STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case Nos. 2017AP1587-CR, 2017AP1588-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

THEORIS RAPHEL STEWART,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION AND AN ORDER DENYING POSTCONVICTION RELIEF ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE DENNIS R. CIMPL, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Page

Statutes

Other Authorities

ISSUE PRESENTED[1]

Was there a sufficient factual basis to support Defendant-Appellant Theoris Raphel Stewart's guilty pleas to two counts of unauthorized use of an entity's identifying information or documents?

The circuit court answered, "Yes."

This Court should answer, "Yes."

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State believes that the briefs will adequately address the issue and therefore does not request oral argument. Publication may be warranted to clarify that the phrase "anything else of value or benefit" in Wis. Stat. § 943.203(2)(a) means exactly what it says.

INTRODUCTION

In 2012, Stewart was convicted of two counts of failure to pay child support. On each count, he faced a fine not to exceed $10,000, or imprisonment not to exceed three and one half years, or both. In order to obtain a favorable sentencing disposition, Stewart falsified documents and provided them to the presentence investigation (PSI) writer. These forged records included diplomas from the University of Arizona and Jones International University. Apparently, Stewart's plan worked: after noting Stewart's educational background

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[1] Although the State believes that the circuit court had the authority to order $8,583.26 in child support arrearages as restitution, it stipulates—as it did at the circuit court—to Stewart's request to convert that amount to an order under Wis. Stat. § 948.22(7)(b). Thus, the State will not address Stewart's second issue presented.

at sentencing, the circuit court placed him on probation, declining the State's additional request for conditional jail time.

The State brought the instant cases in 2014, charging Stewart with a total of 20 counts. Ultimately, Stewart pled guilty to 11 counts between the two cases, including two counts of identity theft for the falsified diplomas. He now seeks to withdraw his guilty pleas to the identity theft charges, contending that there is an insufficient factual basis to support them.

Specifically, Stewart argues that the complaint, which formed the basis of his guilty pleas and conviction, does not allege sufficient facts to meet two of the four elements of the crime. Those elements are: (1) that Stewart intentionally used an identifying document of an entity to obtain credit, money, goods, services, or anything else of value or benefit; and (2) that Stewart intentionally represented that he was the entity or was acting with the authorization or consent of the entity.

Stewart is incorrect. First, the complaint alleges that Stewart falsified diplomas to obtain a favorable sentencing disposition, thereby showing that he committed identity theft to obtain "anything else of value or benefit" within the plain meaning of Wis. Stat. § 943.203(2)(a). The general phrase "anything else of value or benefit" means exactly what it says, and Stewart's conduct plainly falls within the statute's broad reach. Both statutory history and statutory context confirm the State's plain-meaning interpretation of Wis. Stat. § 943.203(2)(a).

However, even if Stewart is correct that the general phrase "anything else of value or benefit" should be limited to cover only items of pecuniary interest, he still loses. In addition to imprisonment, Stewart faced up to a $20,000 fine for his 2012 convictions. Therefore, Stewart falsified

diplomas in part to avoid a $20,000 loss, which undoubtedly qualifies as a financial benefit. Accordingly, even under Stewart's narrow reading of Wis. Stat. § 943.203(2)(a), there is a sufficient factual basis to support his pleas.

Second, the complaint alleges that Stewart falsified diplomas and presented them as authentic documents to the PSI writer, thus showing that he intentionally represented that he was "acting with the authorization or consent" of the universities within the meaning of Wis. Stat. § 943.203(2). Stewart's challenge fails because it depends on the faulty premise that he needed to represent that he was acting with the *express* authorization or consent of the universities to use the diplomas. That is not what the statute says.

Therefore, this Court should affirm the judgment of conviction and the circuit court's order denying postconviction relief.

STATEMENT OF THE CASE

A. Statutory background

Before 2003, Wisconsin law prohibited identity theft—the unauthorized use of personal identifying information or a personal identification document—to obtain "credit, money, goods, services or anything else of value." Wis. Stat. § 943.201(2) (2001–02). The Legislature's use of the general phrase "anything else of value" created wiggle room for defendants to challenge their convictions under this statute. But Wisconsin courts responded by rejecting those challenges, endorsing a broad construction of the statutory language.

For example, in *State v. Ramirez*, the defendant used another person's social security number to get a job. *State v. Ramirez*, 2001 WI App 158, ¶ 2, 246 Wis. 2d 802, 633 N.W.2d 656. The defendant argued that employment did not constitute a thing of value under Wis. Stat. § 943.201(2).

Ramirez, 246 Wis. 2d 802, ¶ 7. Rejecting the defendant's narrow interpretation of the statute, this Court held that employment was a thing of value, as "what Ramirez ultimately sought and obtained was the compensation and other economic benefits that flowed from the employment." *Id.*

In *State v. Peters*, the defendant used another person's identity during her arrest and in subsequent bail proceedings to obtain lower bail. *State v. Peters*, 2003 WI 88, ¶¶ 3–4, 263 Wis. 2d 475, 665 N.W.2d 171. The defendant moved to dismiss the identity theft charge, contending that lower bail did not constitute a thing of value under Wis. Stat. § 943.201(2). *Peters*, 263 Wis. 2d 475, ¶ 10. The lower court agreed, concluding that the general phrase "anything else of value" applied only to items that had commercial value or market value. *Id.* ¶ 16.

The Wisconsin Supreme Court ultimately declined to define the scope of the general phrase, though not before stating that "[t]here is nothing in Wis. Stat. § 943.201 that explicitly limits its application to identity thefts that are carried out to obtain something that has 'commercial value' or 'market value.' Neither does the statute implicitly contain such a limitation." *Peters*, 263 Wis. 2d 475, ¶ 17. The Court determined that misappropriating another's identity to obtain lower bail "meets the statute's requirement that the perpetrator misappropriate an identity to obtain credit or money." *Id.* ¶ 23. In reaching this conclusion, the Court noted that the phrase "anything else of value" did not narrow the meaning of "credit, money, goods [or] services." *Id.* Rather, it served to "expand the list of potentially qualifying 'things of value.'" *Id.* Thus, similar to *Ramirez*, the Court endorsed a broad interpretation of the identity theft statute. *Id.* ¶¶ 24–25.

One month after the Wisconsin Supreme Court issued its decision in *Peters*, the Legislature amended the identity

theft statute with 2003 Wis. Act 36. Act 36 did a number of things to expand the breadth of the crime of identity theft. Relevant here, Act 36 amended Wis. Stat. § 943.201(2) to prohibit personal identity theft to "obtain credit, money, goods, services, *employment*, or any other thing of value *or benefit*." 2003 Wis. Act 36, § 22. Moreover, Act 36 amended the statute to prohibit personal identity theft "to avoid civil or criminal process or penalty." *Id.*

In addition to the changes to Wis. Stat. § 943.201, Act 36 created a new crime, codified in Wis. Stat. § 943.203. 2003 Wis. Act 36, § 24. This statute—the one at issue in this case—prohibits the unauthorized use of an *entity's* identifying information or identifying documents to "obtain credit, money, goods, services, or anything else of value or benefit." *Id.* § 24.

B. Factual and procedural background

The identity theft

On December 19, 2012, Stewart pled guilty to two counts of failure to support in Milwaukee County Case No. 2011CF2608. (R. 2:6.)[2] During the plea hearing, Stewart told the circuit court that he had two Bachelor's degrees. (R. 2:6.) The court ordered a PSI report to assist with sentencing. (R. 2:6.)

During Stewart's interview with the PSI writer, he represented that he had Bachelor's degrees from the University of Arizona and Jones International University. (R. 2:6.) He also told the PSI writer that he had successfully appealed his "bad conduct discharge" from the United States

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[2] The State refers to the appellate record for 2017AP1587-CR unless otherwise indicated. References to the appellate record in 2017AP1588-CR are indicated by the designation "R2."

Air Force, obtaining a "general discharge" instead. (R. 2:6.) To back up his claims, Stewart provided the PSI writer with a diploma from the University of Arizona, awarding Stewart a Bachelor of Science in Computer Science; a diploma from Jones International University, awarding Stewart a Bachelor of Arts in Business Administration; an email from Vince Jordan, Military Liaison at Jones International University, stating that he was sending Stewart a copy of his degree; and a letter from the United States Department of Veterans Affairs, stating that Stewart's "bad conduct discharge" had been upgraded to a "general discharge." (R. 2:6–7.)

At sentencing on May 7, 2013, the circuit court noted Stewart's educational background. (R. 2:7.) The court withheld sentence and gave Stewart probation, declining the State's additional request for conditional jail time. (R. 2:7.)

On February 7, 2014, Stewart returned to the circuit court because his probation agent had requested that he serve conditional jail time for failing to comply with the terms of his probation. (R. 2:7.) At the hearing, Stewart told the court that he had been hired by Amazon and would be starting his job soon. (R. 2:7.) He provided the court with an email from Amazon, indicating Stewart's orientation date and starting salary. (R. 2:7.) Based on this information, the court stayed the conditional jail time. (R. 2:7.)

The State later discovered that Stewart had falsified the above-referenced documents. (R. 2:7.) As a result, the State brought additional charges against Stewart. In Milwaukee County Case No. 2014CF3197, the State charged Stewart with seven counts of failure to support a child, four counts of unauthorized use of an entity's identifying information or documents as a repeater, and four counts of contempt of court. (R. 2:1–5.) In Milwaukee County Case No. 2014CF5128, the State charged Stewart with five additional counts of failure to support. (R2. 1:2–3.)

The plea and sentencing

Ultimately, the parties negotiated a plea agreement. (R. 54:2–4.) Stewart pled guilty to 11 counts between the two cases: eight counts of failure to support a child; two counts of identity theft; and one count of contempt of court. (R. 54:4–8.) As part of the agreement, the State dismissed two counts outright and dismissed and read in the remaining seven counts. (R. 54:2–3.) During the plea hearing, defense counsel agreed that the criminal complaint provided a sufficient factual basis for Stewart's guilty pleas. (R. 54:21.)

Sentencing took place on April 29, 2016. (R. 55.) At sentencing, Stewart admitted that he lied "to find a shortcut." (R. 55:34.) The circuit court, the Honorable Dennis R. Cimpl, presiding, sentenced Stewart to a total of six years' initial confinement and seven years' extended supervision between the two cases. (R. 55:54–56.)

The postconviction motion

Stewart filed a postconviction motion, seeking to withdraw his guilty pleas to the identity theft counts on the basis that there is not a sufficient factual basis to support the pleas. (R. 32:4.) Specifically, he argued that the complaint does not allege sufficient facts to meet two of the four elements of the crime: (1) that Stewart intentionally used an identifying document of an entity to obtain credit, money, goods, services, or anything else of value or benefit; and (2) that Stewart intentionally represented that he was the entity or was acting with the authorization or consent of the entity. (R. 32:5–10.)

The State argued that by presenting falsified diplomas to the PSI writer to obtain a favorable sentencing outcome, Stewart committed identity theft to obtain "anything else of value or benefit" within the meaning of Wis. Stat. § 943.203(2)(a). (R. 34:10–14.) It further argued that when Stewart presented the falsified diplomas to the PSI writer,

he acted as though he had the authorization or consent of the entities to use the diplomas. (R. 34:9–10.)

The circuit court denied Stewart's motion in a written decision. (R. 39.) The court concluded that the phrase "anything else of value or benefit" in Wis. Stat. § 943.203(2)(a) is "not limited [to] tangible goods or money and also includes the benefit the defendant sought to obtain from the PSI writer in terms of . . . a more favorable sentencing disposition." (R. 39:2.) The court further determined that "[b]y fabricating and presenting the diplomas and email to the PSI writer . . . the defendant intentionally, and at least implicitly, represented that [he] was acting with the authorization of the [entities]." (R. 39:2.)

Stewart appeals.

STANDARD OF REVIEW

Whether the criminal complaint provides a sufficient factual basis to support Stewart's guilty pleas presents a question of law that this Court reviews de novo. *State v. Peralta*, 2011 WI App 81, ¶ 16, 334 Wis. 2d 159, 800 N.W.2d 512.

ARGUMENT

A sufficient factual basis exists to support Stewart's guilty pleas to two counts of identity theft.

A. Relevant law

1. Factual basis

Before accepting a guilty plea, the circuit court must "[m]ake such inquiry as satisfies it that the defendant in fact committed the crime charged." Wis. Stat. § 971.08(1)(b). "The 'factual basis' requirement is distinct from the [ ] 'voluntariness' requirement for guilty pleas." *State v.*

Thomas, 2000 WI 13, ¶ 14, 232 Wis. 2d 714, 605 N.W.2d 836. The purpose of the factual basis requirement is to protect "a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge." *Id.* (citation omitted). Where the court fails to establish a factual basis to support the defendant's guilty plea, a manifest injustice has occurred such that the defendant is entitled to withdraw his plea. *Id.* ¶ 17.

2. Statutory interpretation

Whether a sufficient factual basis exists to support Stewart's guilty pleas depends on this Court's interpretation of Wis. Stat. § 943.203(2).

This Court "begins with the language of the statute. If the meaning of the statute is plain, [the Court] ordinarily stop[s] the inquiry." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110 (citation omitted). Statutory language "is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statues; and reasonably, to avoid absurd or unreasonable results." *Id.* ¶ 46. This means that scope, context, and purpose are all relevant to a plain-meaning interpretation of a statute, assuming that the scope, context, and purpose are discernable "from the text and structure of the statute itself, rather than extrinsic sources, such as legislative history." *Id.* ¶ 48. Moreover, this Court may review statutory history as part of its textual analysis. *Richards v. Badger Mut. Ins. Co.*, 2008 WI 52, ¶ 22, 309 Wis. 2d 541, 749 N.W.2d 581. While numerous canons of statutory construction may be relevant to a plain-meaning interpretation of a statute, no canon of interpretation is absolute. *See State v. Popenhagen*, 2008 WI 55, ¶ 42, 309 Wis. 2d 601, 749 N.W.2d 611.

If the above "process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statue is applied according to this ascertainment of its meaning." *Kalal*, 271 Wis. 2d 633, ¶ 46 (citation omitted). "Where statutory language is unambiguous, there is no need to consult extrinsic sources of interpretation, such as legislative history." *Id.* "Thus, as a general matter, legislative history need not be and is not consulted except to resolve an ambiguity in the statutory language, although legislative history is sometimes consulted to confirm or verify a plain-meaning interpretation." *Id.* ¶ 51.

B. By falsifying diplomas to obtain a favorable sentencing disposition, Stewart committed identity theft to obtain "anything else of value or benefit" within the plain meaning of Wis. Stat. § 943.203(2)(a).

A factual basis exists to support Stewart's guilty pleas to two counts of identity theft because the complaint alleges that Stewart falsified diplomas to obtain a favorable sentencing disposition, thereby showing that Stewart committed identity theft to obtain "anything else of value or benefit" within the meaning of Wis. Stat. § 943.203(2)(a).

1. "Anything else of value or benefit" is not limited by the specific terms "credit, money, goods, [or] services."

The analysis begins with the language of the statute. *Kalal*, 271 Wis. 2d 633, ¶ 45. Wisconsin Stat. § 943.203 provides, in pertinent part:

> Whoever, for any of the following purposes, intentionally uses, attempts to use, or possesses with intent to use any identifying information or identification document of an entity without the authorization or consent of the entity and by representing that the person is the entity or is acting

> with the authorization or consent of the entity is guilty of a Class H felony:
>
> (a) To obtain credit, money, goods, services, *or anything else of value or benefit*.

Wis. Stat. § 943.203(2)(a) (2013–14). The phrase "anything else of value or benefit" is undoubtedly general, making the general-terms statutory canon relevant to the analysis. Under that canon, general terms must be given their general meaning, absent some indication to the contrary. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 101 (1st ed. 2012). The reasoning is simple: "the presumed point of using general words is to produce general coverage—not to leave room for courts to recognize ad hoc exceptions." *Id.*

To determine the scope of the general phrase "anything else of value or benefit," this Court considers the ordinary, everyday meaning of the words that make up the phrase, ascertainable by reference to their dictionary definitions. *See Kalal*, 271 Wis. 2d 633, ¶¶ 45, 53.

The term "anything" is ordinarily understood as implying no exclusions. The term's dictionary definition confirms as much. Merriam-Webster defines "anything" as "any thing whatever: any such thing." https://www.merriam-webster.com/dictionary/anything (accessed January 9, 2018).

The term "else" is ordinarily understood as something different or additional. Merriam-Webster defines the term as "in a different manner" or "in an additional manner." https://www.merriam-webster.com/dictionary/else (accessed January 9, 2018). While there are two ordinary meanings of the term, both definitions signify an alternative—something other than what has been discussed.

So far, then, the subject phrase covers anything at all that is not one of the things already listed in the statute. Of course, the Legislature did not intend for the statute to cover

anything in the world—it narrowed the scope of the statute by adding the terms "value" and "benefit." The statute's reach therefore depends on the meaning of those two words.

The term "value" is ordinarily understood as something important or useful. Merriam-Webster broadly defines the term to mean the "monetary worth of something"; something of "relative worth, utility, or importance"; or "something intrinsically valuable or desirable." https://www.merriam-webster.com/dictionary/value (accessed January 9, 2018).

And finally, the term "benefit" is ordinarily understood as some type of advantage or privilege. Merriam-Webster broadly defines the term to mean "something that produces good or helpful results or effects or that promotes well-being"; "financial help in time of sickness, old age, or unemployment"; "a payment or service provided for under an annuity, pension plan, or insurance policy"; or "a service (such as health insurance) or right (as to take vacation time) provided by an employer in addition to wages or salary." https://www.merriam-webster.com/dictionary/benefit (accessed January 9, 2018).

Since the statutory terms "value" and "benefit" have more than one ordinary meaning, it might be argued that the statute's reach is ambiguous. But the Legislature's use of the general term "anything" disambiguates. Since "anything" implies *no exclusions*, the phrase "anything else of value or benefit" encompasses the broadest definitions of the terms "value" and "benefit." Had the Legislature intended to limit the meanings of "value" and "benefit," it could have used limiting language. For example, it could have prohibited identity theft to obtain credit, money, goods, services, *or similar things of value or benefit*. But that is not what the Legislature said. The Legislature used general language—thereby creating general coverage—and this Court's role is

to give effect to the words that the Legislature actually used. *See Kalal*, 271 Wis. 2d 633, ¶¶ 43, 44.

A combination of statutory history and statutory context supports the State's position that the terms "value" and "benefit" in Wis. Stat. § 943.203(2)(a) must be broadly construed. Both statutory canons are relevant to a plain-meaning interpretation of the statute. *See Kalal*, 271 Wis. 2d 633, ¶ 46; *see also Richards*, 309 Wis. 2d 541, ¶ 22.

As noted, before 2003, the crime of unauthorized use of an entity's identifying information or documents did not exist. Wisconsin law only prohibited the misappropriation of personal identifying information or documents to obtain "credit, money, goods, services or anything else of value." *See* Wis. Stat. § 943.201(2) (2001–02). In response to the legal challenges to the general phrase "anything else of value," the Legislature amended the statute to confirm what Wisconsin courts had already suggested: the statute reaches as broadly as it reads. *See* 2003 Wis. Act 36, § 22.

According to the Wisconsin Legislative Council Act Memo on 2003 Wis. Act 36 (September 4, 2003), Act 36 intended to "clarify[ ] that prohibitions on the unauthorized use of information or documents extend to obtaining 'employment' or anything of 'benefit' or to avoiding 'civil or criminal process or penalty.'" The key word is "clarify"[3]: it indicates that prior to Act 36, Wisconsin law already prohibited such conduct by virtue of Wis. Stat. § 943.201(2)'s general language. Thus, through Act 36, the Legislature simply wanted to make absolutely clear that it intended the phrase "anything else of value" to have general effect. Stated

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[3] By contrast, the Memo refers to Act 36 as "*adding* a prohibition against unauthorized use of personal identifying information or documents to 'harm the reputation, property, person, or estate of [an] individual.'"

differently, Act 36's addition of the words "employment" and "benefit" to Wis. Stat. § 943.201(2), as well as the phrase "to avoid civil or criminal process or penalty," merely serves a belt-and-suspenders function.

As discussed, in addition to the amendments to Wis. Stat. § 943.201(2), Act 36 created the statute at issue in this case: Wis. Stat. § 943.203. 2003 Wis. Act 36, § 24. In drafting Wis. Stat. § 943.203, the Legislature chose to use general language substantially similar to that of the former identity theft statute. *Compare* Wis. Stat. § 943.201(2) (2001–02) ("anything else of value") *with* Wis. Stat. § 943.203(2)(a) (2003–04) ("anything else of value or benefit"). Therefore, the Wisconsin Legislative Council Memo on Act 36—indicating that the Legislature used general language in the former identity theft statute to produce general coverage—confirms the State's plain-meaning interpretation[4] of the general language in Wis. Stat. § 943.203(2)(a).

In sum, the statutory terms "value" and "benefit" in Wis. Stat. § 943.203(2)(a) must be broadly construed. And when they are, they plainly include a favorable sentencing disposition in a criminal case. A favorable sentencing disposition in a criminal case is certainly "something of relative importance" or "something that produces good or helpful results or effects or that promotes well-being." *See supra* p. 12 (defining "value" and "benefit"). As the complaint alleges that Stewart falsified diplomas to obtain a favorable sentencing disposition, it shows that he committed identity theft to obtain "anything else of value or benefit" within the meaning of Wis. Stat. § 943.203(2)(a).

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[4] Legislative history may be consulted to confirm the plain meaning of a statute. *See Kalal*, 271 Wis. 2d 633, ¶ 51

Stewart disagrees, but his arguments fail. First, he argues that the *ejusdem generis* canon applies to limit the meaning of the general phrase "anything else of value or benefit" in Wis. Stat. § 943.203(2)(a). (Stewart's Br. 12.) He believes that the phrase "only makes practical sense when interpreting it to mean anything of commercial or financial benefit or value." (Stewart's Br. 12.)

The *ejusdem generis* canon provides that where a general term is preceded by a series of specific terms, "the general term is viewed as being limited to items of the same type or nature as those specifically enumerated." *State v. Campbell*, 102 Wis. 2d 243, 246, 306 N.W.2d 272 (Ct. App. 1981). As with all other statutory canons, the rule is simply a tool to use in ascertaining the meaning of a statute. *Id.*

Importantly, the doctrine of *ejusdem generis* does not apply where "the statute has a plain and reasonable meaning on its face." *Peters*, 263 Wis. 2d 475, ¶ 14; *see also Benson v. City of Madison*, 2017 WI 65, ¶ 120 n.16, 376 Wis. 2d 35, 897 N.W.2d 16 (Abrahamson, J., dissenting). Thus, where a statute's history indicates that the Legislature intended for its general language to have general effect, *ejusdem generis* does not apply. *See La Barge v. State*, 74 Wis. 2d 327, 332–33, 246 N.W.2d 794 (1976) (the catchall phrase "other serious bodily injury" was added to the statute by amendment, indicating the Legislature's intention to broaden the scope of the statute); *accord United States v. Baranski*, 484 F.2d 556, 566–67 (7th Cir. 1973).

Here, similar to *La Barge*, the statutory history of Wis. Stat. § 943.203 indicates that the Legislature intended to give the general phrase "anything else of value or benefit" general effect. As discussed above, prior to creating Wis. Stat. § 943.203, the Legislature was well aware of the litigation history surrounding its use of the general phrase "anything else of value" in the former identity theft statute, Wis. Stat. § 943.201(2) (2001–02). It responded by amending

the statute to confirm what Wisconsin courts had already suggested: the general phrase reaches as broadly as it reads. Rather than removing the controversial general language from the statute, the Legislature added terms to clarify the statute's breadth. It also created Wis. Stat. § 943.203, using nearly identical general language. That is significant: given the issue in *Peters*, the Legislature could have taken steps to show that it intended to limit the general language to items similar to credit, money, goods, or services. Its failure to do so speaks volumes. In light of this statutory history, the *ejusdem generis* canon does not apply. *See La Barge*, 74 Wis. 2d at 332–33.

Second, Stewart argues that if Wis. Stat. § 943.203(2)(a) is not narrowly construed, it will lead to absurd results. (Stewart's Br. 12–13.) Stewart provides a list of vague examples that he believes would be chargeable if the statute's general language is given general effect: "someone who lies about a job or military service to pursue a romantic relationship or someone who embellishes her work or prior education experience on a resume or says he just got released from Racine Correctional Institution so that people will buy him drinks in a bar." (Stewart's Br. 12–13.) Of course, without knowing the manner in which these hypothetical people lied or embellished, one cannot say whether such conduct would fall within the elements of the statute. What is clear, however, is that the absurdity doctrine does not apply simply because certain consequences may seem inequitable or odd—"the absurdity must consist of a disposition that no reasonable person could intend." Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* at 237; *see also City of Kenosha v. Phillips*, 142 Wis. 2d 549, 560, 419 N.W.2d 236 (1988) (court does not apply the absurdity doctrine to avoid what the court believes is an unwise or inequitable result). Moreover, the "absurdity must be reparable by changing or supplying a particular word or

phrase whose inclusion or omission was obviously a technical or ministerial error." Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* at 238. "The doctrine does not include substantive errors arising from a drafter's failure to appreciate the effect of certain provisions." *Id.* Stewart does not address these conditions, making his absurdity argument undeveloped.[5] This Court does not consider undeveloped arguments. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

Third, Stewart argues that Wis. Stat. § 943.203(2)(a) should be narrowly construed because Stewart could have been prosecuted for his conduct under other statutes. (Stewart's Br. 13–14.) Specifically, Stewart argues that he could have been charged with contempt of court under Wis. Stat. § 785.01, or for providing a false statement concerning military service under Wis. Stat. § 946.78, both of which constitute misdemeanor offenses. (Stewart's Br. 13–14.) The State is not aware of any statutory canon that says that the plain language of a statute may be disregarded because a lesser crime exists to cover the conduct in question, and Stewart cites to none. Rightfully so: a court's role is to give effect to the words that the Legislature used, not to usurp the role of the Legislature by deciding how certain criminal conduct should be punished.

Finally, Stewart argues that because the Legislature did not add the words "to avoid civil or criminal process or penalty" to Wis. Stat. § 943.203(2), as it did to Wis. Stat. § 943.201(2), it must not have intended for the statute to cover that kind of conduct. (Stewart's Br. 14.) As discussed, the Legislature's incorporation of this language into Wis.

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[5] The same goes for Stewart's argument that if Wis. Stat. § 943.203(2)(a) is not narrowly construed, it is unconstitutionally vague. (Stewart's Br. 13 n.2.)

Stat. § 943.201(2) served a mere belt-and-suspenders function. In response to litigation over the general phrase "anything else of value," the Legislature wanted to make absolutely clear that the general language reaches as broadly as it reads. Given that Wis. Stat. § 943.203(2) incorporates substantially similar general language, there is no need for the additional phrase "to avoid civil or criminal process or penalty." The plain language of the statute already covers it.

This Court should therefore conclude that there is a sufficient factual basis to support Stewart's guilty pleas.

2. Even if "anything else of value or benefit" is limited by the specific terms "credit, money, goods, [or] services," Stewart's conduct still falls within the plain language of the statute.

Even if Stewart prevails in his argument that the phrase "anything else of value or benefit" in Wis. Stat. § 943.203(2)(a) should be limited to mean "anything of commercial or financial benefit or value" (Stewart's Br. 12), there is still a sufficient factual basis to support his guilty pleas.

Stewart's position on appeal overlooks an important point: when he entered guilty pleas to two counts of failure to support in Milwaukee County Case No. 2011CF2608, he faced a fine not to exceed $10,000, or imprisonment not to exceed three and one half years, or both, on each charge. *See* Wis. Stat. §§ 948.22(2), 939.50(3)(i) (2009–10). Thus, Stewart falsified diplomas in part to avoid a $20,000 loss. That a person obtains a financial benefit by avoiding a $20,000 loss is common sense. It is, quite simply, an advantage relating to money. Therefore, even if this Court adopts Stewart's narrow construction of Wis. Stat. § 943.203(2)(a), it should

still conclude that there is a sufficient factual basis to support his guilty pleas.

C. By presenting falsified diplomas to the PSI writer, Stewart intentionally represented that he was acting with the authorization or consent of the universities.

A factual basis exists to support Stewart's guilty pleas to two counts of identity theft because the complaint alleges that Stewart falsified diplomas and presented them to the PSI writer, thereby showing that he intentionally represented that he was "acting with the authorization or consent" of the universities within the meaning of Wis. Stat. § 943.203(2).

The analysis here is straightforward. Stewart falsified diplomas from two universities. He presented the falsified diplomas as authentic documents to the PSI writer to prove that he had two college degrees. In doing so, he intentionally represented that he had the approval of the universities to use the documents. The circuit court said it best:

> A diploma is not just piece of paper. It is a certificate awarded by an educational establishment to show that someone has successfully completed a course of study. When an educational establishment issues such a certificate, it authorizes the recipient at least implicitly to use it for his or her benefit.

(R. 39:2.) There really is nothing more to it.

Stewart's argument does not complicate the issue. His challenge appears to rest on the faulty premise that he needed to intentionally represent that he was acting with the *express* authorization of the universities in order to be prosecuted. (Stewart's Br. 10.) But that is not what the statute says. *See* Wis. Stat. § 943.203(2) ("by representing that the person . . . is acting with the authorization or consent of the entity."). In short, to commit the crimes charged, Stewart did not need to tell the PSI writer that the

universities explicitly gave him permission to use the diplomas during the PSI process.

This Court should therefore conclude that there is a sufficient factual basis to support his guilty pleas.

CONCLUSION

This Court should affirm the judgment of conviction and the circuit court's denial of Stewart's postconviction motion.

Dated this 19th day of January, 2018.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 5,397 words.

Dated this 19th day of January, 2018.

_____
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CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

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This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

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Dated this 19th day of January, 2018.

_____
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