IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON, Plaintiff-Respondent, Respondent on Review, v. EMILIO JUNIOR MEDINA, Defendant-Appellant, Petitioner on Review.	Yamhill County Circuit Court No. CR100685 CA A147883 SC S062436

BRIEF ON THE MERITS OF RESPONDENT ON REVIEW, STATE OF OREGON

Review of the Decision of the Court of Appeals
on Appeal from a Judgment
of the Circuit Court for Yamhill County
Honorable RONALD W. STONE, Judge

Opinion Filed: April 2, 2014
Author of Opinion: Tookey, J.
Before: Duncan, Presiding Judge, and Tookey, Judge, and
Rasmussen, Judge Pro Tempore

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BRIEF ON THE MERITS OF RESPONDENT ON REVIEW, STATE OF OREGON

INTRODUCTION

Unlike many offenses with long roots in common law, identity theft is a relative newcomer to Oregon's criminal code and was created entirely by legislative action. Following in the footsteps of 1998 federal legislation, the 1999 Oregon legislature enacted ORS 165.800, Oregon's identity theft statute, to address the then-emerging problem of financial fraud resulting from identity theft. Two years later, however, the legislature amended the statute due to concerns that the statute's reach might be overly limited and could be construed to apply only when the identity thief intended to obtain a financial benefit—or in the terms of the original statute, acted with the "intent to defraud." The legislature thus broadened the statute to apply when one acts with the "intent to deceive or defraud." The primary issue presented in this case concerns the intended scope of that amended statutory language.

At issue, more precisely, is whether identity theft under ORS 165.800 encompasses conduct done with the intent to deceive police to avoid arrest and without any intent to gain financially, as was defendant's conduct in this case. By its plain unambiguous text, as informed by relevant legislative history and canons of statutory interpretation, ORS 165.800 applies to such conduct.

QUESTIONS PRESENTED AND PROPOSED RULES OF LAW

First question presented: For conduct to constitute identity theft under ORS 165.800, an individual must act with the "intent to deceive or defraud." Does ORS 165.800 apply when an individual acts without a financial motive but with the intent to deceive police about his identity to avoid being arrested?

First Proposed Rule: As long as the individual intends to deceive police about his identity, he acts with the intent required by ORS 165.800. That the target of deception is a police officer, rather than a citizen, has no significance.

Second question presented: ORS 165.800 prohibits an individual from uttering or converting to the individual's own use the personal identification of another person—whether the person is real or imaginary—with the intent to deceive or defraud. During the booking process, defendant signed and made other alterations to both a property record and a fingerprint card bearing the false name he had provided to police. Did that evidence entitle a rational factfinder to find that defendant "uttered" or "converted to his own use" the personal identification of another, as those terms are defined in ORS 165.800?

Second Proposed Rule: The booking documents constituted the personal identification of another person under ORS 165.800, and by altering the documents and providing them to officers at the jail, defendant "uttered" and "converted" them to his own use as prohibited by the statute.

STATEMENT OF MATERIAL FACTS

The facts in this case are undisputed. The parties stipulated to a statement of facts that the Court of Appeals recited in its opinion, *State v. Medina*, 262 Or App 140, 142, 324 P3d 526 (2014), and that defendant recites in his brief. (Pet Br 5). Accordingly, the state only briefly summarizes the pertinent facts here.

After being stopped for traffic violations, defendant told the police officer who stopped him that he did not have a driver's license and that his name was "Sergio and he provided the officer with a false birth date. The officer arrested defendant for failing to carry a license, and during the booking process, defendant signed a fingerprint card and a property record, both bearing the false name and birth date. Defendant also provided his fingerprints and a social security number for the fingerprint card. Defendant was cited and released from custody, and he later admitted that he did not know anyone named "Sergio and that he had provided the false identity to avoid arrest on an outstanding warrant.

The state charged defendant with identity theft under ORS 165.800 and three misdemeanor charges.[1] With respect to the identity theft count, the

[1] The misdemeanor counts were: giving false information to a police officer for a citation, giving false information to a police officer, and failure to carry or present a license. (ER 1-2).

indictment alleged specifically that defendant "did unlawfully, with the intent to deceive or defraud, utter or convert to defendant's own use personal identification of 'Sergio (ER 1). Defendant proceeded to a bench trial on stipulated facts and moved for a judgment of acquittal on the identity theft charge. The trial court denied the motion and found defendant guilty on all four charges. Defendant appealed the identity theft conviction, and the Court of Appeals affirmed the trial court's judgment.

SUMMARY OF ARGUMENT

The trial court correctly applied ORS 165.800 to defendant's conduct in this case. By assuming a fictitious identity to avoid being arrested on a warrant, defendant acted with the intent to deceive police officers about his identity. That conduct falls squarely within the scope of ORS 165.800, which by its plain terms prohibits assuming another's identity—even that of an "imaginary" person—with an "intent to deceive or defraud." In 2001, the legislature broadened the mental state requirement in ORS 165.800 to include conduct done with the "intent to deceive" to eliminate any requirement of an intent to obtain financial gain. Defendant's contention that the statute categorically does not apply when an individual furnishes a false identity to police is based entirely on 1999 legislative history that pertains only to the original "intent to defraud" language and has no bearing on the current version of the statute—that is, the version adopted by the 2001 legislature. This court should therefore

decline to carve out of the statute an exception that would both contradict the current plain statutory text and contravene the clear legislature's clear intent to broaden the statute's scope.

Defendant's secondary argument—that the evidence was not sufficient to prove that he "uttered" documents or "converted" them to his own use under ORS 165.800—likewise misconstrues the statute's plain terms. Based on the undisputed evidence in this case, a rational factfinder could have found that by signing and altering the identification documents during the booking process, defendant "uttered" or "converted" the documents. The trial court thus properly denied defendant's motion for judgment of acquittal.

ARGUMENT

ORS 165.800 prohibits individuals from uttering or converting to their own use the personal identification of another person, real or imaginary, with the intent to deceive or defraud. At issue, first, is whether defendant acted with an "intent to deceive or defraud" and, second, whether he "uttered" or "converted" the booking documents by signing and altering them. The legislature intended the "intent to deceive or defraud" language to apply broadly to acts of identity theft, and the evidence in this case sufficed to prove that defendant acted with the requisite intent because he intended to deceive police about his identity to avoid arrest. Further, the evidence sufficiently proved that

defendant "uttered" or "converted" the booking documents by signing and altering them.[2]

A. The evidence was sufficient to prove that defendant acted with the requisite "intent to deceive or defraud."

ORS 165.800 prohibits an individual from taking certain specified actions with respect to another's personal identity with an "intent to deceive or defraud." Specifically, ORS 165.800(1) provides:

> A person commits the crime of identity theft if the person, with the intent to deceive or to defraud, obtains, possesses, transfers, creates, utters or converts to the person's own use the personal identification of another person.

ORS 165.800(4)(a), in turn, expressly defines "another person" as any individual "whether living or deceased," including "an imaginary person," and ORS 165.800(4)(b) states that "[p]ersonal identification includes, but is not limited to, any written document or electronic data that does, or purports to, provide information concerning" certain enumerated personal "identifying information."

There is no dispute in this case that the documents defendant signed and altered during booking constituted the "personal identification" of "another

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[2] On appeal of the denial of defendant's motion for judgment of acquittal, this court views "the evidence in the light most favorable to the state to determine whether a rational trier of fact, making reasonable inferences, could have found the essential elements of the crime proved beyond a reasonable doubt." *State v. Hall*, 327 Or 568, 570, 966 P2d 208 (1998).

person" under the statute: "Sergio constitutes a "person" as defined in ORS 165.800(4)(a), and both the property record and the fingerprint card were written documents that contained Sergio name and birthdate, two items specifically listed in the statute as "identifying information." ORS 165.800(4)(b)(A) & (L). Moreover, as addressed later in this brief, defendant "uttered" the booking documents and "converted" them to his own use by signing and altering the documents. That leaves the question of defendant's intent. The plain statutory text, relevant legislative history, and guiding canons of construction all indicate that the legislature intended for ORS 165.800 to apply broadly to acts of deception, including conduct that is intended to deceive police about one's identity to avoid arrest. The facts therefore sufficed to prove that defendant acted with the requisite intent to deceive.

1. ORS 165.800's plain text applies to defendant's conduct.

By his own admission, defendant assumed a false identity with an intent to deceive. Specifically, he intended to deceive the officers about his identity in order to avoid being arrested on an outstanding arrest warrant. Accordingly, by its plain terms, the "intent to deceive or defraud" requirement in ORS 165.800(1) applies to defendant's conduct, and nothing in any accompanying statutory provisions or other relevant context suggests otherwise. Thus, because the primary tools of statutory construction—statutory text and

context—unambiguously establish that the statute applies in this case, resort to legislative history is unnecessary. *See State v. Gaines*, 346 Or 160, 171, 206 P3d 1042 (2009) (legislative history is useful only insofar as it can "confirm seemingly plain meaning and even to illuminate it," or to expose "latent ambiguity" in the statute).

Defendant does not dispute that ORS 165.800's plain text applies to defendant's conduct in this case. Instead, he offers 1999 legislative history to try to carve out an exception for his conduct that is inconsistent with the plain meaning. Legislative history cannot properly serve that role. *See State v. Rader*, 348 Or 81, 90, 228 P3d 552 (2010) (discounting legislative history that was "difficult to square with the text and context of the statute"); *White v. Jubitz Corp.*, 347 Or 212, 223, 219 P3d 566 (2009) ("Although we will consider the legislative history of [a statute], we emphasize that that legislative history cannot substitute for, or contradict the text of, that statute."). The statutory text is dispositive and unambiguously demonstrates that ORS 165.800 applies broadly and encompasses defendant's conduct in this case.

2. The relevant legislative history supports applying ORS 165.800 to defendant's conduct in this case.

In any event, the pertinent legislative history is fully consistent with the plain statutory text and supports the conclusion that defendant acted with the requisite "intent to deceive" under ORS 165.800. In its original form as enacted

in 1999, ORS 165.800 required that to be criminally liable for identity theft, an individual had to act with an "intent to defraud." In 2001, the legislature broadened ORS 165.800's scope by changing the requisite intent to "intent to deceive or defraud." The legislative history for this change, though sparse, indicates that the legislature intended to expand the scope of the identity theft statute to encompass defendant's conduct in this case—that is, deceptive conduct toward a police officer that was not motivated by desire for financial gain. The legislative history offered by defendant predates the 2001 amendment to ORS 165.800 and thus is irrelevant to whether defendant acted with the required intent under the amended statute.

a. The legislative history of the 2001 amendment to ORS 165.800 demonstrates a legislative intent to broaden the scope of the statute to include conduct such as defendant's.

The 2001 amendment was proposed in the House as part of a bill concerning electronic communication in connection with stalking and harassment. After the House passed the bill, the Senate Judiciary Committee adopted the proposed amendment to ORS 165.800. *See* B-Engrossed HB 2918 with Senate Amendments, May 31, 2001. During a Senate Judiciary Committee work session prior to the adoption of the amendment, Committee Counsel Craig Prins stated that the proposed amendment was intended to

broaden ORS 165.800 to apply when one steals another's identity without any financial motives. Counsel Prins stated:

> Section 3 of the [A-Engrossed] bill adds the language "with the intent to deceive or defraud" to the identity theft statute. This was done because—to make it clear to judges, prosecutors and defense attorneys that there need not be a deception with the use [of] identity theft, there need not be a purpose to get pecuniary gain or financial gain but any deception is enough to satisfy the intent on that law.

Audio Recording, Senate Judiciary Committee, May 16, 2001.

A May 30, 2001 Senate Judiciary Committee Staff Measure Analysis prepared by Counsel Prins likewise reflected that the purpose of the proposed amendment was to expand the scope of the mental state requirement in ORS 165.800(1). Specifically, the analysis stated:

> WHAT THE BILL DOES:
>
> - Expands state of mind requirement needed to sustain conviction for identity theft to include "intent to deceive."

In referring the bill from the Senate Judiciary Committee to the Ways and Means Committee,[3] the Legislative Fiscal Office also noted the increased scope of identity theft under the proposed amendment, stating that HB 2918 "expands the crime of identity theft by adding intent to deceive * * *." Audio Recording,

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[3] The Senate Judiciary Committee referred the bill to the Ways and Means Committee, and the Capital Construction, Lottery and Bonding Subcommittee heard the bill in July 2001.

Joint Committee on Ways and Mean, Capital Construction, Lottery and Bonding Subcommittee, July 2, 2001. In carrying the bill on the Senate floor, Senator Brown repeated that language stating that the bill "expands the crime of identity theft." Audio Recording, Senate Floor Debate, July 5, 2001. The bill passed in the Senate with 26 votes without further discussion. The House subsequently approved the Senate amendments to the bill without discussion of the identity theft provision.

The legislative history for the 2001 amendment therefore demonstrates that by adding the "intent to deceive" language to ORS 165.800, the legislature intended to broaden the scope of identity theft to include cases in which individuals who steal other's identities do not intend to obtain any financial benefits for themselves or cause financial injuries to others. The history indicates that the legislature was concerned that the "intent to defraud" language in the original statute was overly narrow because it could be read to require proof of financial benefits or injury—such as is required by common law fraud principles. *See Conzelmann v. N.W.P.& D. Prod. Co.*, 190 Or 332, 350, 225 P2d 757 (1950) (elements of common law fraud include reliance and injury). Indeed, as defendant notes, the 1999 legislative history suggests that the statute originally was directed primarily at financial fraud. (Pet Br 15-16). As a result, the legislature enacted the 2001 amendment to clarify that the statute reaches "any deception," irrespective of any intent to obtain a financial

or pecuniary benefit. Here, defendant stole another's identity with the clear intent to deceive police. The 2001 legislative history thus is entirely consistent with reading ORS 165.800 to apply to defendant's actions. [4]

b. The legislative history of the 1999 enactment of ORS 165.800 is irrelevant to the construction of the statute in its current form.

The extensive legislative history from the 1999 enactment of ORS 165.800, which defendant offers to support his contention that the statute does not apply to his conduct, is irrelevant to the statutory analysis in this case. The 1999 legislative history concerns, at most, the scope of the "intent to defraud" language as it appeared in the original version of ORS 165.800. But, as described above, the 2001 legislature eliminated any limitations imposed by that language when it amended the statute to expand the statute's reach to include any prohibited action taken with an intent to deceive. This court

[4] ORS 165.800 includes three specific affirmative defenses to violating ORS 165.800(1) that the legislature left unchanged when it amended the statute in 2001. ORS 165.800(3)(a) (use of another's personal identification by someone under 21 years old to purchase alcohol); ORS 165.800(3)(b) (use of another's personal identification by someone under 18 years old to purchase tobacco); ORS 165.800(3)(c) (use of another's personal identification to gain access to an age-restricted location or an age-related benefit). That the legislature maintained those defenses and did not add misrepresentations to police to them additionally supports the conclusion that the amended statute applies to defendant's conduct.

therefore should give little, if any, weight to the 1999 legislative history in delineating the scope of the statute as currently worded.

Defendant does not dispute that the "intent to deceive" language is broader than the "intent to defraud" language and that the former, on its face, applies to defendant's conduct. Rather, defendant contends that when the 1999 legislature enacted ORS 165.800, it intended to exclude from the statute identity theft involving false statements to a police officer. Defendant notes that the legislature considered, but ultimately did not include in the final 1999 bill, a provision that specifically prohibited one from obtaining, possessing, transferring, creating, uttering, or converting to the person's own use another's personal identification with the intent "[o]f representing to a peace officer lawfully performing the officer's duties or to a judge that the person is another person." (ATT 3-6). From this, defendant claims, first, that the legislature's decision not to include that provision indicates a legislative intent to exclude such conduct from the prohibited conduct in ORS 165.800 and, second, that the 2001 amendment "did not alter the original's drafter's decision that ORS 165.800 would not apply to a person who misrepresents his identity to a police officer." (Pet Br 25). Even if defendant were correct about the first

claim,[5] his argument nonetheless fails because there is no basis for the second claim.

At most, the 1999 legislative history informs the meaning of the "intent to defraud" requirement in in the *1999* version of ORS 165.800. The 1999 legislature's discussions have no bearing at all on the "intent to deceive" language that the 2001 legislature adopted. Instead, the only legislative history that informs the scope of the "intent to deceive" text is the 2001 legislative history. *See* ORS 174.010 ("In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted."). The 2001 legislative history indicates that the legislature intended the "intent to deceive" language to be read expansively and thus supports the

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[5] Defendant simply assumes, without any support in the legislative history, that by removing the peace officer provision, the 1999 legislature intended affirmatively to exclude the conduct in the provision from the statute. But this court has cautioned against reading legislative intent from the failure to adopt a proposed amendment. *See State ex rel. Juvenile Dept. of Lincoln County v. Ashley*, 312 Or 169, 179, 818 P2d 127 (1991) ("Ordinarily, a committee's inaction or failure to adopt a proposed amendment, as distinct from its affirmative act, is insufficient to permit an inference about its intent."). Indeed, defendant acknowledges that the legislature removed the provision concerning representations to a peace officer from the final bill primarily for fiscal reasons, not due to any considerations concerning the proper scope of the bill. (Pet Br 17-18).

conclusion that ORS 165.800 encompasses a person's intent to deceive a police officer, whether or not the person hopes to gain financially.

3. The relevant canons of statutory construction favor construing ORS 165.800 to apply to defendant's conduct.

If, after analyzing a statute's text and legislative history, the legislature's intent remains ambiguous, this court "may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty." *Gaines*, 346 Or at 172. Here, the statutory text and relevant legislative history leave no ambiguity that the legislature intended ORS 165.800 to have a broad scope encompassing defendant's conduct in this case. Nonetheless, the relevant canons of statutory construction support application of the statute to identity theft aimed at deceiving police officers.

a. Had the legislature considered the issue, it would not have created an exception for defendant's conduct.

Where the legislature does not specifically address a particular issue, this court has relied on the general maxim of statutory construction "which directs a court to construe a statute in accordance with what it believes the legislature would have done, had that body specifically addressed the issue at hand." *State v. Gulley*, 324 Or 57, 66, 921 P2d 396 (1996). Had the legislature addressed whether or not ORS 165.800 should apply to identity theft involving police officers, there is no principled reason to believe that it would have affirmatively excluded such conduct from the statute.

The 2001 legislative history makes abundantly clear that the legislature intended for ORS 165.800 to combat an expanding problem with a diverse range of deceptive conduct, including conduct that produced no risk of financial loss. That problem was not limited to citizen-to-citizen deception. Deceiving another citizen about one's identity in a manner that might, for instance, damage another person's credit is no less serious than deceiving a police officer in a manner that might affect another person's criminal record. Thus, had it addressed the issue directly—as the 2001 history reflects—the legislature would not have created an exception for conduct involving the police. Doing so would have run counter to the 2001 legislature's overriding goal of protecting the public from identity theft in a wide variety of circumstances. *See Gulley*, 324 Or at 66 (in assessing what legislature would have done court is guided by "manifest purpose" of the statute).

b. Applying the statute to defendant's conduct does not raise constitutional problems.

Applying ORS 165.800 to defendant's conduct also does not lead to any constitutional concerns. *State v. Stoneman*, 323 Or 536, 540, 920 P2d 535 (1996) (noting that one maxim of statutory construction "is that a court will give a statute such an interpretation as will avoid constitutional invalidity"). Defendant argues that this court must interpret "intent to deceive" narrowly because a "broad interpretation"

would raise overbreadth concerns under Article I, section 8 of the Oregon Constitution. (Pet Br 27-31). Specifically, defendant contends that in order to avoid constitutional concerns, this court must interpret ORS 165.800 to require an "intent to obtain some substantive benefit to which the actor is not entitled" rather than simply prohibit "deception for the sake of deception."[6] (Pet Br 29-31).

This court need not delve deeply into constitutional considerations in this case. Accepting for the sake of argument defendant's premise that an intent to obtain a substantial benefit is required, ORS 165.800 is constitutional as applied because defendant indisputably had such intent based on the facts of this case.[7] Indeed, defendant admitted that he lied to the police about his identity to avoid being arrested on an outstanding arrest warrant. There is no real debate, therefore, that defendant acted with a clear intent to receive a "substantial benefit" to which he otherwise was not entitled: he assumed the false identity to obtain his immediate

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[6] Defendant makes essentially the same argument in arguing that this court should adopt his construction of the statute to avoid "unreasonable and absurd results." (Pet Br 31-32).

[7] Although defendant hints at a facial challenge to the statute, (Pet Br 31 n 5), he has not properly asserted such a challenge in this case. In any event, neither party urges reading the statute to prohibit "deception for the sake of deception." Thus, the issue is not properly presented before this court, and the state takes no position on it.

release from custody and, potentially, to avoid the traffic charges. Accordingly, applying ORS 165.800 to defendant's conduct in this case does not raise any constitutional concerns under Article I, section 8.

B. The evidence sufficed to prove that defendant "uttered" and "converted to his own use" the personal identification of another in violation of ORS 165.800.

The indictment in this case alleged that defendant "did unlawfully, with the intent to deceive or defraud, utter or convert to defendant's own use personal identification of Sergio (ER 1). Defendant does not dispute that "Sergio is a "person" under ORS 165.800 or that the fingerprint card and property receipt were the "personal identification of another." He contends, however, that his actions—signing both documents and placing his fingerprints and a social security number on the fingerprint card—did not constitute "uttering" the documents or "converting them to his own use" under the statute. (Pet Br 34-38). This court ordinarily presumes that the legislature intended terms to have their "plain, natural, and ordinary meaning." *See PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143(1993). Here, the undisputed facts permitted a rational factfinder to find that defendant "uttered" the fingerprint card and property receipt and "converted" them to his own use based on the plain meaning of those terms.

The word "utter" means "to put (as notes or currency) into circulation; *specif*: to circulate (as a forged or counterfeit note) as if legal or genuine."

Webster's Third New Int'l Dictionary 2526 (unabridged ed 2002). Alternatively, the term is defined as "[t]o say, express, or publish." *Black's Law Dictionary* 1582 (8th ed 2004)). Under either definition, defendant "uttered" the fingerprint card and the property receipt. After signing a fake signature on both documents and adding his fingerprints and social security number to the fingerprint card, defendant provided the documents to the jail officials for filing and further use by the jail and law enforcement. In doing so, defendant circulated and published—and therefore "uttered"—the documents.

Defendant contends that he did not "utter" the fingerprint card because he merely signed the card and an officer, in turn, circulated it by faxing it to an automated fingerprint identification system. (Pet Br 36-37). But nothing in the dictionary definition of "utter"—which encompasses "circulating" a document—suggests that only one person can circulate a particular document, nor does the definition require that to circulate a document one personally place the document into a formal database or circulation system. It requires only that one circulate the document as if it were "legal or genuine." Defendant did that here by providing the documents to jail officials as though the documents contained legitimate and correct personal identifying information for him. The documents were thereafter in circulation for use by others for law enforcement purposes. Thus, defendant uttered the documents.

Additionally, defendant "converted" the documents "to his own use." To "convert" something means to "to change or turn from one state to another; alter in form, substance, or quality." *Webster's* at 499. Jail officials created the fingerprint card and property receipt, both of which included "Sergio and a date of birth. Defendant subsequently altered or changed both of those documents by signing them, and he additionally altered or changed the fingerprint card by placing his fingerprints and a social security number on it. Further, he converted the documents to his own use by personalizing them with a signature and other identifying information and then offering them to jail officials so that they could verify his identity for warrant and background checks and other law enforcement purposes. Thus, defendant converted both documents to his own use in violation of ORS 165.800.

Defendant contends that he did not "convert" the documents because he did not "change the purpose" of the documents, which was to identify defendant. But that argument improperly focuses on the narrowest reading of a single subdefinition of the term "convert" without any basis in the statute to read the term so restrictively. *See State v. Fries*, 344 Or 541, 546, 185 P3d 453 (2008) (using statutory text and context to determine which of multiple definitions of a term the legislature intended).

Accordingly, viewed in the light most favorable to the state, the stipulated evidence entitled a rational factfinder to find that defendant "uttered"

or "converted" to his own use the personal identification of another with the intent to deceive police. The trial court correctly defendant's motion for judgment of acquittal.

CONCLUSION

This court should affirm the trial court's judgment.

Respectfully submitted,

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NOTICE OF FILING AND PROOF OF SERVICE

I certify that on December 2, 2014, I directed the original Brief on the Merits of Respondent on Review, State of Oregon to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon Peter Gartlan and Zachary L. Mazer, attorneys for appellant, by using the court's electronic filing system.

CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d)

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 4,726 words. I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(2)(b).

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