SUPREME COURT STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED December 14, 2023 10:43 AM
On Certiorari to the Colorado Court of Appeals, Case No. 19CA0915 Arapahoe County District Court No. 17CR1064 THE PEOPLE OF THE STATE OF COLORADO, Petitioner, v. JESUS RODRIGUEZ-MORELOS, Respondent.	▲ **COURT USE ONLY** ▲ Case No. 22SC982
PHILIP J. WEISER, Attorney General CHRISTINE BRADY, Senior Assistant Attorney General* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 9th Floor Denver, CO 80203 Telephone: 720-508-6000 E-Mail: AG.appellate@coag.gov Registration Number: 24779 *Counsel of Record	

PEOPLE'S OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

☒It contains **5,330** words (principal brief does not exceed 9500 words; reply brief does not exceed 5700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

☒The brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ *Christine Brady*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

Cases

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

PAGE

Statutes and Constitution

Other Authorities

ISSUE

Whether the court of appeals erred in holding that the crime of identity theft does not apply to a business entity's personal identifying information and applies only to information concerning single, identified human beings.

STATEMENT OF THE CASE AND FACTS

The Colorado Department of Regulatory Agencies investigated defendant after it received complaints that he was taking money for teaching certified nursing assistant (CNA) classes that the state had not approved. In Colorado, people can only become a CNA if they complete a state-approved program. *People v. Rodriguez-Morelos*, 2022 COA 107M, ¶ 2, 522 P.3d 213 (Colo App. 19CA0915, Sept. 15, 2022).

Defendant also did volunteer work for a nonprofit organization called United for Migrants ("the nonprofit") that supported migrant workers. He participated in the nonprofit's food and toy drives, and he helped some immigrants get their GEDs. Without the nonprofit's authorization, defendant told at least some of the students that these classes were affiliated with the nonprofit and that he was acting on its

behalf. For example, operating under the alias "Pablo Castellanos," he referred to himself as the nonprofit's "Director of Education," a position that did not exist. Without the nonprofit's knowledge, he gave some students a tax-exempt document[1] bearing the nonprofit's name. *Id.* at ¶ 3; TR 1/9/19AM, pp 21-26.

The students saw the class as a path to obtaining better employment opportunities. Most, if not all, of the students in the class were Spanish-speaking immigrants, and at least some of them were undocumented. The class cost $63, and, over time, defendant added other certification programs at additional costs, all related to the medical profession. *Id.* at ¶ 4.

To induce students to take the class, defendant made two material misrepresentations. He said: (1) the class had been approved by the state; and (2) that students did not need a social security number to

[1] This is a document issued to non-profit corporations exempting them from taxation on real or personal property. *See* Colo. Const. art. 10, § 5 (Property, real and personal, that is used solely and exclusively for religious worship, for schools or for strictly charitable purposes, also cemeteries not used or held for private or corporate profit, shall be exempt from taxation, unless otherwise provided by general law).

become a CNA. Although Colorado does not require a person to have a social security number to become a CNA, one must be lawfully in the United States to become licensed and to work as a CNA. *Id.* at ¶ 5.

Defendant told students who did not have a social security number or lawful status that he would still be able to find them a job in the nursing field. This was not true. *Id.* at ¶ 6.

Before long, various problems with the courses started to arise. The classes were overcrowded, and students felt that they were not learning the requisite skills to become a CNA. Defendant frequently refused to provide students with receipts for their payments. And none of the students who testified at trial had been hired as a CNA. *Id.* at ¶ 7. Defendant's theory of defense at trial was that he simply wanted to help the immigrant community by providing a legitimate service. *Id.* at ¶ 8.

Based on the above, a jury found defendant guilty of one count of identity theft as to the nonprofit, three counts of felony theft as to the students, and one count of criminal impersonation. *Id.* at ¶ 1.

COURT OF APPEALS' OPINION

The court of appeals affirmed the three theft counts and the criminal impersonation count, but reversed the identity-theft conviction. The issue on certiorari involves interpretation of the identity-theft statutory scheme, more specifically, the definition of "personal identifying information," which describes the pieces of information subject to identity theft. The identity-theft statute also defines who can be a victim of the theft of these pieces of information.

Reviewing the identity-theft statute and its definitions, the court of appeals reasoned that a business entity could not be a victim of identity theft where the theft was based on "personal identifying information," which "means information that may be used, alone or in conjunction with any other information, to identify a specific individual, including but not limited to a name; a date of birth; a social security number; a password; a pass code; an official, government-issued driver's license or identification card number; a government passport number; biometric data; or an employer, student, or military identification number." *See* § 18-5-901(13), C.R.S. (2023). The court interpreted the

term "specific individual" as "one identified human being." *Rodriguez-Morelos*, ¶ 20.

Then the court analyzed whether the evidence was sufficient to establish that defendant had committed identity theft under section 18-5-901(7)(b), C.R.S. (2023), for his use of the tax-exempt document bearing the nonprofit's name. *See id.* ("'Financial identifying information,' means any of the following that can be used, alone or in conjunction with any other information, to obtain cash, credit, property, services, or any other thing of value or to make a financial payment . . . [a] number representing a financial account or a number affecting the financial interest, standing, or obligation of or to the account holder.'"). The court concluded in the negative because defendant had not used the nonprofit's tax-exempt document with the intent to obtain cash or any other thing of value. *Rodriguez-Morelos*, ¶ 35.

PRESERVATION AND STANDARD OF REVIEW

This issue was preserved because it was raised in and addressed by the court of appeals. *See* Court of Appeals Opening Brief, pp 25-27; Court of Appeals Answer Brief, pp 17-23; *Rodriguez-Morelos,* ¶¶ 9-26.

Statutory interpretation is a question of law reviewed de novo. *People v. Perez*, 2016 CO 12, ¶ 8. In construing a statute, this Court aims to effectuate the General Assembly's intent. *Carrera v. People*, 2019 CO 83, ¶ 17. It looks first to the language of the statute, giving the words and phrases their plain and ordinary meaning; it reads statutory words and phrases in context; and it construes them according to the rules of grammar and common usage. *Id.* at ¶ 37. This Court also aims to effectuate the purpose of the legislative scheme. *Id.* In doing so, it reads that scheme as a whole, giving consistent, harmonious, and sensible effect to all of its parts, while avoiding constructions that would render any words or phrases superfluous or lead to illogical or absurd results. *McCoy v. People*, 2019 CO 44, ¶ 38.

This Court's ultimate goal is to "adopt an interpretation that achieves consistency across a comprehensive statutory scheme." *People*

In Interest of L.M., 2018 CO 34, ¶ 13. Importantly, words or phrases should be considered "both in the context of the statute of which the words or phrases are a part and in the context of any comprehensive statutory scheme of which the statute is a part." *People v. Berry*, 2017 COA 65, ¶ 13 (citing *People v. Hill*, 228 P.3d 171, 173-74 (Colo. App. 2009); *Krol v. CF & I Steel*, 2013 COA 32, ¶ 15)).

Finally, when statutory language is conflicting or ambiguous, this Court may rely on other factors such as legislative history, the consequences of a given construction, and the goal of the statutory scheme to determine a statute's meaning. *Frazier v. People*, 90 P.3d 807, 811 (Colo. 2004) (citing *People v. Cooper*, 27 P.3d 348, 354 (Colo. 2001)).

SUMMARY OF THE ARGUMENT

Under the plain language of the identity-theft statute and its accompanying definitions, the class of victims is defined as an individual person or business entity. By using the term "of another," the legislature intended to include business entities as victims.

The court of appeals erred in interpreting the plain language of the identity-theft statute because it relied on a faulty interpretation of the phrase "of another," which defines the class of victims. That is, the court of appeals incorrectly focused on the meaning of "specific individual" in isolation, and it unnecessarily resorted to dictionary definitions of the words "specific" and "individual." Further, there are categories of information that can be stolen that would apply equally to entities, i.e., name, password, and pass code, and other entity information analogous to a human being's information, i.e., the nonprofit's tax-exempt document, taxpayer ID, or business license. A defendant could use a business entity's taxpayer ID to commit theft, which is analogous to the social security number of a natural person; a business license number is analogous to a driver's license number; and a tax-exempt document is analogous to a W4 Form.

Given the above, the court of appeals interpreted the class of victims too narrowly, without a good reason for doing so. Even if the statute is ambiguous, a good reason does not exist to strictly construe the class of victims under the identity-theft statute because, after using

the usual tools of statutory construction, this Court will not be "left with a grievous ambiguity or uncertainty in a statute." Further, the rule of lenity is generally used to narrow the mens rea or actus reus contained in a criminal statute, but that is different than using the rule to limit potential victims.

Moreover, to the extent the language of the identity-theft statute and its definitions are ambiguous as to the intended victims, the court of appeals' construction of the statute leads to unreasonable and unjust results—if not illogical or absurd results. The court of appeals offered no reasons—and the People have found none—why the legislature would have desired to limit the victims of identity theft to natural persons. The opposite is true—identity thieves steal from natural persons and business entities alike.

Finally, the legislative history belies the court of appeals' construction of the statute. The legislative recordings specifically denote business entities as victims under the identity-theft statute.

ARGUMENT

I. Under the plain language of the identity-theft statute and its accompanying definitions, a victim is defined as an individual person *or* business entity.

"A person commits identity theft if he or she: [k]nowingly uses the personal identifying information, financial identifying information, or financial device *of another* without permission or lawful authority with the intent to obtain cash, credit, property, services, or any other thing of value or to make a financial payment." § 18-5-902(1)(a), C.R.S. (2023). (emphasis added).

In turn, the phrase "of another" "means that of a natural person, living or dead, *or a business entity* as defined by section 16-3-301.1(11)(b)." § 18-5-901(11), C.R.S. (2023) (emphasis added). And under section 16-3-301.1(11)(b), C.R.S. (2023), "business entity" means, for example, "a corporation or other *entity* that is subject to the provisions of title 7, C.R.S.; . . . a corporation or other *entity* that is subject to the provisions of title 11, C.R.S.; or a sole proprietorship or

other association or group of individuals doing business in the state." (emphasis added).

"Personal identifying information" (PII) means:

> [I]nformation that may be used, alone or in conjunction with any other information, to identify a *specific individual*, including but not limited to a name; a date of birth; a social security number; a password; a pass code; an official, government-issued driver's license or identification card number; a government passport number; biometric data; or an employer, student, or military identification number.

§ 18-5-901(13) (emphasis added).

When these statutory definitions are read in context with the language of the identity-theft statute, an offender commits identity theft when the offender uses the PII not only of a natural person, but also of a business entity. Otherwise, the legislature would not have defined "of another" to include both human beings and entities. *See Berry*, ¶ 13 ("[W]e consider the words or phrases at issue in context—both in the context of the statute of which the words or phrases are a part and in the context of any comprehensive statutory scheme of which the statute is a part."); *see also Doubleday v. People*, 2016 CO 3, ¶ 20

("we read the scheme as a whole, giving consistent, harmonious, and sensible effect to all of its parts").

In any event, in Colorado, the legislative definition of a "person" for the purposes of statutory construction is broad:

> The following definitions apply to every statute, unless the context otherwise requires:
>
> . . .
>
> "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity.

§ 2-4-401(8), C.R.S. (2023).

Although the identity-theft statute does not use the term "person" in describing identifying information, it does use the term "personal." "Personal" is defined as "of, relating to, or affecting a particular person." *See* https://www.merriam-webster.com/dictionary/personal; *see also Black's Law Dictionary* 1142 (6th ed. 1990) ("In general usage, a human being (i.e., natural person), *though by statute* [the] term may include labor organizations, partnerships, associations, corporations. . . .") (emphasis added). So, to the extent that a "specific individual" is a

person, that phrase includes a business entity in Colorado. *See* § 16-3-301.1(11)(b).

Accordingly, for these reasons, the plain language of the identity-theft statute and its accompanying definitions define the class of victims to include an individual person or business entity.

II. The court of appeals erred in interpreting the plain language of the identity-theft statute because it relied on a faulty interpretation of the phrase "of another."

In concluding that PII "concerns information belonging only to human beings," the court of appeals incorrectly focused on the meaning of "specific individual" in isolation, rather than interpreting PII in the context of the overall statutory scheme.

First, it unnecessarily resorted to dictionary definitions of the words "specific" and "individual" to conclude that "specific individual" refers to "one identified human being." *Rodriguez-Morelos,* ¶¶ 20, 25. *See City of Westminster v. Dogan Constr. Co.,* 930 P.2d 585, 592 (Colo. 1997) ("[W]e have not hesitated to abjure literal definitions when such definitions would defeat legislative intent."*); People v. Fioco,* 2014 COA

22, ¶ 20 (dictionary definitions do not reflect statutory purposes or objectives). Indeed, "[d]ictionary definitions are acontextual, whereas the meaning of sentences depends critically on context, including all sorts of background understandings." *United States v. Costello,* 666 F.3d 1040, 1044 (7th Cir. 2012). By contrast, statutory interpretation "demands careful attention to the nuances and specialized connotations that speakers of the relevant language attach to particular words and phrases in the context in which they are being used." *Id.* (internal quotation marks omitted).

Second, regardless of how dictionaries define these words, the "of another" phrase still defeats the court of appeals' interpretation. Its interpretation cannot be reconciled with the legislature's plain wording in the identity-theft statute that an offender also commits identity theft if the offender uses the PII of a business entity, i.e., belonging to an entity. Worse, the court of appeals' interpretation effectively nullifies or renders superfluous the legislature's use of the phrase "of another" by limiting PII to that concerning human beings. *See Carrera*, ¶ 17 ("we must 'avoid constructions that would render any words or phrases

superfluous or lead to illogical or absurd results'") (internal citation omitted). If the legislature intended to limit PII to information belonging only to natural persons, it would not have defined "of another" to also include entities. Thus, by providing that an offender also commits identity theft by using the PII belonging to an entity, the legislature necessarily rejected the interpretation that PII concerns information "belonging only to human beings."

Thus, the court of appeals erred in interpreting the plain language of the identity-theft statute because it ignored the phrase "of another" and instead relied on dictionary definitions of "specific" and "individual."

The legislature did not plainly indicate that "specific individual" could not be a specific individual corporation. The term "individual" is broad enough to include more than natural persons. Further, the list of information that can be stolen by an identity thief is non-exclusive, so it includes items that can be stolen from a business entity.

Accordingly, the court of appeals erred in interpreting the plain language of the identity-theft statute because it relied on a faulty

interpretation of the phrase "of another" and failed to read it in context as it was required to do.

III. The legislature did not plainly indicate that "specific individual" could not be a specific individual corporation.

A. The term "individual" is broad enough to include more than natural persons.

As noted above, PII "include[s] but [is] not limited to a name . . . a password; [or] a pass code," belonging to a "specific individual." § 18-5-901(13).

Although the court of appeals suggests that the word "individual" is commonly understood as being limited to natural persons, it is not necessarily so. The legislature did not plainly indicate in section 18-5-901(13) that "specific individual" could not be a specific individual corporation. That is, the legislature could have easily used a more exact phrase like, "of another natural person."

In any event, "individual" has been defined as "a single or particular being or thing or group of beings *or things*." *Webster's Third New Int'l Dictionary* 1152 (2002) (emphasis added); *see also Black's Law*

Dictionary 843 (9th ed. 2009) ("[o]f or relating to a single person *or thing*.") (emphasis added). Consistent with these definitions, courts construing federal statutes have concluded that statutory context may make clear that the word "individual" includes entities as well as natural persons. *See, e.g., Clinton v. City of New York*, 524 U.S. 417, 428 (1998) ("[I]n the context of the entire section Congress undoubtedly intended the word 'individual' to be construed as synonymous with the word 'person.'"); *United States v. Middleton*, 231 F.3d 1207, 1210–13 (9th Cir. 2000) ("To the extent that a word's dictionary meaning equates to its 'plain meaning,' a corporation can be referred to as an 'individual'; neither is it a legal term of art that applies only to natural persons."); *LaBarge v. Mariposa Cnty.*, 798 F.2d 364, 366–67 (9th Cir. 1986) (construing the phrase "private individual in like circumstances" to include an in-state employer who had brought in some employees for a temporary job in-state); *see also Consol. Edison Co. of N.Y., Inc. v. Pataki*, 292 F.3d 338, 346–49 (2d Cir. 2002) (a corporation is an "individual" that may not be singled out for punishment under the Bill of Attainder Clause of the United States Constitution).

Accordingly, the term "individual" is broad enough to include more than natural persons.

B. The list of information that can be stolen by an identity thief is non-exclusive, and thus it includes a business entity's information.

The definition of PII provides a clue to the Colorado General Assembly's intent because it gives a non-exclusive list of the pieces of information that can be stolen, which includes name, password, and pass code. Here, defendant used without permission the nonprofit's name. But in a different scenario, defendant could have used other pieces of information specific to the nonprofit that are not listed in the definition. For instance, he *did* use the nonprofit's tax-exempt document, although the court of appeals disavowed that action because he did not use it "with the intent to obtain cash or any other thing of value." *Rodriguez-Morelos*, ¶ 35. A defendant could use a business entity's taxpayer ID to commit theft, which is analogous to the social security number of a natural person; and a business license number is analogous to a driver's license number. Finally, a tax-exempt document

is analogous to a W4 Form for natural persons because it can exempt them from the withholding of federal income tax from their paychecks. *See* https://www.irs.gov/forms-pubs/about-form-w-4.

Importantly, in *People v. Rieger*, 2019 COA 14, the division held that "the word 'includes' is generally used as a term of extension or enlargement when used in a statutory definition." *Id.* at ¶ 14 (quoting *Freedom Newspapers, Inc. v. Tollefson*, 961 P.2d 1150, 1154 (Colo. App. 1998)). The court further held that the word "includes" "denotes that the examples listed are not exhaustive or exclusive." *Id.* (quoting *Preston v. Dupont*, 35 P.3d 433, 439 (Colo. 2001)). And to remove any possible doubt, the court specifically added that the term "includes" means that the examples are "only illustrative." *Id.* (citing *People v. Patton*, 2016 COA 187, ¶¶ 14-16); *see also* Bryan A. Garner, *Garner's Dictionary of Legal Usage* 439 (3d ed. 2011) ("[I]ncluding ... should not be used to introduce an exhaustive list, for it implies that the list is only partial[;] ... 'the use of the word including indicates that the specified list ... is illustrative, not exhaustive.' ").

Again, the plain language of the definition lists specific pieces of information that plainly *do* apply to a business entity—name, password, and pass code. *See* § 18-5-901(13). And, because the list is not exhaustive, an identity thief could use other pieces of information that are not specifically listed in the definition from either a natural person *or* a nonprofit corporation for purposes of obtaining money. § 18-5-902(1)(a). In this way, the legislature would not be limiting whatever information might be used in the future (that does not exist now) to identify a natural person or entity.

In sum, Colorado's General Assembly took a broad enough view of identity theft to cover crimes committed against business entities and expressly included them as potential crime victims by using the "of another" definition. *See* § 18-5-902(1)(a). Thus, under the plain language of the statute, a person also commits identity theft when he or she uses the PII belonging to an entity. Significantly, nothing in the description of pieces of information in section 18-5-901(13) excludes business entities—as defined in section 16-3-301.1(11)(b)—as victims. Likewise, nothing in the definition of "financial identifying information"

in section 18-5-901(7)(b), limits the victimization of business entities only to that section.

Read in context, the legislative definition of the victim of identity theft includes a nonprofit corporation like the one in this case, and that definition should apply here. *See* § 2-4-101, C.R.S. (2023) ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage[']" and "[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly").

In the end, because the plain language of the identity-theft definition of PII includes business entities, the court of appeals erred. *See Hunsaker v. People*, 2015 CO 46, ¶ 11 (if the statutory language is clear, the reviewing court applies its plain and ordinary meaning).

Accordingly, the list of information that can be stolen by an identity thief is non-exclusive, and thus it includes a business entity's information.

IV. The court of appeals interpreted the class of victims too narrowly, without a good reason for doing so.

A. Legal Standards

"All general provisions, terms, phrases, and expressions, used in any statute, shall be liberally construed, in order that the true intent and meaning of the general assembly may be fully carried out." § 2-4-212, C.R.S. (2023).

Courts commonly invoke the idea of a "strict" or "liberal" interpretation to resolve questions about a statute's meaning. Traditionally, the entire endeavor of statutory interpretation was built around the idea that certain types of laws should be construed narrowly and others broadly. Indeed, the liberal versus strict rules are often central to resolve questions about legislative intent, and they can apply to penal laws. 3 Sutherland, *Statutory Construction, In General,* § 58.1 at 147-49 (8th ed.).

The rule of strict construction, or "rule of lenity" in the criminal context, requires courts to interpret ambiguous penal laws in favor of

the defendants subjected to them. For the following reasons, however, this rule affords defendant no comfort here.

"The rule of lenity applies only if, after using the usual tools of statutory construction, courts are left with a *grievous ambiguity or uncertainty* in a statute." 3 Sutherland, *Statutory Construction*, *Operation of the Strict Construction Rule* (*Rule of Lenity)*, § 59.4 at 194-222 (8th ed.) (emphasis added).

Application of the rule depends, as an initial matter, on a judicial finding of ambiguity. *People v. Forgey,* 770 P.2d 781, 783 (Colo. 1989) ("The rule of lenity should be used only to resolve statutory ambiguity, and not to create it by disregarding the clear legislative purpose for which the statute was enacted."). A statute is ambiguous if it can reasonably be interpreted in two or more ways, but it is not ambiguous merely because different interpretations are conceivable. *Lockhart v. United States,* 577 U.S. 347, 361 (2016). Nor is a statute ambiguous for lenity purposes only because judicial authority is divided over its proper construction. *Reno v. Koray,* 515 U.S. 50, 64 (1995). And the "mere possibility of articulating a narrower construction . . . does not by itself

make the rule of lenity applicable." *Smith v. United States,* 508 U.S. 223, 239 (1993).

Before jumping to the rule of lenity, courts should try to resolve the ambiguity by considering a law's text, context, structure, purpose, and legislative history. Thus, application of the rule of lenity is proper only at the end of the process of construing what a legislature has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers. In other words, "the rule of lenity should operate as a tie-breaker." *United States v. Mabry*, 518 F.3d 442, 452 (6th Cir. 2008).

As well, the ambiguity must be "grievous." *Maracich v. Spears*, 570 U.S. 48, 76 (2013); *see also Huddleston v. United States*, 415 U.S. 814, 831 (1974) (same). "Importantly, the rule of lenity does not apply when a law merely contains some ambiguity or is difficult to decipher." *Wooden v. United States*, 595 U.S. 360, 377 (2022) (Kavanaugh, J., concurring). This is so because "most statutes are ambiguous to some degree." *Muscarello v. United States*, 524 U.S. 125, 138 (1998). Instead, "[t]he rule of lenity applies only if, after seizing everything

from which aid can be derived . . . we can make no more than a guess as to what Congress intended." *Id.*, at 138–139 (1998) (internal quotation marks omitted).

B. Analysis

Here, even if the statute were ambiguous, a good reason does not exist to strictly construe the class of victims under the identity-theft statute because, after using the usual tools of statutory construction, this Court will not be "left with a grievous ambiguity or uncertainty in a statute." *Muscarello*, 524 U.S. at 139. And considering the legislative history—as discussed in the next section—this Court is more than able to avoid making a "guess" about which victims the legislature intended to protect. The rule of lenity is generally used to narrow the mens rea or actus reus contained in a criminal statute, but that is different than using the rule to limit potential victims.

Accordingly, the court of appeals interpreted the class of victims too narrowly, without a good reason for doing so.

V. The court of appeals' interpretation leads to absurd and unreasonable results.

A. Legal Standards

This Court "read(s) the statutory scheme as a whole, giving consistent, harmonious, and sensible effect to all of its parts and avoiding constructions that would render any of the statutory words or phrases superfluous or that would lead to illogical or absurd results." *Pellegrin v. People,* 2023 CO 37, ¶ 22; *Garcia v. People*, 2023 CO 41, ¶ 28 (same). Likewise, construction of a statute which would lead to unreasonable and unjust results should not be adopted where it can be avoided without doing violence to the language of the statute. *Danielson v. Indus. Comm'n of Colo.,* 44 P.2d 1011, 1013 (Colo. 1935); *see also Pellegrin,* ¶ 22 (citing *Waneka v. Clyncke*, 134 P.3d 492, 494 (Colo. App. 2005) ("When interpreting a statute, a reviewing court may substitute 'or' for 'and,' or vice versa, to avoid an absurd or unreasonable result."), *aff'd,* 157 P.3d 1072 (Colo. 2007)); *Huber v. Colo. Mining Ass'n*, 264 P.3d 884, 889 (Colo. 2011) (noting that in construing a constitutional provision, the supreme court must avoid interpretations

that lead to unjust, absurd, or unreasonable results); *cf.* § 2-4-203(1)(e), C.R.S. (2023) (providing that if a statute is ambiguous, then a court, in determining the intention of the General Assembly, may consider the consequences of a particular construction).

B. Analysis

To the extent the language of the identity-theft statute and its definitions are ambiguous as to the intended victims, the court of appeals' construction of the statute leads to unreasonable and unjust results—if not illogical or absurd results. The court of appeals gave no reason why the legislature would deny entities statutory protection. As argued above, there are categories of information that would apply equally to entities, i.e., name, password, and pass code, and other entity information analogous to a human being's information, i.e., the nonprofit's tax-exempt document, taxpayer ID, or business license.

Similarly, the court of appeals offered no reasons—and the People have found none—why the legislature would have even desired to limit the victims of identity theft to natural persons. The opposite is true—

identity thieves steal from natural persons and business entities alike. Further, identity theft of a business harms natural persons—owners of small entities, natural persons doing business as entities, shareholders of large entities, and customers of each one of those who pay higher prices for goods and services to offset the losses. The court of appeals' interpretation deprives all of the above victims protection from identity thieves, for no discernible reason, and in that way it is absurd and unreasonable.

Most significantly, a review of the legislative history resolves any ambiguity regarding whether the General Assembly intended business entities to be included within the ambit of victims of identity theft. That is, the legislative recordings for section 18-5-902 (HB 06-1326), support the argument that the intent of the statute is to include business entities as victims. *See Jordan v. Panorama Orthopedics & Spine Ctr.,* 2015 CO 24, ¶ 14 (a court's "goal in construing a statute is to ascertain and effectuate the General Assembly's intent . . . look[ing] to the language of the statute and give the words their plain and ordinary

meaning before resorting to interpretive rules of statutory construction or, where a statute remains ambiguous, legislative history").

The representatives sponsoring the bill introduced a district attorney from the First Judicial District to discuss the "technicalities of the bill." *See* Hearing on H.B. 1326 before the Subcommittee of the House Judiciary Committee, 65th General Assembly, Second Session (Feb. 23, 2006), at 1:29-34.

The district attorney first told a story about an elderly couple victimized by a woman at a church booth posing as an agent from a mortgage company, whose name she used without permission. She used the personal information she received from the couple to purchase a house, vehicle, and other items, and to open a bank account in the wife's name. The district attorney then made the following comments:

> We talked about financial identifying information, personal identifying information, and there's a definition of "another" *that's important* because the victims of identity theft are actual living people, you know, living person, they could be a dead person, or *definitely a business entity*. So "of another" is a *business entity*, a living person, a dead person.

See id. at 14:04-30 (emphasis added).

In other words, the district attorney defined "of another" as referring to (1) a business entity, (2) a living person, or (3) a dead person. Significantly, nowhere in his comments did the district attorney distinguish between types of victims when referring to PII. To be sure, a human being can be an identity-theft victim where the theft is committed under either definition as set forth in section 18-5-901(13) or section 18-5-901(7)(b).

But, according to the court of appeals, only one section applies to business entities, section 18-5-901(7)(b). The legislative recordings do not support that interpretation; and to the contrary, show that the court of appeals' interpretation leads to absurd results.

Accordingly, because the court of appeals' interpretation leads to absurd and unreasonable results, it should not stand.

CONCLUSION

For all of the above reasons, the People respectfully request that this Court reverse the court of appeals' opinion.

PHILIP J. WEISER
Attorney General

/s/ *Christine Brady*

CHRISTINE BRADY, 24779*
Senior Assistant Attorney General
Criminal Appeals Section
Attorneys for Petitioner
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **OPENING BRIEF** upon **KIRA LEE SUYEISHI** and all parties herein via Colorado Courts E-filing System (CCES) on December 14, 2023.

/s/ Alex Miller