

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jason Eric Meisenholder,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 4, 2022

Court of Appeals Case No.
21A-CR-2351

Appeal from the Decatur Superior
Court

The Honorable Matthew D.
Bailey, Judge

Trial Court Cause No.
16D01-1912-F6-1551

Crone, Judge.

Case Summary

- [1] Jason Eric Meisenholder appeals his conviction for level 6 felony synthetic identity deception. Because we sua sponte find that the statute pursuant to which Meisenholder was convicted and sentenced violates the Proportionality Clause of the Indiana Constitution, we reduce his conviction to class B misdemeanor false informing, and remand with instructions to the trial court to resentence him accordingly.

Facts and Procedural History

- [2] On the night of December 4, 2019, Decatur County Sheriff's Deputy John Organist was advised to be on the lookout for a blue Dodge Dakota with a "possible impaired driver" who "possibly had showed a firearm to the complainant." Tr. Vol. 2 at 69. As the deputy was exiting a parking lot, he saw a blue Dodge Dakota entering the parking lot. The deputy noticed that the Dakota did not have a visible license plate, and he initiated a traffic stop. The Dakota's driver exited the vehicle, and the deputy asked him for identification. The driver said that "he didn't have his driver's license information on him" and that his name was "Kevin Eric Meisenholder[.]" *Id.* at 71. The driver then gave the deputy three different birthdates. Deputy Organist relayed the information to dispatch, which found a record for a Kevin Meisenholder who had a different birthdate and did not share the driver's "[i]dentifying markers" such as "[h]air, height, weight, eyes." *Id.* at 73. The deputy "detained" the driver and "put him back in the vehicle." *Id.* Very shortly thereafter, the driver admitted that his name was Jason Meisenholder and "provided his correct

information.” *Id.* at 74. Meisenholder “admitted that he was providing false information” and “knew he had some warrants out for his arrest.” *Id.*

- [3] The State charged Meisenholder with level 6 felony synthetic identity deception, class A infraction driving while suspended, and three other offenses, and it also alleged that he was a habitual offender. A jury found him guilty of synthetic identity deception and driving while suspended and found him to be a habitual offender. The jury found him not guilty on the remaining charges. The trial court sentenced Meisenholder to 545 days for synthetic identity deception, enhanced by two years based on the habitual offender finding, and suspended 545 days to probation. This appeal ensued.

Discussion and Decision

- [4] Meisenholder challenges his conviction for synthetic identity deception. The statute pursuant to which he was charged, which has since been repealed and eliminated from our criminal code, read in pertinent part as follows:

(a) A person who knowingly or intentionally obtains, possesses, transfers, or uses the synthetic identifying information:

(1) with intent to harm or defraud another person;

(2) with intent to assume another person’s identity; or

(3) with intent to profess to be another person;

commits synthetic identity deception, a Level 6 felony.

....

(d) It is not a defense in a prosecution under subsection (a) ... that no person was harmed or defrauded.

Ind. Code § 35-43-5-3.8 (2019). “Synthetic identifying information” was defined as “identifying information that identifies: (1) a false or fictitious person; (2) a person other than the person who is using the information; or (3) a combination of persons described under subdivisions (1) and (2).” Ind. Code § 35-43-5-1(r) (2019). And “identifying information” was defined in pertinent part as “information that identifies a person, including a person’s ... name, address, date of birth, place of employment, employer identification number, mother’s maiden name, Social Security number, or any identification number issued by a governmental entity[.]” Ind. Code § 35-43-5-1(i) (2019).

[5] At the time of Meisenholder’s offense, Indiana Code Section 35-44.1-2-3(d) provided that a person who “gives false information in the official investigation of the commission of a crime, knowing the ... information to be false ... commits false informing, a Class B misdemeanor.” Meisenholder does not dispute that he falsely identified himself to Deputy Organist, and the evidence as presented certainly would support a conviction for false informing. However, rather than charging Meisenholder pursuant to the false informing statute, the State charged him with level 6 felony synthetic identity deception for “knowingly or intentionally obtaining, possessing, transferring, or using synthetic identifying information with intent to profess to be another person.” Appellant’s App. Vol. 2 at 14 (citing Ind. Code § 35-43-5-3.8(a)(3)). By seeking

and obtaining a felony conviction against Meisenholder, the State was then also able to seek and obtain a habitual offender finding and mandatory sentence enhancement, resulting in a sentence well in excess of what Meisenholder could have received if charged and convicted of the class B misdemeanor for his criminal conduct.

[6] Under these circumstances, we sua sponte find that the synthetic identity deception statute, as applied to Meisenholder, violates the Proportionality Clause, Article 1, Section 16, of the Indiana Constitution. The Proportionality Clause directs that “[a]ll penalties shall be proportioned to the nature of the offense.” While we cannot set aside a legislatively sanctioned penalty merely because it seems too severe, the fact that an appellant’s sentence “falls within parameters affixed by the legislature does not relieve this Court of the constitutional duty [under Section 16] to review the duration of appellant’s sentence as it is possible for the statute under which appellant is convicted to be constitutional, and yet be unconstitutional as applied to appellant in this particular instance.” *Conner v. State*, 626 N.E.2d 803, 806 (Ind. 1993).

[7] As this Court recognized in *Poling v. State*, 853 N.E.2d 1270 (Ind. Ct. App. 2006), Indiana caselaw involving the Proportionality Clause has primarily involved situations where the defendant argues that a less serious crime garners a more severe punishment than a more serious crime. *Id.* at 1276. Thus, although the Proportionality Clause requires proportionality between “penalties” for an offense and the offense itself, not proportionality between the penalty for one offense and the penalty for another offense, “a reviewing court

cannot determine in isolation whether a penalty for an offense is disproportional to the offense itself; instead, some comparison must be made to the penalties prescribed for similar offenses.” *Mann v. State*, 895 N.E.2d 119, 123 n.6 (Ind. Ct. App. 2008). Indeed, our supreme court has analyzed challenges based on the Proportionality Clause in part by comparing the penalty and offense at issue to penalties for similar offenses. *See, e.g., State v. Moss-Dwyer*, 686 N.E.2d 109, 113 (Ind. 1997) (concluding the defendant’s sentence for providing false information on handgun permit application did not violate Proportionality Clause when compared to more lenient sentence for carrying a handgun without a license because “[t]he legislature could well determine that giving false information on an application for a handgun permit was a more serious crime than carrying a handgun without a license”); *Conner*, 626 N.E.2d at 806 (finding statute unconstitutional where penalty for selling fake marijuana was more severe than penalty for selling real marijuana, which contradicted pattern of punishing real drug dealing more harshly than fake drug dealing).

- [8] Moreover, in *Poling*, we found that the Proportionality Clause may be violated where there is redundancy between the elements of offenses that are given different sentences. *Poling*, 853 N.E.2d at 1276. The defendant in *Poling* was convicted of three counts of class C felony neglect of a dependent, and he argued on appeal that his sentence violated the Proportionality Clause. The neglect of a dependent statute provided that the offense was a class D felony if, among other things, the defendant abandoned or cruelly confined the

dependent, but also stated that the offense was elevated to a class C felony if the cruel confinement “consist[ed] of unusual confinement.” *Id.* (quoting Ind. Code § 35-46-1-4(a)(5)). Noting a redundancy between the offense levels in that both authorized a conviction if the confinement was cruel, we concluded that the defendant’s sentence violated the Proportionality Clause because “one defendant can receive a harsher sentence than another for the very same crime.” *Id.* We explained that when criminal statutes with differing penalties require essentially the same proof, “skilled prosecutors w[ill] usually seek the more severe sentence” and thus the statute providing the lesser penalty “would effectively be nullified.” *Id.* at 1277 (citation omitted). “[C]ommon sense and sound logic would seemingly dictate” that the penalties for what constitutes the same crime be identical. *Id.*

- [9] Here, Meisenholder’s offense of level 6 felony synthetic identity deception (using false or fictitious identifying information with intent to profess to be another person) could be proven with the exact same, and in fact lesser, evidence as the offense of class B misdemeanor false informing (requiring additional proof that the false information is given in the official investigation of the commission of a crime). Yet, synthetic identity deception provided a harsher sentence. The legislature could not have rationally concluded that defendants who lie about their identity to anyone under any circumstances are more blameworthy or deserve a harsher penalty than defendants who lie about their identity to law enforcement during a criminal investigation. It should not have been left to prosecutorial discretion, as happened here, whether to pursue

a level 6 felony charge or a class B misdemeanor charge for the same conduct, as this resulted in Meisenholder receiving a harsher sentence than another defendant could have received for the very same crime. Under the circumstances, the synthetic identity deception statute violates the Proportionality Clause.

[10] Wisely, the “synthetic identity deception” statute was repealed, and this Proportionality Clause violation cannot be repeated. Although our current statutory law still provides for the level 6 felony offense of “identity deception,” that offense applies only “to a person who, with intent to harm or defraud another person, knowingly or intentionally ... uses identifying information to profess to be another person.” Ind. Code § 35-43-5-3.5. This is quite distinguishable from the crime of false informing, which requires no such intent. In other words, verbally giving false identifying information to a police officer in the official investigation of the commission of a crime, without more, would not also support a felony charge of identity deception.

[11] Because we find that the synthetic identity deception statute violates the Proportionality Clause as applied to Meisenholder, we hereby reduce his level 6 felony conviction to a class B misdemeanor conviction for false informing and remand with instructions for the trial court to resentence Meisenholder accordingly. Because the felony conviction to which the habitual offender

enhancement was attached no longer exists,¹ we further order the trial court to vacate the habitual offender finding and enhancement.

[12] Reversed and remanded.

Vaidik, J., and Altice, J., concur.

¹ A habitual offender finding does not constitute a separate crime, nor does it result in a separate sentence; rather, it results in a sentence enhancement imposed upon the conviction of a subsequent felony. *Hendrix v. State*, 759 N.E.2d 1045, 1048 (Ind. 2001).