

ORIGINAL

IN THE SUPREME COURT OF OHIO  
2012

STATE OF OHIO,

Case No. 2011-2101

Plaintiff-Appellee,

On Appeal from the  
Franklin County Court  
of Appeals, Tenth  
Appellate District

-vs-

EDDIE GIBSON,

Court of Appeals  
Case No. 10AP-1047

Defendant-Appellant.

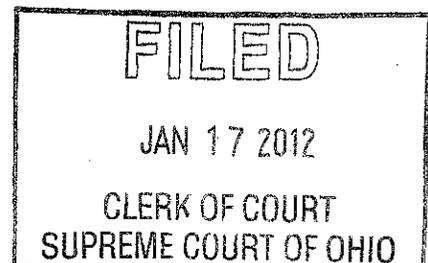
**MEMORANDUM OF PLAINTIFF-APPELLEE OPPOSING JURISDICTION**

RON O'BRIEN 0017245  
Franklin County Prosecuting Attorney  
SETH L. GILBERT 0072929  
Assistant Prosecuting Attorney  
(Counsel of Record)  
373 South High Street-13<sup>th</sup> Fl.  
Columbus, Ohio 43215  
614/525-3555  
slgilber@franklincountyohio.gov

COUNSEL FOR PLAINTIFF-APPELLEE

YEURA R. VENTERS 0014879  
Franklin County Public Defender  
DAVID L. STRAIT 0024103  
Assistant Public Defender  
(Counsel of Record)  
373 South High Street-12<sup>th</sup> Fl.  
Columbus, Ohio 43215  
614/525-3960

COUNSEL FOR DEFENDANT-APPELLANT



**TABLE OF CONTENTS**

EXPLANATION OF WHY THIS COURT SHOULD DECLINE JURISDICTION..... 1

STATEMENT OF THE CASE AND FACTS ..... 1

ARGUMENT..... 7

**Response to First Proposition of Law:** In judging the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.....7

**Response to Second and Third Propositions of Law:** Neither R.C. 2913.31 nor R.C. 2923.24, as applied to these facts, violates the Contract or Free Exercise Clauses of the United States and Ohio Constitutions. ....8

**Response to Fourth Proposition of Law:** The decision to grant or deny a motion for new trial is within the sound discretion of the trial court.....12

CONCLUSION..... 13

CERTIFICATE OF SERVICE ..... unnumbered

## **EXPLANATION OF WHY THIS COURT SHOULD DECLINE JURISDICTION**

None of defendant Eddie Gibson's four propositions of law warrants this Court's review. Defendant's first and fourth propositions of law—claiming that the evidence was insufficient and juror bias required a new trial, respectively—are fact-laden and would have minimal impact beyond the narrow facts of this case. Defendant's second and third propositions of law—claiming that his convictions run afoul of the Contract and Free Exercise Clauses of the United States and Ohio Constitutions—are plainly without merit.

Because this case presents no questions of such constitutional substance or of such great public interest as would warrant further review by this Court, and because the Tenth District correctly affirmed defendant's convictions, the State respectfully submits that jurisdiction should be declined.

## **STATEMENT OF THE CASE AND FACTS**

Defendant and his wife Samantha were both indicted on one count of forgery and one count of possessing criminal tools (PCT). The indictment arose from defendant creating and presenting a counterfeit check to a local car dealership in an attempt to buy two new vehicles. The case proceeded to a jury trial, during which defendant represented himself (standby counsel was appointed), and the following evidence was adduced:

On February 3, 2010, defendant and Samantha agreed to buy from Performance Chrysler Jeep Dodge two new vehicles—a Dodge Ram and a Dodge Journey—for full sticker price. They also agreed to buy warranties and a “tire and wheel program” for the vehicles. Samantha filled out all the necessary sales paperwork, but the deal was not completed that day, because defendant said he needed to get the purchase money from a trust. The Dodge Journey was later inadvertently sold from the showroom floor, but defendant agreed to buy a replacement vehicle.

Later that month, defendant and Samantha returned to the dealership, and defendant presented a check for \$78,285.86 to pay for the vehicles. The check indicated that it was drawn from a "Private Account" held by "Eddie-Dwayne Gibson Junior" at the Federal Reserve Bank of Atlanta (FRBA). In the upper-left hand corner of the check, next to defendant's name and address, was a graphic labeled, "The Great Seal of Eddie-Dwayne Jr. of the family of Gibson." Defendant signed the check.

Eric Tincer, the dealership's general manager, was immediately suspicious of the check. Tincer explained to defendant that the dealership would not release the vehicles until the funds were verified and the check cleared. The dealership, however, gave defendant a check for \$314.91, because the check defendant presented did not reflect the fact that the replacement Dodge Journey was slightly less expensive than the one defendant had originally agreed to buy.

A few days later, the dealership learned that the check defendant presented was counterfeit. Robert Love, a vice president of FRBA, testified that defendant has no account with the FRBA. In fact, the FRBA does not offer retail or consumer-oriented services and does not allow "natural persons" to open accounts. Although the routing number on the check was correct (FRBA's routing number can be found on the internet), the account number listed on the check was "meaningless."

Meanwhile, the dealership had mistakenly titled the vehicles to Samantha and paid the approximate \$5100 total tax bill on the sale. The dealership was able to undo the title error and had requested a refund of the erroneous tax payment.

A detective instructed Tincer to call defendant to tell him to come pick up the vehicles. When defendant showed up at the dealership to take possession of the vehicles, he was arrested. Later, defendant sent a letter to the dealership asking the dealership to release the vehicles and

demanding that “the remittance be viewed as valid” and that the dealership “conduct [itself] as though the funds have cleared.”

At trial, defendant explained the process by which, in his mind, he created a personal account at the FRBA and funded that account with \$100 billion, thus making the check he presented to the dealership valid.

Defendant’s scheme is premised on three beliefs. First, defendant believes that the government has no authority over flesh-and-blood people, and—realizing this—the government creates a corporate or trust entity to correspond with every flesh-and-blood person. Each of these “strawmen” entities is given the same name as its corresponding flesh-and-blood person, the only difference being that the strawman’s name is always spelled with capital letters. It is these strawmen entities—not flesh-and-blood people—that engage in commerce, incur debts, and hold title to property. (The strawmen hold only equitable title in property; the government, having created the strawmen, holds legal title.)

Second, defendant believes that banks create money “out of thin air.” According to defendant, under the fractional-reserve banking system—which requires banks to keep only a certain fraction of their deposits available for withdraw at any given time—banks make loans in amounts exceeding what is held on deposit. In other words, a borrower promises to pay back a bank loan, but the bank making the loan gives up no consideration. Defendant posed the question: “If [the banks] weren’t giving us anything, why do we have to pay anything back?”

Third, defendant believes that “any offer to contract warrants a response. If there is no response, it is a valid acceptance and an agreement between the parties that all parties must abide by.” Along these same lines, defendant stated that public servants “owe us the duty of letting us know if we’re wrong, especially when we give them ample time to respond before we’re going

to act upon our notices of understanding and intent.” Defendant acquired this belief from, among other sources, “Black’s Law Dictionary” and “Law for Dummies.”

Armed with these beliefs—i.e., that the government controls flesh-and-blood people by creating strawman entities, that a promise to pay back a bank loan is unenforceable, and that silence in response to an offer to contract constitutes acceptance of the contract—defendant put his \$100 billion scheme into action. As defendant stated during cross-examination, he made the money “magically appear[]”—“[l]ike it does in the banks.”

The scheme began in April 2009, when defendant sent by registered mail to Treasury Secretary Timothy Geithner a package containing, among other documents, a cover letter stating that defendant’s flesh-and-blood person was separate from the corresponding strawman entity created by the government. The letter further explains that each strawman has been issued an “unlimited credit account” with the Treasury Department to discharge all of the strawman’s debts. The letter then declares that defendant was taking possession of all property owned by the strawman, including the Treasury account, and was naming Geithner as trustee. Defendant funded the account with a “Private Non-Negotiable Bond for Set-Off” in the amount of “Unlimited including (Twenty Five US Silver Dollars).” The letter concluded by giving Geithner 30 days to reject this payment; if Geithner failed to reject, “the payment is to be viewed as lawful and binding.”

Later in April 2009 (before the 30-day deadline expired), defendant sent by registered mail to Geithner another package. The cover letter with this package states that, because Geithner failed to object to the first package, the unlimited Treasury account “has been established.” To “insure accurate accounting,” defendant presented a “One Hundred Billion US

Dollar Private Indemnity Bond.” The letter then reminded Geithner that he has been appointed fiduciary over the account. Geithner had ten days to honor or reject the payment.

In August 2009, defendant sent Geitner a “Treasury Notice” explaining that the red “F” on the back of defendant’s social security card mandated that the newly-created \$100 billion Treasury account be held at the FRBA (defendant’s logic is apparently that “F,” which is the sixth letter in the alphabet, corresponds with the FRBA, which services the Sixth Federal Reserve District), and that the red numbers following the “F” on his social security card would be the account number. Geithner had three days to honor or reject this notice, and “[n]on-response is acceptance.”

A couple months later, defendant “deposited” into the account a “private off-set bond” for \$300 million. Defendant authorized Geithner to use half of this amount for the benefit of the United States. Geithner had ten days to honor or reject this presentment.

Geithner failed to respond to any of defendant’s correspondences, so defendant then sent a letter to Dennis Lockhart, the Present and CEO of the FRBA, advising him that he was required to establish a personal account for defendant at the bank. Enclosed with the letter were copies of the off-set bond, an “administrative order” stating that defendant and Geithner were authorized agents over the account, and a copy of a blank check that defendant had created on his computer.

Early November 1999, defendant sent to numerous individuals a “Verified Constructive Notice of Corporate Understanding and Intent to the Public in the Nature of a Commercial Affidavit of Truth.” Among the recipients of this document were the Pope, Queen Elizabeth II, President Obama, Attorney General Holder, Secretary of State Clinton, Federal Reserve Chairman Ben Bernanke, Geithner, and several other government officials. Except where “no

other alternatives provide an immediate remedy in commerce” (i.e., defendant’s driver’s license, passport, social security card, etc.), defendant denied any “nexus” between himself and his strawman entity. Enclosed with the Notice was an “Affidavit of Truth,” in which defendant set forth his world view and explained the circumstances surrounding the creation of his Treasury Account. Defendant gave the recipients 30 days to respond, and a failure to respond was a binding agreement that everything in the Affidavit is true.

No one responded to the November 1999 Notice, so the following month defendant sent the same recipients (except that Lockhart was substituted for Bernanke) a “Verified Constructive Notice of Activated Binding Contract,” declaring that the terms of his affidavit are now a binding contract and constitute “civil law.” Other than Lockhart, the recipients did not need to respond to this Notice.

In January 2010, defendant put his scheme to the test, mailing a check drawn on the FRBA to pay off Samantha’s student loan. Later that month, defendant received a letter stating that the loan was paid in full.

“[F]irmly convinced at this point that this system worked,” on February 5, 2010—two days after agreeing to buy the two vehicles—defendant sent to Geithner a copy of the check he intended to present to the dealership. Geithner had three days to “reject this presentment,” otherwise “the enclosed public debt is viewed as agreed upon by all parties.” Geithner did not respond, so defendant presented the check to the dealership.

One day after his arrest, defendant received a letter stating that the student-loan check did not clear. Defendant, however, testified that he still believes the loan has been paid off, because “[p]eople put lots of stuff on paper that’s not necessarily true to cover themselves.”

Although willing to admit that his \$100 billion scheme was imperfect, defendant insisted that the core beliefs behind his scheme were valid and vowed to make whatever changes necessary to legitimize his Treasury account:

I believe that my process may be flawed in a few areas; and when this case is over, I will be resolving those with the Federal Reserve to find out how I do utilize my rightful property. I may have done it wrong, but they owed me that explanation, that I'm doing it wrong. If I'm doing it wrong, it will be changed; but in the end, I do believe that that check is based on lawful principles.

Defendant said that even if he has to “revamp” his scheme, “it’s still going to be done.” If the various individuals again fail to respond to defendant’s correspondences, he intended to “bring charges against them for violating [his] rights.” Defendant promised that, once he “perfect[s] the process,” he was going to “take care” of his friends by buying them cars and possibly a house for his wife.

The jury found defendant guilty on both counts, and the trial court sentenced him to two years of community control and ordered him to pay \$314.91 to the dealership. The Tenth District affirmed defendant’s convictions, but remanded for resentencing, finding that the two counts should have merged, and that the evidence did not support the restitution award. Defendant now seeks discretionary review.

## ARGUMENT

**Response to First Proposition of Law:** In judging the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.

Defendant’s first proposition of law claims that the evidence was insufficient to establish the requisite mens rea for forgery and PCT—i.e. “with purpose to defraud” under R.C. 2913.31(A) (forgery), and “with purpose to use it criminally” under R.C. 2923.24(A) (PCT).

The standard for judging the sufficiency of the evidence is “whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed. 560 (1979).

Under this low-bar standard, the evidence was easily sufficient to prove that defendant possessed the requisite intent. As the Tenth District stated:

Appellant created an imaginary account with the Federal Reserve and presented a false check bearing that imaginary account number to the dealership with the intent to buy two cars. This is sufficient evidence for a jury to conclude that appellant intended to defraud the dealership by deception. *State v. Lutz*, 8th Dist. No. 80241, 2003-Ohio-275, ¶ 38.

For the state to prove appellant guilty of possessing criminal tools, it would have to prove that he possessed an instrument (the check) with purpose to use it criminally. R.C. 2923.24(A). Appellant argues that, because he did not commit forgery, he cannot be convicted of possessing criminal tools, because he did not intend to commit an underlying offense. We disagree, as we have concluded that sufficient evidence supported his forgery conviction.

Opinion at ¶¶ 29-30.

Defendant’s first proposition of law warrants no further review.

**Response to Second and Third Propositions of Law:** Neither R.C. 2913.31 nor R.C. 2923.24, as applied to these facts, violates the Contract or Free Exercise Clauses of the United States and Ohio Constitutions.

The State responds to defendant’s second and third propositions of law together.

Defendant’s second proposition of law claims that application of the forgery and PCT statutes to this case violates the Contract Clauses of the United States and Ohio Constitutions. Defendant’s

third proposition of law raises an as-applied challenge under the Free Exercise Clauses of the United States and Ohio Constitutions.

In analyzing whether a statute violates the right to contract, “generally, we first ask whether the change in state law has ‘operated as a substantial impairment of a contractual relationship.’” *State ex rel. Horvath v. State Teachers Retirement Bd.*, 83 Ohio St.3d 67, 76, 697 N.E.2d 644 (1998), quoting *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 186, 112 S.Ct. 1105, 117 L.Ed.2d 328 (1992), quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244, 98 S.Ct. 2716, 57 L.Ed.2d 727 (1978). “This inquiry has three components: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial.” *Horvath* at 76, quoting *Romein* at 186.

The obvious flaw with defendant’s Contract Clause argument is the absence of any contract between him and the Treasury or the FRBA. *Bd. of Trs. of the Tobacco Use Prevention & Control Found. v. Boyce*, 127 Ohio St.3d 511, 2010-Ohio-6207, 941 N.E.2d 745, ¶ 26 (“We conclude that there is no violation of the state and federal contract clauses because no contract was formed.”). That none of the recipients of defendant’s various correspondences objected to his creation of a \$100 billion account does not constitute “acceptance.” Nor did defendant give any consideration in return for the \$100 billion account. So even if the FRBA offered personal accounts—and, of course, it does not—no contractual relationship existed between defendant and the Treasury of the FRBA. Indeed, defendant was prosecuted for and convicted of forgery and PCT precisely *because* there was no contractual relationship.

Another flaw with defendant’s Contract Clause challenge is that the forgery and PCT statutes were enacted long before defendant committed his crimes. The Contract Clause “applies to contracts that ‘existed prior to the effective date of the statute [at issue in the litigation].’”

*Doe v. Ronan*, 127 Ohio St.3d 188, 2010-Ohio-5072, 937 N.E.2d 566, ¶ 15, quoting *Aetna Life Ins. Co. v. Schilling*, 67 Ohio St.3d 164, 168, 616 N.E.2d 893 (1993). “[C]ontracts entered into on or after the effective date of [a statute] are subject to the provisions of the statute.” *Doe* at ¶ 15, quoting *Schilling* at 168 (emphasis sic).

Regarding defendant’s Free-Exercise challenge, the Tenth District correctly noted that defendant failed to preserve this issue in the trial court and accordingly declined to consider it. Opinion at ¶ 14. In any event, defendant’s Free-Exercise challenge is without merit. Under the Federal Constitution, “an individual’s religious beliefs [do not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate.” *Employment Div., Dept of Human Resources of Ore v. Smith* (1990), 494 U.S. 872, 878-879, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990). Thus, “the right of free exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).’” *Id.* at 879, quoting *United States v. Lee*, 455 U.S. 252, 263, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982), fn. 3 (Stevens, J., concurring). Except when other constitutional protections are at stake, a neutral and generally applicable law may be applied to religious practices even when not supported by any “compelling government interest.” *Smith* at 881-885.

The Ohio Constitution provides greater free-exercise protection than the Federal Constitution. Under State law, “the standard for reviewing a generally applicable, religion-neutral state regulation that allegedly violates a person’s right to free exercise of religion is whether the regulation serves a compelling state interest and is the least restrictive means of furthering that interest.” *Humphrey v. Lane*, 89 Ohio St.3d 62, 728 N.E.2d 1039 (2000). “To state a prima facie free exercise claim, the plaintiff must show that his religious beliefs are truly

held and that the governmental enactment has a coercive affect [sic] against him in the practice of his religion.” *Id.* at 68, citing *State v. Whisner*, 47 Ohio St.2d 181, 200, 351 N.E.2d 750 (1976).

Defendant fails to show any free-exercise violation under either the United States or the Ohio Constitution. To start, defendant fails to make the threshold showing that the forgery and PCT statutes infringe on a sincerely held religious belief. *State v. Blackmon*, 130 Ohio App.3d 142, 148, 719 N.E.2d 970 (1988), citing *State v. Bontrager*, 114 Ohio App.3d 367, 371, 683 N.E.2d 126 (1996). Defendant does not claim—let alone establish—that his religious beliefs preclude compliance with the forgery and PCT statutes. *C.f.*, *Humphrey*, 89 Ohio St.3d 62, 728 N.E.2d 1039 (Native American’s religious practice of wearing long hair conflicted with State employer’s grooming policy). Rather, defendant relies on Christian principles to claim that he did not commit forgery or PCT at all. In other words, defendant’s complaint is not that the forgery and PCT statutes have a “coercive [e]ffect against him in the practice of his religion,” *id.* at 68, but that the jury did not agree with his contention that Christianity entitled him to create a \$100 billion personal account at the FRBA.

Beyond this preliminary issue, the forgery and PCT statutes easily pass muster under both the Federal and Ohio Constitutions. For First Amendment purposes, the two statutes are “valid and neutral law[s] of general applicability.” *Smith*, 455 U.S. at 263. The statutes also satisfy the more stringent test under the Ohio Constitution. The statutes prohibit no more than necessary to further the State’s obvious compelling interest in prohibiting forgery and criminal-tool possession. And contrary to defendant’s assertion, whether there was a “victim” to his crimes does not negate the State’s compelling interest in prosecuting him for violating the forgery and PCT statutes.

For the foregoing reasons, defendant's second and third propositions of law warrant no further review.

**Response to Fourth Proposition of Law:** The decision to grant or deny a motion for new trial is within the sound discretion of the trial court.

Defendant's fourth proposition of law claims that he was entitled to a new trial because after the trial his standby counsel heard some of the jurors state that they believed defendant was an "Aryan racist" and was "involved with the militia groups."

However, defendant never asked for a new trial. Rather, he claimed that the alleged jury bias entitled him to an acquittal. Of course, a Crim.R. 29 acquittal can be granted only for insufficient evidence; juror-misconduct is not a valid grounds for acquittal.

But even if the trial court construed defendant's juror-bias allegation as a request for new trial under Crim.R. 33(A)(2), a new trial was unwarranted. As the Tenth District recognized, Opinion at ¶ 40, defendant did not submit any affidavits to support his allegation of juror bias, as required by Crim.R. 33(C). Moreover, a juror-misconduct claim requires a defendant to present information "from a source which possesses firsthand knowledge of the improper conduct." *State v. Schiebel*, 55 Ohio St.3d 71, 75, 564 N.E.2d 54 (1990). Defendant did not rely on any first-hand information, but rather relied on unsworn, double hearsay—i.e., his statement describing what his stand-by counsel heard one or more of the jurors allegedly say.

Defendant would have fared no better had he supported his juror-bias allegation by submitting an affidavit from a juror. The aliunde rule prohibits attacking a jury verdict with testimony from a juror "to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith." Evid.R. 606(B). This rule "embodies the

common-law tradition of protecting and preserving the integrity of jury deliberations by declaring jurors generally incompetent to testify as to any matter directly pertinent to, and purely internal to, the emotional or mental processes of the jury's deliberations." *Schiebel* at 75. An affidavit from defendant's stand-by counsel describing what the juror(s) said would have likewise been incompetent evidence. *Id.* at 75-76, citing *Tasin v. SIFCO Industries, Inc.*, 50 Ohio St.3d 102, 553 N.E.2d 257 (1990).

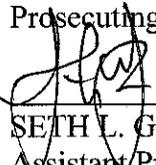
For the foregoing reasons, defendant's fourth proposition of law warrants no further review.

### CONCLUSION

For the foregoing reasons, the State respectfully submits that jurisdiction should be declined.

Respectfully submitted,

RON O'BRIEN 0017245  
Prosecuting Attorney

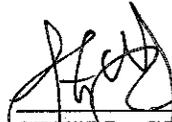


---

SETH L. GILBERT 0072929  
Assistant Prosecuting Attorney  
Counsel for Plaintiff-Appellee

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was hand-delivered this day, January 17, 2012, to DAVID L. STRAIT, 373 South High Street-12th Fl., Columbus, Ohio 43215; Counsel for Defendant-Appellant.



---

SETH L. GILBERT 0072929  
Assistant Prosecuting Attorney