

**IN THE CRIMINAL COURT FOR BRADLEY COUNTY, TENNESSEE
AT CLEVELAND**

STATE OF TENNESSEE)	
)	
)	
vs.)	Case No. 17-CR-321
)	
)	
THOMAS ERIC WATSON)	

ORDER

This cause came before the Court for hearing on December 13, 2017 on Defendant’s “Motion to Dismiss for Lack of Constitutionality or, in the Alternative, for Failure to Include a Necessary and Required Element of the Offense” and Defendant’s “Motion in Limine.” After review of the motions, memorandum, response and arguments of counsel, this Court rules as follows:

Superseding Presentment

The Superseding Presentment, filed September 20, 2017, charges Defendant with a violation of Tennessee Code Annotated section 55-5-116, which provides:

It is a class E felony for any person to:

- (1) Alter with fraudulent intent any certificate of title, certificate of registration, registration plate, or permit issued by the department or any county clerk of this state by virtue of chapters 1-6 of this title;
- (2) Alter or falsify with fraudulent intent or forge any assignment upon a certificate of title; or
- (3) Hold or use the document or plate, knowing the document or plate to have

been altered, forged or falsified.

Without specifically referencing subsection three, the Superseding Presentment charges Defendant did “unlawfully, knowingly, and feloniously hold [or use]¹ a certificate of title or certificate of registration,² knowing the document to have been altered, forged or falsified[.]”³

Motion to Dismiss

Defendant moves to dismiss all counts in the Superseding Presentment claiming each fails to include a necessary element of the crime—namely, that the maker of the alteration acted with fraudulent intent. Alternatively, should this Court determine fraudulent intent is not an element of subsection three, he claims such subsection—specifically, the term “the document”—is unconstitutionally vague.

1. Sufficiency of Superseding Presentment

“Pursuant to the provisions of both the Tennessee and federal constitutions . . . criminal defendants [] have a right to know ‘the nature and cause of the accusation.’” *State v. Byrd*, 820 S.W.2d 739, 740 (quoting Tenn. Const. Art. I, § 9; U.S. Const. Amend. 6). “[T]o satisfy the constitutional requirement, an indictment or presentment must provide a defendant with notice of the offense charged, provide the court with an adequate ground upon which a proper judgment may be entered, and provide the defendant with protection against double jeopardy.” *Id.* at 741 (citation omitted).

1 The even counts allege Defendant did “use” a certificate of title or certificate of registration, while the odd counts allege Defendant did “hold” such.

2 Although the Superseding Presentment uses the term “certificate of registration,” it specifically identifies only the certificates of title.

3 The Superseding Presentment identifies the year, make, model and VIN number of each vehicle for which Defendant allegedly used and held an altered, forged or falsified certificate of title.

Again, subsection three provides “[i]t is a Class E felony for any person to: . . . (3) Hold or use *the document* or plate, knowing *the document* or plate to have been altered, forged or falsified.” Tenn. Code Ann. § 55-5-116(3) (emphasis added). Defendant contends “the document” refers to a certificate of title⁴ altered, forged or falsified *with fraudulent intent*. Thus, according to Defendant, a subsection three violation occurs only where a defendant knowingly holds or uses a certificate of title which has been altered, forged or falsified *with fraudulent intent*. Because the Superseding Presentment charges only Defendant knowingly used or held an altered, forged or falsified certificate of title, he contends it fails to include an essential element and therefore must be dismissed.

The State, however, maintains “the document” refers simply to a certificate of title. It contends, as charged against Defendant, a subsection three violation occurs where a defendant knowingly holds or uses an altered, forged or falsified certificate of title.

“When a statute’s text is clear and unambiguous, the courts need not look beyond the statute itself to ascertain its meaning.” *Lee Medical, Inc. v. Beeler*, 312 S.W.3d 515, 527 (Tenn. 2010) (citing *Green v. Green*, 293 S.W.3d 493, 507 (Tenn. 2009); *State v. Strode*, 232 S.W.3d 1, 9-10, (Tenn. 2007)). “Because the legislative purpose is reflected in a statute’s language, the court must always begin with the words that the General Assembly has chosen.” *Lee Medical*, 312 S.W.3d at 526 (citing *Waldschmidt v. Reassure Am. Life Ins. Co.*, 271 S.W.3d 173, 176 (Tenn. 2008)). “Courts must give these words their natural and ordinary meaning.” *Id.* (citing *Hayes v. Gibson County*, 288 S.W.3d 334, 337 (Tenn. 2009)).

“[B]ecause these words are known by the company they keep, court must also construe these words in the context in which they appear in the statute and in light of the statute’s general purpose.” *Id.* (citations omitted). “The courts should avoid basing their interpretation on a single sentence, phrase or word, but instead should endeavor to give effect to every clause, phrase, or word in the statute.” *Id.* at 527 (citing *Cohen v. Cohen*, 937 S.W.2d 823, 828 (Tenn. 1996)).

Here, the statutory language is instructive. Tennessee Code Annotated section 55-5-116 subsections one and two identify four document types: certificates of title, certificates of registration, specified permits and assignments on certificates of title. “[T]he document[,]” as used in subsection three, clearly refers to these previously-delineated documents.

Tennessee Code Annotated section 55-5-116, subsection one, criminalizes altering, *with fraudulent intent*, certificates of title, certificates of registration, registration plates and specified permits. Subsection two criminalizes altering or falsifying, *with fraudulent intent*, or forging any assignment upon a certificate of title. In contrast, subsection three criminalizes holding or using the above-listed documents *knowing* the same to have been altered, forged or falsified. The Court must presume, had the legislature intended to impose a fraudulent intent *mens rea* into subsection three, it would have done so. *See Carver v. Citizen Utilities Co.*, 954 S.W.2d 34, 35 (Tenn. 1997) (“A rule of statutory construction is that the mention of one subject in a statute means the exclusion of other subjects that are not mentioned. Omissions are significant when statutes are express in certain categories but not others.”) (citations omitted)). Finding no fraudulent intent requirement in subsection three,

4 The statute also criminalizes altering certificates of registration, plates and permits.

the Court denies Defendant's Motion to Dismiss for Failure to Include a Necessary and Required Element of the Offense.⁵

2. Constitutionality

Alternatively, Defendant moves for dismissal challenging Tennessee Code Annotated section 55-5-116(3) as unconstitutionally vague. He claims, unless the Court imposes a fraudulent intent *mens rea* into subsection three, which it has declined to do, the statute fails to clearly define its prohibitions.

“[T]he root of the vagueness doctrine is a rough idea of fairness.” *Moncier v. Bd. Of Prof'l Responsibility*, 406 S.W.3d 139, 152 (Tenn. 2013) (quoting *Colten v. Kentucky*, 407 U.S. 104, 110 (1972)). The Court of Appeals recently quoted with the approval the following regarding the vagueness doctrine:

“It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *State v. Pickett*, 211 S.W.3d 696, 704 (Tenn. 2007) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)). By virtue of the Due Process Clause of the Fourteenth Amendment to the Federal Constitution and article I, section 8 of the Tennessee Constitution, a criminal statute cannot be enforced when it prohibits conduct “in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application.” *Id.* (quoting *Leech v. Am. Booksellers Ass'n*, 582 S.W.2d 738, 746 (Tenn. 1979)). The primary purpose of the vagueness doctrine is to ensure that our statutes provide fair warning as to the nature of forbidden conduct so that individuals are not “held criminally responsible for conduct which [they] could not reasonably understand to be proscribed.” *United States v. Harriss*, 347 U.S. 612, 617, 74 S.Ct. 808, 98 L.Ed. 989 (1954). In evaluating whether a statute

⁵ In any event, the Court finds the terms “forge” and “falsify” presume fraudulent intent. Tennessee Code Annotated section 39-14-114, titled “Forgery,” provides in part “[a] person commits an offense who forges a writing *with intent to defraud* or harm another.” Similarly, Black’s Law Dictionary defines “falsify,” in part, as “To make deceptive; to counterfeit, forge, or misrepresent[.]” Thus, despite its omission of the term “fraudulent intent,” the Superseding Presentment sufficiently charges Defendant with holding/using a certificate of registration knowing the document was fraudulently forged or falsified.

provides fair warning, the determinative inquiry “is whether [the] statute’s ‘prohibitions are not clearly defined and are susceptible to different interpretations as to what conduct is actually proscribed.’” *Pickett*, 211 S.W.3d at 704 (quoting *State v. Forbes*, 918 S.W.2d 431, 447–48 (Tenn. Crim. App. 1995)); see also *State v. Whitehead*, 43 S.W.3d 921, 928 (Tenn. Crim. App. 2000).

A second, related purpose of the vagueness doctrine is to ensure that our criminal laws provide “minimal guidelines to direct law enforcement.” *State v. Smith*, 48 S.W.3d 159, 165 (Tenn. Crim. App. 2000) (citing *Forbes*, 918 S.W.2d at 448). The vagueness doctrine does not permit a statute that “authorizes and encourages arbitrary and discriminatory enforcement,” *State v. Harton*, 108 S.W.3d 253, 259 (Tenn. Crim. App. 2002) (citing *City of Chicago v. Morales*, 527 U.S. 41, 56, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999)), which typically occurs when a statute “delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis,” *Davis–Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 531 (Tenn. 1993) (citing *Grayned*, 408 U.S. at 108–109, 92 S.Ct. 2294).

Despite the importance of these constitutional protections, this Court has recognized the “inherent vagueness” of statutory language, *Pickett*, 211 S.W.3d at 704, and has held that criminal statutes do not have to meet the unattainable standard of “absolute precision,” *State v. McDonald*, 534 S.W.2d 650, 651 (Tenn. 1976); see also *State v. Lyons*, 802 S.W.2d 590, 592 (Tenn. 1990) (“The vagueness doctrine does not invalidate every statute which a reviewing court believes could have been drafted with greater precision, especially in light of the inherent vagueness of many English words.”). In evaluating a statute for vagueness, *courts may consider the plain meaning of the statutory terms, the legislative history, and prior judicial interpretations of the statutory language.* See *Lyons*, 802 S.W.2d at 592 (reviewing prior judicial interpretations of similar statutory language); *Smith*, 48 S.W.3d at 168 (“The clarity in meaning required by due process may . . . be derived from legislative history.”).

Nunn v. Tennessee Dep’t of Correction, No. M201601518COAR3CV, 2017 WL 4776748, at *21–22 (Tenn. Ct. App. Oct. 23, 2017) (emphasis in original) (footnote omitted) (quoting *State v. Crank*, 468 S.W.3d 15, 22–23 (Tenn. 2015)).

Defendant’s vagueness argument is premised upon ambiguity in the term “the document” which, he contends, must be construed in his favor. However, this Court has found “the document” unambiguous and determined subsection three contains no fraudulent

intent *mens rea*. Accordingly, the court finds the prohibition against using or holding certificates of title knowing the same has been altered, forged or falsified is clearly defined so as to pass constitutional muster. Defendant's Motion to Dismiss is DENIED.

Motion in Limine

Defendant moves the Court to limit any testimony—specifically, any information contained in the summary of Barry Carrier—regarding other allegations of misconduct by Defendant. Finding no objection, the motion is GRANTED.

Enter this the _____ day of _____, 2017.

Don R. Ash
Senior Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been delivered by U.S. Mail to the following:

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On this the _____ day of _____, 2017.

Clerk