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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL JAIME WARD,

Defendant and Appellant.

B281116

(Los Angeles County  
Super. Ct. No. MA069592)

Appeal from a judgment of the Superior Court of Los Angeles County, Kathleen Blanchard, Judge. Affirmed in part and reversed in part.

Byron C. Lichstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, and Michael C. Keller, Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted Daniel Jaime Ward (Ward) of two counts of unauthorized use of personal identifying information of another person, in violation of Penal Code section 530.5, subdivision (a), and one count of forgery in violation of Penal Code section 470, subdivision (d).<sup>1</sup> On appeal Ward challenges only the two unauthorized use of personal information convictions, contending that “attempting to cash a washed check does not constitute identity theft.” Alternatively, Ward contends that one of the two convictions must be vacated because both are part of a single transaction which, under the law, can support only one conviction. We agree that one of the two convictions must be vacated, but otherwise affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In August 2016, Ward walked into a branch of Wells Fargo Bank and presented a teller with a check to be cashed. The check, in the amount of \$1,080, was payable by the City of Lancaster (the City), and Ward’s name appeared on the payee line. Upon viewing the check, the teller was able to tell that it had been “washed.”<sup>2</sup> One of the bank’s managers contacted the City and

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<sup>1</sup> Penal Code section 530.5, subdivision (a), provides in pertinent part: “Every person who willfully obtains personal identifying information, as defined in subdivision (b) of Section 530.55, of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense.”

Pursuant to Penal Code section 530.55, subdivision (b), “personal identifying information” includes, among other things, name, address, telephone number, social security number, place of employment, checking account number, and date of birth.

Further statutory references are to the Penal Code.

learned that the proper payee was Deana's Equipment Rentals. Another bank manager then called the Los Angeles County Sheriff's Department to advise that someone was trying to cash an altered check. By the time the sheriff's deputies arrived, Ward had already left the bank. The district attorney's office charged Ward with two counts of forgery (§ 470, subd. (d)) and two counts of unauthorized use of personal identifying information (§ 530.5, subd. (a)).

At trial, Ward testified that he had received the check from Bob Richardson as payment for a week's worth of construction and auto body work. Ward denied altering the check and said that when he tried to cash it, he did not know that it had been altered. He had thought nothing of the fact that the check came from the City. He had noticed, however, that the check was for \$1,080 rather than the agreed-upon payment of \$1,200. He said that Richardson told him to cash the check at a Wells Fargo Bank.

During trial, at the court's suggestion, the prosecutor dismissed one of the forgery counts. The prosecutor retained, however, the two section 530.5 counts, explaining that one charge pertained to the use of the payor's identifying information and the other to the use of the payee's information.

The jury found Ward guilty of two counts of violating section 530.5, subdivision (a) and one count of violating section 470, subdivision (d), and also found true the allegations that the value of the check exceeded \$950 and that Ward had been convicted of both offenses in the same proceeding. The court suspended

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<sup>2</sup> At trial, in response to an inquiry as to what made the check seem "washed," one of the Wells Fargo Bank managers testified that "[t]he area seemed kind of worn down, like maybe something had been used to remove ink from that area. And it also kind of appeared that there was something that had previously been there; a very faint image of previous printing."

imposition of sentence on all counts and placed Ward on formal probation for a period of three years.

Ward timely filed a notice of appeal.

## DISCUSSION

### **A. In Attempting to Cash the Check, Ward Used Identifying Information of the City, Thereby Satisfying the Requirements of Section 530.5.**

Ward contends that his section 530.5 convictions (unauthorized use of personal identifying information) must be vacated because his alleged conduct does not constitute a violation of that statute. We disagree.

Pursuant to sections 530.5, subdivision (a), and 530.55, subdivision (b), a person who willfully obtains personal identifying information, such as a bank account number, belonging to someone else, and uses that information for any unlawful purpose without the consent of the person whose personal identifying information is being used, is guilty of this offense. (§§ 530.5, subd. (a), 530.55, subd. (b).)

Ward willfully obtained a check payable by the City to the order of Deana's Equipment Rentals. Thereafter, relying on the City's checking account number appearing on the check, Ward attempted to cash the check to obtain, for his own use, funds which were intended for Deana's Equipment Rentals. In so doing, Ward used personal identifying information of another person, without that person's consent, for an unlawful purpose.

*People v. Barba* (2012) 211 Cal.App.4th 214, 223 (*Barba*) supports our conclusion. There, the defendants stole a number of blank checks from the victim's vehicle and then tried to cash the checks at check cashing stores. The checks were payable to the defendants, but contained the name of the victim's company as well as its address and account number. The trial court dismissed the

unauthorized use count, concluding that the statute “was intended to be used not when someone ‘forges a check but when someone represents themselves to be another person such as when they were cashing a check.’ ” (*Id.* at p. 221.)

The Court of Appeal reversed the dismissal order, explaining that the trial court, in reaching its conclusion, “read the element of ‘personation’ into the statute, and proceeded to find that because defendants had not attempted to portray themselves as someone else during this forged check cashing scheme, there was no violation of section 530.5.” (*Barba, supra*, 211 Cal.App.4th at p. 222, fn. omitted.)<sup>3</sup> In making its decision, the reviewing court opined that “[s]ome of the confusion about exactly what conduct section 530.5, subdivision (a) prohibits may be attributable to the fact that the statute is often referred to as an ‘identity theft’ statute.” (*Barba, supra*, at p. 226.) The court went on to conclude “there can be no doubt that by submitting the stolen checks for cashing, defendants were relying on the personal identifying information provided on those checks to obtain money to which they were not entitled.” (*Id.* at p. 228)

Ward contends, however, that this was exclusively a violation of section 470, subdivision (d), which makes unlawful his portrayal that the check was made out to him. We disagree. The express unambiguous language of the statute made his conduct a violation of section 530.5. It is of no moment that his conduct might also

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<sup>3</sup> In reaching its decision, the *Barba* court observed that “[f]rom 1997 to 2006, section 530.5, subdivision (a) prohibited the willful obtaining and use of another person’s identifying information ‘in the name of the other person.’ However, this language was removed from subdivision (a) as of 2006. (Stats. 2006, ch. 522, § 2, p. 3793.)” (*Barba, supra*, 211 Cal.App.4th at p. 224, fn. omitted.)

violate another criminal statute, as the same act may violate more than one criminal statute.

Further, Ward's reliance on *People v. Lee* (2017) 11 Cal.App.5th 344 (*Lee*) is inapt. In that case, the defendant was charged with and convicted of 20 counts of violating section 530.5, subdivision (a), among other offenses. (*Lee, supra*, 11 Cal.App.5th at p. 347.) The defendant, a tax consultant, started an investment club whereby club members would invest funds which the defendant agreed to pool and use to buy stocks for the club. The defendant never invested the money, but rather used the money for his own benefit. (*Id.* at pp. 346-347.) On appeal, the defendant challenged the sufficiency of the evidence to support the elements of the statute. The *Lee* court agreed that the evidence did not satisfy the requirement, among others, that the defendant used his victims' information for an unlawful purpose. Said the court: "What made [the defendant's] conduct unlawful was his failure to use his victims' money as promised," not his use of their identifying information. (*Id.* at p. 357.)

**B. In Attempting to Cash the Check, Ward Did Not Use Personal Identifying Information of Deana's Equipment Rentals, Thus, the Conviction for That Count Must be Reversed.**

Ward contends that, even if we determine that his alleged conduct constitutes a violation of section 530.5, subdivision (a), one of the two convictions must be reversed. We agree.

As we have discussed above, Ward violated the statute by using the City's personal identifying information, but we do not agree with the respondent that he used Deana's identifying information in presenting the check. Indeed, the name "Deana's Equipment Rentals" had already been deleted from the check and there was no other identifying information on the check even related to the rental company.

Relying on *People v. Valenzuela* (2012) 205 Cal.App.4th 800, the respondent nonetheless maintains that the conviction should be affirmed. In *Valenzuela*, our colleagues in Division Four upheld convictions as to three counts of unauthorized use of personal identifying information based on the defendant's possession of information relating to three different victims. Said the court: "[T]he retention of personal identifying information of multiple victims constitute multiple identity theft offenses." (*Id.* at p. 808.) Those are not the facts in this case. Here, the check which Ward presented contained no information pertaining to the rental company or any entity other than the City.

#### **DISPOSITION**

The conviction with respect to Deana's Equipment Rentals (count 2) is reversed. In all other respects, the judgment is affirmed.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.