

Circuit Court for Baltimore County
Case No.: C-03-CR-001721

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 21

September Term, 2021

EDWARD LEROY SMITH

v.

STATE OF MARYLAND

Reed,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 15, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On February 22, 2021, Edward Leroy Smith, appellant, entered a conditional guilty plea pursuant to Maryland Rule 4-242(d) in the Circuit Court for Baltimore County to theft of property valued between \$1,500 and \$25,000.¹ The court sentenced him to two years' imprisonment with all but time served suspended and ordered him to pay \$12,000 in restitution.

Prior to pleading guilty, appellant filed a motion to dismiss the theft charges against him. After holding a hearing on the motion, the circuit court denied it on July 21, 2020. The propriety of that ruling is the subject of this appeal. For the reasons that follow, we shall affirm.

The criminal information filed against appellant alleged that appellant had stolen multiple laptops and a telephone conference device from the “United States’ Government (Social Security Administration).” According to appellant, the charging document was deficient because the federal government is not a “person,” within the contemplation of the theft statute, Md. Code Ann., Crim. Law Art. (“CR”) § 7-104, from whom appellant could have stolen property.

Appellant’s argument follows the following route: (1) an element of the crime of

¹ Maryland Rule 4-242(d) permits a defendant to enter a conditional guilty plea where the defendant can reserve the right to appeal certain issues determined adversely to the defendant which, if determined in favor of the defendant, would have been dispositive of the case. As will be seen, the appellate issue in this case deals with the circuit court’s denial of appellant’s motion to dismiss the criminal information.

theft is the intent to deprive the “owner” of property²; (2) “owner” is defined as a “person,”³ and (3) the definition of “person” does not include any governmental entities.⁴ Thus, the federal government, according to appellant, is not an owner of property within the contemplation of the theft statute.

Although appellant acknowledges that the definition of “person” includes, aside from those things specifically listed in CR § 1-101(h), any “other entity,” he contends that the government cannot be one of those “other entit[ies]” because no other sort of governmental entity is specifically listed in the statute. According to appellant, when interpreting whether the legislature intended for government entities to be included in the

² CR § 7-104(a) provides as follows:

(a) A person may not willfully or knowingly obtain or exert unauthorized control over property, if the person:

- (1) intends to deprive the owner of the property;
- (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or (3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

³ CR § 7-101 defines “owner” for purposes of CR § 7-104 as follows:

(h) Except as otherwise expressly provided in this part, “owner” means a person, other than the offender:

- (1) who has an interest in or possession of property regardless of whether the person’s interest or possession is unlawful; and
- (2) without whose consent the offender has no authority to exert control over the property.

⁴ CR § 1-101(h) defines “person” for purposes of CR § 7-101(h) as follows: “Person” means an individual, sole proprietorship, partnership, firm, association, corporation, or other entity.”

definition of “person” we should apply the *ejusdem generis*⁵ tool of statutory construction. *Ejusdem generis* is a “canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed.” *Harleysville Preferred Ins. Co. v. Rams Head Savage Mill, LLC*, 237 Md. App. 705, 726 (2018).

In this case, according to appellant, from analyzing the list of specific things, which contains “an individual, sole proprietorship, partnership, firm, association, [or] corporation,” it is clear that none of those things is governmental, and therefore the legislature did not intend for government to be included within the meaning of the general clause, any “other entity.”

In addition, appellant points out that the Court of Appeals has “long recognized that, in general, the term “person” in a statute does not include the State and its agencies and instrumentalities.” *Washington Suburban Sanitary Comm'n v. Phillips*, 413 Md. 606, 622 (2010). The Court has, however, also recognized that the State and its agencies may fall within the purview of the term “person” “where such an intention is manifest.” *State Comm'n on Hum. Rels. v. Mayor & City Council of Baltimore*, 280 Md. 35, 39 (1977).

For its part, the State claims that the plain language of the relevant statutes includes government as a potential owner of property because an “entity” is defined as “an organization (such as a business or *a governmental unit*) that has a legal identity apart from

⁵ *Ejusdem generis* is Latin for “of the same kind or class”.

its members or owners.” Black’s Law Dictionary (11th ed. 2019) (emphasis added). In addition, a “public entity” is defined as a “governmental entity, such as a state government or one of its political subdivisions.” *Id.* Because, according to the State, the meaning of the statute is not ambiguous, there is no need to resort to the utilization of the *ejusdem generis* tool of statutory construction in order to divine the intent of the legislature. “If there is no ambiguity in that language, either inherently or by reference to other relevant laws or circumstances, the inquiry as to legislative intent ends, and there is no need to resort to the various, and sometimes inconsistent, external rules of construction.” *Haile v. State*, 431 Md. 448, 466–67 (2013) (internal quotations omitted).

Next the State asserts that, even if appellant’s analysis were correct, it would lead to the absurd result that there would be no criminal liability under Maryland law for theft from any governmental entities, and there is no evidence that the legislature intended such a result.

In short, we agree with the State. Additionally, we note that the thrust of the theft statute is directed at the perpetrator of the crime, not the identity of the “owner” of the property. Under the statute, the “owner” of the property is merely a person with greater possessory power over the property than the thief.

Consequently, we shall affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**