

SUPREME COURT OF VIRGINIA

Gheorghiu v. Commonwealth

701 S.E.2d 407 (Va. 2010) · No. 091945 · Decided November 4, 2010

SUMMARY

The Supreme Court of Virginia held that venue was improper in Arlington County for the defendant's identity theft and credit card fraud convictions because the Commonwealth did not establish that any part of those offenses occurred there. The court rejected the theory that identity theft continues while the defendant retains identifying information and held that possession of a credit card number after completion of credit card fraud could not constitute an act in furtherance of that crime. The court affirmed the credit card theft convictions because the venue objection was not preserved for appeal, and reversed and vacated the identity theft and credit card fraud convictions at issue.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Senior Justice Elizabeth B. Lacy; Chief Justice Hassell; Justice Koontz; Justice Kinser; Justice Lemons; Justice Goodwyn; Justice Millette; Senior Justice Lacy
JURISDICTION	Virginia
DECIDED	November 4, 2010
DOCKET	091945
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a published Court of Appeals of Virginia decision affirming convictions for identity theft, credit card fraud, and credit card theft, except for possession of burglarious tools. The Supreme Court of Virginia reviewed venue challenges to the identity-theft and credit-card-fraud convictions and an unpreserved venue challenge to the credit-card-theft convictions.
STANDARD OF REVIEW	The court considered the venue issue under the requirement that the Commonwealth establish a strong presumption that part of the offense occurred in the prosecuting locality. For the unpreserved credit-card-theft venue issue, the court applied Rule 5:25 and required good cause or a showing that review was necessary to attain the ends of justice.
PRECEDENTIAL VALUE	Published opinion; binding Virginia Supreme Court precedent.

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Arlington County was a proper venue for prosecuting the identity-theft charge involving Iris Keltz's identifying information.
2. Whether Arlington County was a proper venue for prosecuting the credit-card-fraud charge involving Gerald Kent's credit-card number.
3. Whether the Supreme Court should review the unpreserved venue challenge to the 36 credit-card-theft convictions under the good-cause or ends-of-justice exceptions in Rule 5:25.

HOLDINGS

1. Identity theft is complete when the defendant obtains, records, or accesses identifying information without permission and with intent to defraud; continued possession of the information is not a continuing element of the offense and does not itself establish venue.
2. Possession of Kent's credit-card number in Arlington County after the number had already been used to commit the charged fraud in Fairfax was not an act in furtherance of the completed offense and did not establish venue in Arlington County.
3. The court would not excuse Gheorghiu's failure to object to venue at trial because he showed neither good cause nor that review was necessary to attain the ends of justice.

KEY QUOTATIONS

“Therefore, under the clear terms of the statute, the crime of identity theft is complete when any one of these acts occurs in conjunction with the intent to defraud.” (412)

“The crime of credit card fraud charged in case number CR06-449 was complete. Therefore, possession of the credit card number in Arlington County subsequent to the commission of the crime could not “further” the crime.” (413)

FACTUAL BACKGROUND

Gheorghiu and his cousin traveled from New York City to Virginia and used credit-card numbers belonging to other people to obtain goods in Alexandria, Fairfax, and Arlington Counties. Police arrested Gheorghiu in Arlington County and found in his vehicle credit cards, credit-card numbers, computer files, and equipment associated with remagnetizing cards. The evidence did not establish where the laptop was located when the relevant credit-card information was accessed or remagnetized, who performed those acts, or where Keltz's

number was used. Kent's credit-card number had already been used to purchase a laptop in Fairfax before Gheorghiu was arrested in Arlington.

PROCEDURAL HISTORY

Gheorghiu was indicted and tried in Arlington County on 57 indictments. The trial court dismissed four identity-theft counts for lack of evidence and entered judgment on the remaining jury convictions. The Court of Appeals reversed and dismissed the possession-of-burglarious-tools conviction but affirmed the remaining convictions, holding that venue was proper for the challenged identity-theft and credit-card-fraud counts and that the venue challenge to the credit-card-theft counts was procedurally barred. The Supreme Court affirmed the credit-card-theft convictions, reversed and vacated the identity-theft and credit-card-fraud convictions at issue, and remanded those matters for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The convictions in case numbers CR05-1243 and CR06-449 were vacated and remanded for further proceedings should the Commonwealth so elect. The convictions for credit-card theft were affirmed.

CASES CITED

- Gheorghiu v. Commonwealth, 54 Va. App. 645, 682 S.E.2d 50 (2009)
- Cheng v. Commonwealth, 240 Va. 26, 393 S.E.2d 599 (1990)
- Strouther v. Commonwealth, 92 Va. 789, 22 S.E. 852 (1895)
- Commonwealth v. Montague, 260 Va. 697, 536 S.E.2d 910 (2000)
- Doane v. Commonwealth, 218 Va. 500, 237 S.E.2d 797 (1977)
- Meeks v. Commonwealth, 274 Va. 798, 651 S.E.2d 637 (2007)
- Hamilton v. Commonwealth, 279 Va. 94, 688 S.E.2d 168 (2010)
- Charles v. Commonwealth, 270 Va. 14, 613 S.E.2d 432 (2005)
- Randall v. Commonwealth, 183 Va. 182, 31 S.E.2d 571 (1944)
- Green v. Commonwealth, 266 Va. 81, 580 S.E.2d 834 (2003)
- Ali v. Commonwealth, 280 Va. ___, 701 S.E.2d 64 (2010)
- Jimenez v. Commonwealth, 241 Va. 244, 402 S.E.2d 678 (1991)
- Ball v. Commonwealth, 221 Va. 754, 273 S.E.2d 790 (1981)
- Pollard v. Commonwealth, 220 Va. 723, 261 S.E.2d 328 (1979)
- Keesee v. Commonwealth, 216 Va. 174, 217 S.E.2d 808 (1975)

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