

2018 IL App (2d) 161042-U
No. 2-16-1042
Order filed September 19, 2018

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 16-CF-1295
)	
CARLOS A. RAMOS,)	Honorable
)	Christen L. Bishop,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court was permitted to transfer defendant's case between judges despite the absence of any motion for substitution; (2) defense counsel's strategic decision not to cross-examine a State witness did not deny defendant his right of confrontation; (3) the State proved defendant guilty beyond a reasonable doubt of identity theft: the trial court could infer that defendant had no authority to possess and use the personal identifying documents and information of a complete stranger, who was a real person though deceased, and the State was not required to prove that defendant obtained some benefit from the use.

¶ 2 Defendant, Carlos A. Ramos, was charged with two counts of identity theft (720 ILCS 5/16-30(a)(4) (West 2014)) and forgery (720 ILCS 5/17-3(a) (West 2014)). Following a bench trial, he was convicted of identity theft but found not guilty of forgery. The court sentenced him

to three years' imprisonment. Defendant, *pro se*, appeals, contending that (1) his due-process rights were violated when the case was assigned to another judge for trial without the filing of a motion; (2) he was denied his right to confront the witnesses against him when his trial counsel refused to cross-examine a State witness; (3) he was not proved guilty beyond a reasonable doubt; and (4) the trial court erred in not requiring the State to prove that defendant received a tangible benefit as a result of the theft. We affirm.

¶ 3 At trial, Waukegan police officer William Walker testified that, in 1995, he stopped defendant for driving without lights. Because defendant had no valid license, Walker arrested him. At the station, Walker completed a booking and property sheet. Defendant said that his name was Carlos Antonio Ramos and that he was born December 13, 1968, in El Salvador. Defendant completed a fingerprint card, which defendant and Walker signed.

¶ 4 Officer Jay Tapia testified that he was in charge of the sex offender and violent offender registration unit in Waukegan. Defendant had been registering "on and off" as a sex offender since 2008 under the name Luis H. Gonzalez. In January 2015, defendant notified the office that he was going to be out of the jurisdiction for more than three days. Defendant filled out a form indicating that he would be traveling to "Central America." When Tapia asked defendant to be more specific, he said that he would be traveling to El Salvador.

¶ 5 In July, defendant returned to the office to register. Tapia informed defendant that, on the booking sheet from the 1995 arrest, defendant stated that he was Carlos Ramos, and used a different date of birth than that appearing on his sex-offender registration documents. Defendant explained that Carlos Antonio Ramos was a fake name he used when stopped by the police.

¶ 6 Tapia testified that he continued his investigation in conjunction with other agencies. They searched defendant's home, where they found birth and death certificates of Luis Herman

Gonzalez. These documents showed that Luis Herman Gonzalez was born in Philadelphia on January 13, 1966, and was deceased. The death certificate showed that Gonzalez died while in the custody of the Pennsylvania Department of Corrections. It contained two social security numbers, ***-**-0766 and ***-**-6066. Tapia learned that only one of those numbers—***-**-0766—had ever been issued.

¶ 7 On March 10, 2016, defendant registered. Tapia received the registration but learned that defendant had a vehicle that was not listed on the form. Tapia told defendant that the law required him to list his vehicle. Defendant returned later in the day and completed another form that included information about his vehicle.

¶ 8 Tapia identified the two registration forms defendant signed that day. Both list the registrant as Luis H. Gonzalez, with a social security number of ***-**-0766. The forms list Antonio Ramos and Carlos A. Ramos as aliases.

¶ 9 Tapia contacted the Social Security Administration. The response he received was admitted into evidence. It showed that, in 1991, Luis H. Gonzalez, who was born in Philadelphia on January 13, 1966, applied for a social security card with the number ***-**-0766. In 1996, 1997, and 2000, someone applied for a replacement card with the number ***-**-0766, with the applicant's mailing address being a post office box in Waukegan, Illinois. In 2004, a similar application was filed with a return address in Chicago. Further applications were received from Riverdale, Illinois, in 2004 and once again from Waukegan in 2006.

¶ 10 Brandon Ambrose testified that he was a civilian employee of the Waukegan Bureau of Identification. On March 10, 2016, he assisted defendant, who identified himself as Luis H. Gonzalez, in completing his sex-offender registration. Ambrose printed a form containing the information that was then on file. He then asked defendant to make any changes. Defendant

signed the form, but the form did not include information about his vehicle. Defendant then provided information about his vehicle and signed a second form. Defendant reviewed the forms and signed them in Ambrose's presence. He initialed several paragraphs on the back of each form and signed there as well.

¶ 11 Evidence established that the fingerprints taken by the Waukegan Police Department for Carlos Ramos and Luis Gonzalez are the same. Moreover, the registration forms contain the social security number assigned to Luis Herman Gonzalez.

¶ 12 Luis Antonio Gonzalez testified that he was born in Philadelphia. He had one brother, Luis Herman Gonzalez. Their parents were Herman Gonzalez and Anna Hilda Sanchez. His brother died in prison in 2000. Before that, he lived in Philadelphia and in Rochester, New York. He never lived in Illinois. The witness had never heard his brother mention the name Carlos Ramos.

¶ 13 Maria Gallardo testified that defendant, whom she knew as Luis Gonzalez, rented a room from her. He told her that he was from El Salvador and that he was a United States citizen. He never said that he was born in Philadelphia.

¶ 14 Defense counsel moved for a directed finding. He argued that the evidence showed that the information on the registration forms was preprinted and had not changed substantially since approximately 2008. Because defendant merely signed the preprinted forms, he did not "use" the information on March 10, 2016. The trial court denied the motion.

¶ 15 Defendant did not testify, but submitted documents from an earlier case in which he was convicted as Luis Gonzalez and ordered to register as a sex offender under that name. The court found defendant guilty of two counts of identity theft, but not guilty of forgery. The court sentenced defendant to three years' imprisonment. Defendant timely appeals.

¶ 16 Defendant, *pro se*, raises four contentions. He argues that (1) he was denied his right to due process when the case was assigned to another judge for trial without an appropriate motion being filed; (2) he was denied his right to confront witnesses when his attorney refused to cross-examine Luis Antonio Gonzalez; (3) he was not proved guilty beyond a reasonable doubt; and (4) the court erroneously ruled that the State did not have to prove that defendant derived a tangible benefit from using Gonzalez's identity.

¶ 17 The State, following three extensions, did not file a brief and we ordered the case to be decided solely on defendant's brief. Where, as here, the record is simple and the claimed errors are such that we can easily decide them without the aid of an appellee's brief, we should decide the merits of the appeal. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 18 We can briefly dispose of defendant's first two contentions. The case was initially assigned to Judge James Booras, but was transferred to Judge Christen L. Bishop for trial. Defendant waived a jury trial before Judge Bishop. She admonished defendant about the rights he was forgoing and defendant signed a jury waiver without objection.

¶ 19 Defendant contends that no motion was filed to transfer the case to another judge. He cites section 114-5 of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-5(a) (West 2014) (providing for a motion in writing)). However, that section applies only to substitution of a judge for cause. It does not purport to regulate administrative transfers such as occurred here. In any event, defendant appeared before Judge Bishop without objecting to her presiding over the case, thus forfeiting any objection.

¶ 20 Defendant next contends that he was denied his right to confront witnesses when his counsel refused to cross-examine Luis Antonio Gonzalez. He contends that the record contained “discrepancies” regarding the age of Gonzalez’s mother, Anna Hilda Sanchez.

¶ 21 The confrontation clause of the sixth amendment requires that “[i]n all criminal prosecutions, the accused shall enjoy the right *** to be confronted with the witnesses against him.” U.S. Const., amend. VI. However, the confrontation clause guarantees only an opportunity for effective cross-examination, not “ ‘cross-examination that is effective in whatever way, and to whatever extent, the defense may wish.’ ” *People v. Tracewski*, 399 Ill. App. 3d 1160, 1165-66 (2010) (quoting *People v. Hampton*, 387 Ill. App. 3d 206, 214 (2008)). Here, the defense was given the opportunity to cross-examine Gonzalez but counsel declined to do so. Defendant does not assert that counsel was ineffective for making that decision, and courts routinely recognize that whether and how to cross-examine a witness is a matter of trial strategy, which will not support a claim of ineffective assistance. *People v. Salgado*, 263 Ill. App. 3d 238, 246 (1994) (citing *People v. Stewart*, 104 Ill. 2d 463, 492 (1984)).

¶ 22 In any event, defendant fails to explain adequately the relevance of Sanchez’s age to his defense. Given the documentary evidence, defendant cannot seriously dispute that Luis Herman Gonzalez was a real person whose identity defendant assumed. We fail to perceive how establishing Sanchez’s age when she gave birth to Gonzalez would have aided the defense.

¶ 23 Defendant’s third contention is that the State failed to prove him guilty beyond a reasonable doubt. Defendant was convicted of two counts of identity theft under a subsection of the statute making it a crime to “use[], obtain[], record[], [or] possess[] *** any personal identification information or personal identification document of another knowing that such

personal identification information or personal identification documents were stolen or produced without lawful authority.” 720 ILCS 5/16-30(a)(4) (West 2016).

¶ 24 Defendant contends that the State failed to prove that he used personal information “of another,” because the victim was deceased. He further contends that he has always been known as Luis Gonzalez, has “worked with” the social security number in question since the age of 15, and that the State failed to prove otherwise. Finally, defendant argues that the State failed to prove that the documents found in his possession were stolen or obtained unlawfully.

¶ 25 In reviewing the sufficiency of the evidence to support a criminal conviction, we ask whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985); *People v. Kent*, 2016 IL App (2d) 140340, ¶ 18.

¶ 26 Although, as the trial court noted, this case presents an unusual application of the statute, the State presented sufficient evidence to prove defendant’s guilt. Evidence showed that defendant inexplicably had at his home identification documents belonging to Luis Herman Gonzalez and that someone from Waukegan had requested replacement social security cards in his name. The trial court could reasonably infer that the victim, who was deceased and had never been to Illinois during his lifetime, did not give them to defendant or authorize defendant to use them. The court could also reasonably conclude that defendant used that information by signing the preprinted registration forms containing Gonzalez’s name and social security number.

¶ 27 Defendant argued in the trial court that he did not “use” Gonzalez’s information when he merely signed the preprinted form. It was reasonable to infer that defendant provided the false information at some point. Moreover, Ambrose testified that he advised defendant to go over the

information and note any changes. Defendant signed the form without suggesting that any of the information was incorrect. Therefore, the trial court could reasonably conclude that he used Gonzalez's information to complete his registration.

¶ 28 Defendant seems to turn the statute on its head, arguing that, because Gonzalez was deceased, he was incapable of evincing a lack of consent. The statute requires that a defendant know that the documents were produced "without lawful authority." There was simply no evidence that defendant was authorized to possess the identification documents of a complete stranger.

¶ 29 Moreover, it is irrelevant that the victim of the identity theft was deceased. It cannot have been the legislature's intent to immunize those who steal the identities of deceased persons. In *State v. Hardesty*, 213 P.3d 745 (Kan. Ct. App. 2009), the court held that Kansas' identity-theft statute applied to the defendant, who used his deceased brother's driver's license. Distinguishing an earlier case that declined to apply the statute to the identity of a fictitious person, the court held that the defendant's late brother was a "real person" and noted that the theft of deceased identities might be more difficult to discover than that of living ones. *Id.* at 749 (citing *United States v. Kowal*, 527 F.3d 741, 745-46 (8th Cir. 2008)).

¶ 30 Defendant contends that Luis Gonzalez is his real name. It is true that the State never introduced a birth certificate or other documentation to establish defendant's "real" name. The prosecutor asked the trial court to infer that, because defendant gave his name as Carlos Ramos during his first contact with the Waukegan police, Carlos Ramos is his true identity, and the court reasonably did so.

¶ 31 Defendant's argument might be persuasive if there were no other evidence. However, the fact that he possessed birth certificates and social security cards belonging to Luis Herman

Gonzalez belies defendant's assertion. Those documents establish that Luis Herman Gonzalez was born in Philadelphia on January 13, 1966, a different date and place of birth than defendant originally gave the Waukegan police. Luis Antonio Gonzalez testified that Luis Herman Gonzalez was his brother, thus establishing that Luis Herman Gonzalez was an actual person whose identification information defendant possessed and used in registering as a sex offender.

¶ 32 Defendant's final contention is that the trial court erred in holding that the State did not have to prove that defendant obtained a tangible benefit from his use of Gonzalez's information. We disagree, as the plain language of section 16-30(a)(4), under which defendant was convicted, simply does not require that a defendant use the information for any purpose or obtain any benefit therefrom.

¶ 33 The principal rule of statutory construction is to give effect to the legislature's intent, and the statute's language is the best indication of that intent. *People v. Grever*, 222 Ill. 2d 321, 328 (2006). When the language is plain and unambiguous, we must apply the statute as written, without resorting to aids of statutory construction. *People v. Montoya*, 373 Ill. App. 3d 78, 81 (2007).

¶ 34 Section 16-30(a)(4) permits the conviction of one who "uses, obtains, records, possesses, sells, transfers, purchases, or manufactures any personal identification information or personal identification document of another knowing that such personal identification information or personal identification documents were stolen or produced without lawful authority." 720 ILCS 5/16-30(a)(4) (West 2014). Thus, this section requires only that a defendant use the information knowing that it was obtained unlawfully.

¶ 35 Defendant attempts to distinguish *Montoya*, which the trial court cited, arguing that the defendant in *Montoya* received a salary and benefits as a result of using a stolen identity.

However, the *Montoya* defendant was convicted under a since-repealed identity-theft statute that prohibited the use of “any personal identifying information or personal identification document of another person to fraudulently obtain credit, money, goods, services, or other property.” 720 ILCS 5/16G-15(a)(1) (West Supp. 2003); see *Montoya*, 373 Ill. App. 3d at 78. That provision was incorporated *verbatim* into the current version of the statute. See 720 ILCS 5/16-30(a)(1) (West 2014). However, defendant was charged not under that subsection, but under a new subsection that does not require that the information be used for any specific purpose.

¶ 36 Finally, we note that on or about August 15, 2018, defendant attempted to file an “affidavit” in this court. This document does not comply with the rule for supplementing the record on appeal (Ill. S. Ct. R. 329 (eff. July. 1, 2017)). This rule allows the record to be supplemented only with evidence that was actually before the trial court, and there is no indication that defendant’s affidavit was part of the trial court record. See *In re Estate of Albergo*, 275 Ill. App. 3d 439, 444 (1995). Moreover, there is no indication that defendant’s filing was served on the State. See Ill. S. Ct. R. 361(b) (eff. July 1, 2017). It is therefore stricken.

¶ 37 The judgment of the circuit court of Lake County is affirmed.

¶ 38 Affirmed.