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SUPREME COURT
STATE OF WASHINGTON
Sep 10, 2012, 8:10 am
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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION II

State of Washington,)
)
 Respondent,) No. 86772-1
)
 v.) Statement of Additional Authority
)
)
 Derrick Robert Evans,)
)
 Petitioner.)

Carol Elewski, attorney for Petitioner, Derrick Robert Evans, files this statement of additional authorities pursuant to RAP 10.8, regarding interpretation of the phrase, “another person, living or dead,” as found in RCW 9.35.020(1).

1. Applying the tenet that “[p]lain meaning ‘is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole,’” State v. Gray, ___ Wn.2d ___, 280 P.3d 1110, 1114 (2012) (citation omitted), counsel refers the Court to the following two uses of the phrase, “person, living or dead”:

a. **RCW 19.77.020(1)(b)** *Registration of Certain Trademarks Prohibited* (“A trademark by which the goods or services of any applicant for registration may be distinguished

from the goods or services of others shall not be registered if it: . . . Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute”);

b. **RCW 63.60.020(4)** *Personality Rights; Definitions* (“‘Individual’ means a natural person, living or dead”).

In addition, Counsel respectfully directs the Court’s attention to the following statutory provisions related to RCW 9.35.020(1):

c. **RCW 9.35.005(1)** *Identity Crimes; Definitions* (“‘Financial information’ means any of the following information *identifiable to the individual* that concerns the amount and conditions of an *individual’s* assets, liabilities, or credit: (a) Account numbers and balances; (b) Transactional information concerning an account; and (c) Codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, state identicaid numbers issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.”) (emphases added);

d. **RCW 9.35.020(8)** *Identity Crimes; Identity Theft* (“In a proceeding under this section, the crime will be considered to have been committed in any locality *where the person whose means of identification or financial information was appropriated resides*, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.”) (emphasis added); *but see* **RCW 9.35.050(1)** *Identity Crimes; Incident Reports* (“A person who has learned or reasonably suspects that his or her financial information or means of identification has been unlawfully obtained, used by, or disclosed to another, as described in this

chapter, may file an incident report with a law enforcement agency, by contacting the local law enforcement agency that has *jurisdiction over his or her actual residence, place of business, or place where the crime occurred.*") (emphases added);

e. **RCW 9.35.040(1)** *Identity Crimes; Information Available to Victim* ("A person, financial information repository, financial service provider, merchant, *corporation*, trust, partnership, or unincorporated association possessing information relating to an actual or potential violation of this chapter, and who may have entered into a transaction, provided credit, products, goods, or services, accepted payment, or otherwise done business with a person who has used the victim's means of identification, must, upon written request of the victim, provide copies of all relevant application and transaction information related to the transaction being alleged as a potential or actual violation of this chapter.") (emphases added);

f. **RCW 9.35.040(2)** *Identity Crimes; Information Available to Victim* ("Unless the information provider is otherwise willing to verify the victim's identification, the victim shall provide the following as proof of positive identification: (a) The showing of a *government-issued photo identification card* or, if providing proof by mail, a copy of a government-issued photo identification card; (b) A copy of a filed police report evidencing the victim's claim; and (c) A written statement from the state patrol showing that the state patrol has on file documentation of the victim's identity pursuant to the personal identification procedures in RCW 43.43.760.") (emphasis added); **RCW 43.43.760(2)** *Personal Identification - Requests - Purpose - Applicants - Fee* ("Whenever a person claiming to be a victim of identity theft appears before any law enforcement agency and requests an impression of his or her fingerprints to be made, such

agency may comply with this request and make the required copies of the impressions on forms marked ‘Personal Identification.’”);

g. **RCW 9.35.040(4)** *Identity Crimes; Information Available to Victim* (“No *person*, financial information repository, financial service provider, merchant, *corporation*, trust, partnership, or unincorporated association may be held liable. . .”) (emphases added);

h. **RCW 9.35.040(5)** *Identity Crimes; Information Available to Victim* (“A *person*, financial information repository, financial service provider, merchant, *corporation*, trust, partnership, or unincorporated association may decline . . .”) (emphases added); and

i. **RCW 9.35.040(6)** *Identity Crimes; Information Available to Victim* (“Nothing in this section creates an obligation on the part of a *person*, financial information repository, financial services provider, merchant, *corporation*, trust, partnership, or unincorporated association to retain or maintain . . .”) (emphases added).

2. State v. Berry, 129 Wn. App. 59, 117 P.3d 1162 (2005) (discussing prior version of RCW 9.35.020, which also used language, “another person, living or dead” and holding identity theft not committed if crime alleged to have been committed against fictitious person). In holding the Legislature intended the victim of identity theft to be another specific, real person, Division One stated:

When the Legislature created the identity theft statute, it noted that “financial information is personal and sensitive information that if unlawfully obtained by others may do significant harm to *a person’s* privacy, financial security, and other interests.” Laws of 1999, ch. 368, § 1 (emphasis added). Moreover, the Legislature defined a “means of identification” as “information or an item that is not describing finances or credit but is *personal to or identifiable with an individual or other person . . .*” RCW 9.35.005(3) (emphasis added).

129 Wn. App. 59, 67. *Accord State v. Sells*, 166 Wn. App. 918, 924, 271 P.3d 952 (2012) (stating, “[t]he phrase ‘another person’ as used in the identity theft statute requires proof that the identification or financial information belongs to a real person,” and holding use of credit card in name of both individual and school district constituted identity theft); *State v. Hayes*, 164 Wn. App. 459, 482, 262 P.3d 538 (2011) (“The identity of the victim is a key element of identity theft, and the charge is not proved if the alleged victim is not a real person.”); *State v. Presba*, 131 Wn. App. 47, 53, 126 P.3d 1280 (2005) (“This court has held that the ‘individual or other person’ referred to in former 9.35.020(1) must be a ‘specific, real person.’”).

Dated this 7th day of September, 2012.

Carol Elewski, WSBA # 33647
Attorney for Petitioner
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Certificate of Service

I certify that on September 7, 2012, I caused a true and correct copy of this Statement of

Additional Authority to be served on the following by e-filing:

Respondent’s Attorney:
Ms. Katherine Svoboda
Senior Deputy
Grays Harbor Prosecuting Attorney's Office
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Carol Elewski

OFFICE RECEPTIONIST, CLERK

To: C Elewski
Cc: Katherine Svoboda
Subject: RE: 86772-1, State v. Evans

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From: C Elewski [<mailto:celewski@yahoo.com>]
Sent: Friday, September 07, 2012 4:12 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Katherine Svoboda
Subject: 86772-1, State v. Evans

Please find attached for filing in State v. Evans, No. 86772-1, Petitioner's Statement of Additional Authority. The original signed document is retained in my files.

Sincerely,

Carol Elewski, WSBA 33647
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