

SUPREME COURT OF WASHINGTON

State v. Leyda

138 P.3d 610 (Wash. 2006) · No. No. 75866-2 · Decided July 20, 2006

SUMMARY

The Washington Supreme Court held that value is not an essential element of second degree identity theft or third degree theft and therefore need not be alleged in the charging document. The court further held that the unit of prosecution under RCW 9.35.020 is a single proscribed act involving one person's identification or financial information, rather than each subsequent use of that information. It reversed three of Steven Leyda's four identity theft convictions and remanded for resentencing, while affirming the third degree theft convictions.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Alexander, C.J.; C. Johnson, J.; Madsen, J.; Sanders, J.; Bridge, J.; Owens, J.; Fairhurst, J.; J.M. Johnson, J.; Chambers, J.
JURISDICTION	Washington
DECIDED	July 20, 2006
DOCKET	No. 75866-2
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Leyda was convicted in King County Superior Court of eight offenses. The Washington Court of Appeals affirmed. The Washington Supreme Court granted direct review of Leyda's challenges to the unit of prosecution for identity theft and the sufficiency of the charging document.
STANDARD OF REVIEW	Questions concerning the unit of prosecution and double jeopardy are reviewed as legal issues by determining legislative intent from the statute's language and, when necessary, legislative history. The sufficiency of a charging document is reviewed under constitutional essential-element principles.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Steven Edward Leyda v. State of Washington

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QUESTIONS PRESENTED

1. Whether value is an essential element of second degree identity theft and third degree theft that must be alleged in the charging document.
2. Whether RCW 9.35.020 permits a separate identity-theft conviction for each use or attempted use of one victim's single means of identification or financial information.
3. Whether Leyda's multiple identity-theft convictions violated the federal and Washington constitutional prohibitions against double jeopardy.

HOLDINGS

1. Value is not an essential element of third degree theft and need not be alleged in the charging document.
2. Value is not an essential element of second degree identity theft and need not be alleged in the charging document.
3. The unit of prosecution is any one act of knowingly obtaining, possessing, using, or transferring a single person's means of identification or financial information with the requisite criminal intent; subsequent uses of that same information as part of the same course of conduct do not create separate identity-theft offenses.
4. Leyda's four identity-theft convictions could not stand because the State divided one course of conduct involving one victim's single credit card into four offenses. He could properly be convicted of only one count of second degree identity theft.

KEY QUOTATIONS

"We conclude that the unit of prosecution for identity theft is any one act of either knowingly "obtain[ing], possess[ing], us[ing], or transfer[ring] a means of identification or financial information of another person . . . with the intent to commit, or to aid or abet, any crime." (at 612)

"Under RCW 9.35.020(1), Leyda committed the crime of identity theft the moment he "obtained" a means of financial information (i.e., the Bon Marché credit card) of Cynthia Austin with the intent to commit, or to aid or abet, the crime of theft." (at 619)

FACTUAL BACKGROUND

Leyda possessed Cynthia Austin's Bon Marché credit card without permission and gave it to his girlfriend, who used it to make purchases at the store. The card was used in multiple transactions on October 21 and October 26, 2002, and was presented during an attempted purchase on November 2, 2002. Leyda was charged with a separate identity-theft count for each use or attempted use of the single card, and the total value obtained was less than \$1,500.

PROCEDURAL HISTORY

Leyda was charged with four counts of second degree identity theft based on four uses or attempted uses of one victim's credit card, along with theft and possession-of-stolen-property offenses. A jury convicted him on all counts, and the Court of Appeals affirmed. The Supreme Court granted review, struck issues raised for the first time in a supplemental brief, affirmed the rulings concerning the charging information and third degree theft, reversed three of the four identity-theft convictions, and remanded for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse three of the four second degree identity-theft convictions and remand for resentencing based on one conviction for second degree identity theft. The third degree theft convictions remain affirmed.

CASES CITED

- State v. Leyda, 122 Wash. App. 633, 94 P.3d 397 (2004)
- Douglas v. Freeman, 117 Wash. 2d 242, 258, 814 P.2d 1160 (1991)
- State v. Tinker, 155 Wash. 2d 219, 222, 118 P.3d 885 (2005)
- State v. Johnson, 119 Wash. 2d 143, 147, 829 P.2d 1078 (1992)
- State v. Tvedt, 153 Wash. 2d 705, 710-11, 717, 107 P.3d 728 (2005)
- State v. Westling, 145 Wash. 2d 607, 610, 40 P.3d 669 (2002)
- State v. Root, 141 Wash. 2d 701, 710, 9 P.3d 214 (2000)
- State v. Ramirez, 2001 WI App 158, 246 Wis. 2d 802, 633 N.W.2d 656, 662
- State v. Turner, 102 Wash. App. 202, 209, 6 P.3d 1226 (2000)
- State v. Azpitarte, 140 Wash. 2d 138, 142, 995 P.2d 31 (2000)
- State v. Adel, 136 Wash. 2d 629, 634-35, 965 P.2d 1072 (1998)
- State v. Bobic, 140 Wash. 2d 250, 266, 996 P.2d 610 (2000)
- State v. Ose, 156 Wash. 2d 140, 144, 146, 124 P.3d 635 (2005)
- State v. Keller, 143 Wash. 2d 267, 282, 19 P.3d 1030 (2001)
- In re Post Sentencing Review of Charles, 135 Wash. 2d 239, 249-50, 955 P.2d 798 (1998)
- State v. Graham, 153 Wash. 2d 400, 103 P.3d 1238 (2005)
- State v. Tili, 139 Wash. 2d 107, 115, 985 P.2d 365 (1999)
- Bell v. United States, 349 U.S. 81, 84, 75 S. Ct. 620, 99 L. Ed. 905 (1955)
- United States v. Cina, 699 F.2d 853, 859 (7th Cir. 1983)
- State v. Trout, 125 Wash. App. 403, 409, 105 P.3d 69 (2005)
- State v. Rodriguez, 78 Wash. App. 769, 772-73, 898 P.2d 871 (1995)

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