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ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

JAMES A. EDGAR
J. Edgar Law Offices
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

IAN McLEAN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MARCO ACA,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-0904-CR-300

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Jr., Judge
The Honorable Amy J. Barbar, Magistrate
Cause No. 49G02-0803-FC-66643

October 7, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Marco Aca appeals his conviction for Forgery,¹ a class C felony, claiming that the trial court erred in denying his motion to dismiss that charge because his alleged criminal behavior “more closely matched the false government issued identification statute.” Appellant’s Br. p. 2. As a result, Aca contends that the State should have charged him under a more specific statute and, therefore, his conviction for forgery must be set aside. Finding that the trial court properly exercised its discretion in denying Aca’s motion to dismiss, we affirm.

FACTS

On March 25, 2008, Monica Saloane was working as a customer service representative at an Indiana Bureau of Motor Vehicles (BMV) license branch in Indianapolis. At some point, Aca approached Saloane and told her that he wanted to title a vehicle in his name. Aca gave Saloane his purported social security number and other information. Thereafter, Saloane entered the information into her BMV computer. The BMV’s computer indicated that the social security number that Aca had provided was “not found.” Tr. p. 87-88.

When Aca handed Saloane a social security card, she suspected that it was a “fraudulent card.” Id. at 88, 92. Saloane took the card to her supervisor and a BMV representative contacted the Indianapolis Metropolitan Police Department (IMPD).

Officer Larry Craciunoiu responded to the call, took Aca into custody, and escorted him to a back office at the BMV. After Officer Craciunoiu determined that Aca could not speak sufficient English to answer his questions, Officer Craciunoiu obtained

¹ Ind. Code § 35-43-5-2.

the services of a Spanish-speaking interpreter at IMPD's dispatch facility via telephone. Through the interpreter, Officer Craciunoiu advised Aca of his Miranda² rights. Aca indicated that he understood his rights and agreed to answer Officer Craciunoiu's questions.

Aca explained that he obtained the social security card "when he arrived in the country approximately five years prior . . . [and] a friend had all of his documents waiting for him." Id. at 100. Aca admitted that the card was a "fake," but he "thought he would use it to get by at the BMV." Id. at 101.

Aca was arrested and charged with forgery. Further investigation determined that the social security number on Aca's counterfeit card belonged to a girl who had been born in 2003. Aca had not been issued that social security number, and the card had not been printed or issued by the Social Security Administration.

Prior to trial, Aca moved to dismiss the charging information, claiming that he could only be prosecuted for false government issued identification,³ a class A misdemeanor. The trial court denied the motion, and on February 22, 2009, Aca proceeded to a jury trial and renewed his motion to dismiss. The trial court again denied the motion, and Aca was found guilty of forgery, a class C felony. Aca was subsequently sentenced to two years with all time suspended. Aca now appeals.

DISCUSSION AND DECISION

I. Standard of Review

² Miranda v. Arizona, 384 U.S. 436 (1966).

³ Ind. Code § 35-43-2-5.

We review a ruling on a motion to dismiss for an abuse of discretion. Ingram v. State, 760 N.E.2d 615, 618 (Ind. Ct. App. 2001). An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. Weis v. State, 825 N.E.2d 896, 900 (Ind. Ct. App. 2005).

Because the trial court's decision to deny Aca's motion to dismiss was based on an interpretation of the forgery statute, our review of this question of law is de novo. Houston v. State, 898 N.E.2d 358, 361 (Ind. Ct. App. 2008), trans. denied. When reviewing a matter de novo, we owe no deference to the trial court's legal conclusions. Kibbey v. State, 733 N.E.2d 991, 995 (Ind. Ct. App. 2000).

II. Aca's Claims

Aca asserts that "Indiana has a long history of statutory construction which informs us that where two criminal statutes cannot be harmonized, we looked to legislative intent to determine which one is more appropriate. Generally, the more specific statute controls." Appellant's Br. p. 4. Thus, Aca contends that the trial court was obligated to dismiss the forgery charge "because his behavior better fits the letter and spirit of the false government issued identification statute rather than the general forgery law." Id.

In resolving this issue, we first turn to the relevant statutes. Indiana Code section 35-43-5-2 defines the offense of forgery as follows:

(b) A person who, with intent to defraud, makes, utters, or possesses a written instrument in such a manner that it purports to have been made:

(1) by another person;

- (2) at another time;
- (3) with different provisions; or
- (4) by authority of one who did not give authority; commits forgery, a Class C felony.

The offense of counterfeiting government documents is defined as follows: “A person who knowingly or intentionally possesses, produces, or distributes a document not issued by a government entity that purports to be a government issued identification commits a Class A misdemeanor.” I.C. § 35-43-5-2.5.

Notwithstanding Aca’s contention that the State could only have charged him with the more specific and lesser grade of offense, we note that in Skinner v. State, 736 N.E.2d 1222 (Ind. 2000), our Supreme Court summarily affirmed this court’s prior opinion in Skinner⁴ and specifically disapproved of this court’s reasoning in State v. Wynne, 699 N.E.2d 717, 719 (Ind. Ct. App. 2001), which held that if a defendant’s conduct satisfies the elements of two criminal statutes on the same subject matter and a more specific statute was enacted after the more general statute, the more specific statute controls and the State must charge the defendant under that statute. More particularly, the order granting transfer in Skinner provided that:

Relying on State v. Wynne . . . [Appellants] contend that the State may charge them only with check fraud, the check fraud statute being both more specific and more recently adopted. The net result of accepting this contention would be reducing the class of felony and therefore the potential penalty.

The Court of Appeals in this appeal declined to follow Wynne. Instead, it held that when two criminal statutes overlap such that either may

⁴ Skinner v. State, 732 N.E.2d 235 (Ind. Ct. App. 2000).

cover a given set of facts, the prosecutor has the discretion to charge under either statute.

We grant transfer and summarily affirm the opinion of the Court of Appeals. . . . The decision in State v. Wynne is disapproved.

Id. at 1222 (emphasis added).

After Skinner, our Supreme Court reaffirmed the principle of prosecutorial discretion in deciding what offense to charge in Manuwal v. State, 904 N.E.2d 657 (Ind. 2009). The Manuwal court observed that the statutes defining the greater offense of operating while intoxicated did not distinguish between the operation of a vehicle on private and public property. Id. at 658-59. Thus, it was determined that the State was not restricted to pursuing the lesser, more specific offense of operating an off-road vehicle under the influence of alcohol against the defendant.⁵ More specifically, Manuwal held that “[R]egardless of where the defendant’s driving occurred, whether on public or private property and even on the defendant’s own property, the State is authorized to charge him with intoxicated driving offenses.” Id. at 659.

Applying the principles set forth in Skinner and Manuwal, we can only conclude that the State could pursue forgery charges against Aca, and the prosecutor was not restricted to filing the more specific charge of counterfeiting government documents against him. In other words, “the prosecutor has the discretion to charge under either

⁵ In the initial appeal, a different panel of this court determined that the defendant had been improperly charged because his conduct was punishable only under Indiana Code section 14-16-1-29(c), which provides that a person who operates an off-road vehicle while under the influence of alcohol, “commits a Class B misdemeanor.” It was observed that the more specific statute reflected the “spirit and intent of our legislature in a circumstance where a defendant is alleged to have operated such a vehicle under the influence of alcohol.” State v. Manuwal, 876 N.E.2d 1142, 1147-48 (Ind. Ct. App. 2007) (Vaidik, J., dissenting).

statute.” Skinner, 736 N.E.2d at 1222. As a result, the trial court properly denied Aca’s motion to dismiss.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.