information of business entities that can be viewed as analogous to the listed categories of information, such as a taxpayer identification number, which is similar to a person’s social security number. *See People v. Roggow*, 2013 C0 70, ¶ 20 (the phrase

“includes, but is not limited to” suggests “an expansion or enlargement” and a “broader interpretation”; the statutory definition makes plain that the examples listed are “only illustrative”); *People v. Rieger*, 2019 COA 14, ¶ 14 (the word “includes” in a statutory definition denotes that the examples listed are not exhaustive or exclusive); *see also Coloradans for a Better Future v. Campaign Integrity Watchdog*, 2018 CO 6, ¶ 37 (“It is a familiar principle of statutory construction that words grouped in a list should be given related meaning.”). Moreover, in defining “personal identifying information,” the legislature chose the term “specific individual” rather than specific “person” or “human being” and described categories of information that may be used to identify a “specific individual.” *See Justus v. State*, 2014 CO 75, ¶ 29 (“we must construe the statutory language as the legislature enacted . . . the statute” and “[w]e must assume that the legislature did not use words idly.”).

The defendant’s argument turns on his interpretation of the term “specific individual,” which he construes as meaning only a particular human being or natural person, so that a person cannot commit identity

theft by using a business’s “personal identifying information.” While the statute does not define the term “specific individual,” the words “specific” and “individual” are not complex or technical, and generally the reviewing court should give “the words and phrases their ordinary and commonly accepted meaning.” *City and County of Denver v. Board of County Commissioners of Adams County*, 2024 CO 5, ¶ 28. This approach “honors our preference for the commonly accepted meaning of statutory terms over ‘strained or forced interpretation[s].’” *Cowen v. People*, 2018 CO 96, ¶ 14 (quoting *Roup v. Commercial Research, LLC*, 2015 CO 38, ¶ 8). Certainly, when a statute does not define a term, in determining its plain and ordinary meaning the reviewing court “may consider a definition in a recognized dictionary.” *Cowen*, ¶ 14. Even so, when the defendant and the court of appeals turned to dictionary definitions to give meaning to this statutory scheme, they read ambiguities into the statutory terms and unnecessarily focused on the meaning of the words “specific” and “individual” in isolation from the statutory scheme as a whole.

Merriam-Webster Online Dictionary defines “specific” as “constituting or falling into a specifiable category,” or “restricted to a particular individual, situation, relation or effect.”² And according to the Merriam-Webster Online Dictionary, “individual”³ is defined as follows:

individual 2 of 2 noun

- 1 **a** : a particular being or thing as distinguished from a class, species, or collection:
such as
 - (1) : a single human being as contrasted with a social group or institution
| a teacher who works with *individuals*
 - (2) : a single organism as distinguished from a group
- b** : a particular person
| are you the *individual* I spoke with on the telephone?
- 2 : an **indivisible** entity
- 3 : the reference of a name or variable of the lowest logical type in a calculus

² *Specific*, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/specific>.

³ *Individual*, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/individual>.

The defendant asks this Court to look to the language, “a single human being as contrasted with a social group or institution,” rather than the first listed definition: “a particular being or thing as distinguished from a class, species, or collection,” which is broad enough to encompass an individual organization or business entity. And the court of appeals similarly engaged in rather complex parsing of the possible dictionary definitions of the words “specific” and “individual,” reading them together in a manner that excludes a single organization or business entity. *Rodriguez-Morelos*, ¶¶ 21-26. Yet, this strained reading of the statutory language creates inconsistencies with the statutory definition of the term “of another,” and the plain language of § 18-5-902(1)(a). *See Burton v. Colorado Access*, 428 P.3d 208, 213 (Colo. 2018) (“reading ‘individual’ to mean only a natural person here yields an absurd result . . .”).

Moreover, this Court looked to the applicable dictionary definitions of “individual” in *Burton*, 428 P.2d at 213, and reasoned that:

[T]he ordinary meaning of “individual” isn’t limited to natural persons. See Individual, Webster’s New College Dictionary (2005) (defining as “a single thing, being or organism”) (emphasis added); Individual, Black’s Law Dictionary (10th ed. 2014) (“Of, relating to, or involving a single person or thing....” (emphasis added)).

Thus, this Court should reject the approach taken by the defendant and the court of appeals and give the word “individual” its ordinary meaning. And contrary to the reasoning of the court of appeals, the fact that the statutory definition pairs “individual” with the word “specific” should not change this analysis.

In addition, the defendant’s contention that “personal identifying information” can only belong to natural persons fails to give any weight to § 2-4-401(8), C.R.S. (2023), which provides that:

The following definitions apply to every statute, unless the context otherwise requires:

...

“Person” means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.

The defendant suggests that this Court should not rely on § 2-4-401(8), pointing to *Edwards v. New Century Hospice, Inc.*, 2023 CO 49, ¶¶ 2, 23. While this Court rejected New Century’s reliance on the definition of “person” in § 2-4-401(8), the analysis turned upon the specifics of the statutes at issue in that case:

[W]hile “person” *can* be defined as a corporate entity in some cases, its *plain and ordinary* meaning in the context of the Professions Act, the Nurse Practice Act, and the Mandatory Reporter statute is a human being. This interpretation also gives consistent, harmonious, and sensible effect to all parts of the three statutes.

Id. at ¶ 25 (emphasis in original). Conversely, in the context of the identity theft statute, it makes sense to view the terms individual and person as applying to both a human being and a business entity.

In support of his argument the defendant also points to *People v. Molina*, 2017 CO 7, and *People v. Perez*, 2016 CO 12. In *Perez*, ¶¶ 7, 10-22, this Court considered whether the prosecution must prove that an offender who commits identify theft knew the information he exploited belonged to an actual person, ultimately concluding that “the prosecution must prove that an offender knowingly used personal

identifying information and knew that the information belonged to another person.” Similarly in *Molina*, ¶ 7, this Court affirmed that “the People must prove that an identity theft defendant knew the information he or she falsely used belonged to a real person.” However, both cases involved defendants charged with using social security numbers belonging to other people, and thus did not address the meaning of the identity theft statute in the context of stealing identifying information from an entity. And here, the defendant knew he was using the name of an existing organization, so these cases do not preclude his conviction of the offense of identity theft.

The approach championed by the defendant and the court of appeals – that a person can commit identity theft against a business entity only by knowingly using either a financial device or financial identifying information to obtain a thing of value – gives undue emphasis to the phrase “specific individual” and could lead to illogical results. Other than their reliance on dictionary definitions of the terms “specific” and “individual,” there is nothing in the statutory scheme to suggest the legislature intended to so limit the reach of the identity

theft statute. And their cramped reading of the provisions fails to give appropriate effect to all parts of the identity theft statute and accompanying definitions and unnecessarily limits the criminal liability of those who improperly use the personal identifying information of a business entity. *See People In Interest of L.M.*, 2018 CO 34, ¶ 13 (in construing statutes, “[o]ur goal is to adopt an interpretation that achieves consistency across a comprehensive statutory scheme.”).

The more logical reading of the identity theft statutory provisions recognizes that the term “specific individual” is broad enough to include a specific business entity, particularly in light of the definition “of another,” which expressly includes both a natural person and a business entity and indicates legislative intent to punish those improperly using identifying information belonging to human beings and business entities. *See A.S. v. People*, 2013 CO 63, ¶ 11 (“When interpreting a comprehensive legislative scheme, we construe each provision to further the overarching legislative intent.”).

II. To the extent the statute is ambiguous, the legislative history and the goal of the identity theft statutory scheme support the conclusion that a specific individual can be a business entity, and the rule of lenity does not apply.

Even if the plain language of this statutory scheme is found to be ambiguous, the defendant's arguments fail. When statutory language is ambiguous, this Court may look to other aids to statutory construction, such as the statute's legislative history, the consequences of a given construction, and the end to be achieved by the statutory scheme, to determine a statute's meaning. *McCoy*, ¶ 38. As this Court explained in *Plemmons v. People*, 2022 CO 45, ¶ 28, “[l]egislative history—“the development of a statute during the legislative process and prior to enactment or amendment,”—can illuminate legislative intent.” (citations omitted). Although statements made before a legislative committee are not conclusive proof of legislative intent, they do provide guidance in interpreting the statute. *People v. Rockwell*, 125 P.3d 410, 419 (Colo. 2005); see also *McCoy*, ¶¶ 44-49. And the testimony of a bill's sponsor concerning its purpose and anticipated effect can be powerful evidence

of legislative intent. *People v. Sprinkle*, 2021 CO 60, ¶ 22 (quoting *Vensor v. People*, 151 P.3d 1274, 1279 (Colo. 2007)).

The legislative history recordings for § 18-5-902 (HB 06-1326), suggest that the identity theft statutory scheme was intended to include business entities as victims. The representatives sponsoring the bill introduced a district attorney from the First Judicial District to discuss the “technicalities of the bill.” *See* Hearing on H.B. 06-1326 before the Subcommittee of the House Judiciary Committee, 65th General Assembly, Second Session (February 23, 2006), at 1:29-34.

The district attorney first told a story about a couple victimized by a woman at a church booth posing as an agent from a mortgage company. She used the personal information she received from the couple to purchase a house, vehicle, and other items, and to open a bank account in the wife’s name. The district attorney discussed the need for Colorado to create an identity theft offense, noted the importance of including the language “of another,” and made the following comments:

We talked about financial identifying information, personal identifying information, and there’s a definition of “another” that’s

important because the victims of identity theft are actual living people, you know, living person, they could be a dead person, or definitely a business entity. So “of another” is a business entity, a living person, a dead person.

See id. at 14:04-30 (emphasis added).

In *Perez*, ¶ 16, this Court discussed this legislative history, noting that “[i]n 2006, the General Assembly sought to protect victims of identity theft by passing the identity-theft statute.” The testimony “leading up to the passage of the identity-theft statute focused on the harm that identity theft causes and the inadequacy of other laws, such as racketeering or criminal impersonation, to address the problem.” *Id.* In addition, the testimony “focused primarily on protecting victims and the importance of using the language ‘of another’ to achieve that goal.” *Id.* The comments made during the legislative discussion of the identity theft bill do not suggest any distinction between types of victims in relation to use of personal identifying information and also illustrate the significance of the choice of the language “of another” and the accompanying definition. *Cf. Perez*, ¶¶ 15, 19 (“even if the language were not plain, we find no contrary intention in the history or purpose

of the identity-theft statute”; the legislature did not communicate clear intent to limit the applicability of the culpable mental state).

Thus, when the legislative history and announced goal of the identity theft statutory scheme are considered in light of the language chosen by the legislature in §§ 18-5-902(1)(a) and 18-5-901(13), the narrow interpretation adopted by the court of appeals must be rejected. Instead, the interpretation that includes those who improperly use personal or financial identifying information of both human beings and business entities should prevail.

Finally, the rule of lenity is inapplicable here and affords the defendant no relief. The rule of lenity provides that, “when we cannot discern the legislature’s intent, ‘ambiguity in the meaning of a criminal statute must be interpreted in favor of the defendant.’” *People v. Jones*, 2020 CO 45, ¶ 70. However, the rule of lenity is “a rule of last resort,” and is to be “invoked only ‘if after utilizing the various aids of statutory construction, the General Assembly’s intent remains obscured.’” *People v. Summers*, 208 P.3d 251, 258 (Colo. 2009) (quoting *People v. Thoro Products Co., Inc.*, 70 P.3d 1188, 1198 (Colo. 2003)).

Furthermore, the “rule of lenity should be used only to resolve statutory ambiguity, and not to create it by disregarding the clear legislative purpose for which the statute was enacted.” *People v. Forgey*, 770 P.2d 781, 783 (Colo. 1989); *see also People v. Harris*, 914 P.2d 425, 430 (Colo. App. 1995) (the rule of lenity “may be employed only to resolve an unyielding statutory ambiguity, not to create one”). Here, the meaning of the statutory language and the legislative intent are readily discernable, and there is no need to resort to the rule of lenity. *See People v. Bice*, 2023 COA 98, ¶ 38 (application of the rule of lenity is unnecessary since the two statutes at issue can be read consistently, harmoniously, and sensibly). Accordingly, the judgment of the court of appeals should be reversed and the defendant’s identity theft conviction affirmed.

CONCLUSION

For the foregoing reasons and authorities, the People respectfully ask this Court to reverse the judgement of the court of appeals and affirm the defendant’s identity theft conviction.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **People's Reply Brief** upon **KIRA L. SUYEISHI, Deputy State Public Defender**, by Colorado Courts E-filing System (CCES), this 20th day of June 2024.

Wendy J. Ritz _____