



FULLERTON POLICE DEPARTMENT

TRAINING BULLETIN

ROBERT DUNN, CHIEF OF POLICE

AUGUST 2019, TB # 19-04

Fullerton Police Department Property Crimes Unit

Understanding the differences between 148.9(a)(PC) and 529(a)(3)(PC)

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Background:

Over the last several months, the Property Crimes Unit has seen an increase in charges for 529(a)(3)(PC). After review by Property Crimes Detectives, it has been found that the elements of 529(a)(3)(PC) had not been met. Which has resulted in cases being submitted to the Orange County District Attorney's Office for 148.9(a)(PC).

The following scenarios were created based upon cases that have been submitted to the Property Crimes Unit. These scenarios were provided to the Orange County District Attorney's Office for further review. The D.D.A. that reviewed the scenarios, agreed with the charges according to the scenarios. The D.D.A provided case law to further assist officers with choosing the most appropriate charges for a suspect.

Additionally, when a suspect provides a false name please ensure that the name given is properly documented as an alias associated to the suspect. This may prevent, the suspect from concealing his true identity in future contacts with our officers and may assist with future investigations.

Scenario 1: During downtown enforcement, a subject is observed urinating in public in violation of Fullerton Municipal Code. The subject is contacted and identifies himself without being in possession of a CDL. Since the subject is unable to provide satisfactory identification the subject is taken to the Fullerton Police Department. During the booking process, the subject signed booking documents under the name that he provided during his initial police contact. A citation was completed and the subject signed the citation reflecting the identity that he provided. Prior to the suspect being released, CALID fingerprints returned identifying the suspect as a different person. The identity that the suspect initially provided to police was found to be of a true person (his brother). Based on this scenario the suspect would be in violation of 529(a)(3)(PC).

Scenario 2: During a traffic enforcement stop, a passenger provides his name and indicates that he is not on probation or parole. Dispatch is provided with all of the identities inside the vehicle and they are identified as being clear (No probation or parole and no warrants). A secondary officer responds to the scene and takes notice of one of the occupants. The secondary officer recalls that she had previously arrested the passenger and believed that he was on parole. The passenger is asked to step away from the vehicle and he complies. The passenger is confronted about providing a false identity and admits that he is on parole. The passenger indicates that he thinks he has a warrant for an arrest and provided a name date of birth to conceal his identity (The name and date of birth actually return to a true person). Based on this scenario the suspect would be in violation of 148.9(a)(PC).

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Scenario 3: You are dispatched to Target for two subjects that are actively in the process of concealing merchandise on their person. Loss prevention informs dispatch that they will notify officers when the suspects leave and provides the physical descriptors of the suspects. Officers respond to the scene and detain two suspects matching the physical descriptors provided by Loss Prevention as they are leaving the business. While the suspects are being detained one of the suspects verbally provides the identity of their sister to conceal their true identity. The second suspect accidentally provides the true identity of the first suspect. The first suspect is confronted about providing a false name and admits to providing her sisters name to avoid being arrested for her outstanding warrant. Based on this scenario the suspect would be in violation of 148.9(a)(PC).

Scenario 4: You are dispatched to Target for a subject in custody. You arrive on scene and make contact with Target Loss Prevention. Target Loss Prevention indicates that the suspect that is in custody provided their identity, a loss prevention report had been completed and the suspect has been advised if they return to any Target that they will be arrested for 602(PC). You take custody of the suspect and conduct record checks on the suspect's identity. You find that the identity is clear with no warrants. You complete a private person's arrest form for the identity provided by the suspect and Target Loss Prevention signs the document. Since the suspect has no identification you take the suspect into custody and transport them to the Fullerton Police Jail. While transporting the suspect to Jail, the suspect informs you of their true identity. Based on this scenario the suspect would be in violation of 529(a)(3)(PC). The reason why the 529(a)(3)(PC) would apply, is because Target's records would reflect the false identity of a true person. If that true person returned to a Target and was stopped by Loss Prevention they may be liable to the 602(PC) warning.

* According to the Orange County District Attorney's Office: The officer should have contacted Target to inform them of the identity information he/she discovered. But because that wasn't done then technically it is a 529(a)(3)(PC) violation.

Scenario 5: You conducted a traffic enforcement stop on a bicyclist for not having a headlamp during night hours. The suspect verbally provides his identifies himself as John Smith DOB: 1-1-85. You conduct a records check on the information provided and find match for the identity. Since the suspect is not in possession of a CDL, you conduct a database search on the identity and locate a prior booking photograph of Smith that does not match the subject you have detained. You conduct a Cal- Photo database search and locate a DMV photo for the identity provided and it also does not match the subject you have detained. You notice that the DMV photograph matches the booking photo for Smith DOB: 1-1-85. Based on your findings you complete a citation for "Smith" and inform him that providing a false identity is a felony. The suspect signs the citation as John Smith DOB: 1-1-85. Since, you are in question of the suspect's true identity based upon the photographs you take him into custody and transport to the Fullerton Police Jail. While at the Jail you find the suspect's true identity. Based on this scenario the suspect would be in violation of 529(a)(3)(PC).

Scenario 6: You are dispatched to Quicken cash for a check that had been returned for insufficient funds. You make contact with the staff and they provide you with the check that was returned, the application used to cash the check, a CDL and photographs of the suspect during the transaction. You compare the CDL with the photographs from the transaction and notice that while they appear to be the same person they are actually two different people. In fact you identify the person making the transaction as a subject you had previously arrested. Based on this scenario the suspect would be in violation of 529(a)(3)(PC).

People v. Cole 23 Cal.App. 4th 1672 Decided 4/4/1994

Sufficiency of Evidence Supporting Felony False Personation

[1] Pursuant to section 529, subdivision 3, it is a felony to personate another falsely, and in such assumed character, (1) to do an act which, if done by the person falsely personated, might cause that person liability for any prosecution, or (2) to do an act whereby any benefit might accrue to the person falsely personating. Pursuant to section 148.9, it is a misdemeanor to provide a police officer with false identification either to evade process of the court or to evade proper identification.



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In *People v. Robertson* (1990) 223 Cal. App. 3d 1277 [273 Cal. Rptr. 209], the court identified one of the distinctions between the two crimes: "Regarding section 529, subdivision 3, the prosecution must establish in addition to the act of impersonation itself an 'act' which, had it been done by the person falsely personated, might have subjected that person to either a suit or some kind of debt or fine; or which benefitted [sic] the defendant or 'any other person' in some way. Once again, this is not the case when seeking a conviction based on section 148.9. For a conviction based on the latter statute, the prosecution need only establish the act of impersonation before a peace officer upon a lawful detention or arrest, for the purpose of evading the process of the court or proper identification." (*People v. Robertson*, supra, 223 Cal.App.3d at p. 1281, italics added.)

Appellant contends there is no evidence of an act in addition to that of falsely identifying himself to the arresting officer. Because there is no evidence of an additional act that would elevate the crime from a misdemeanor to a felony, his felony conviction must be reversed.

According to respondent, evidence of "[a] compounding act, whether it was the defendant's own affirmative action, or his passive allowance of further court action under the false identity" is sufficient to demonstrate the felony violation of section 529. Respondent contends the appellant's initial act of falsely identifying himself as Larry Quesenberry was compounded by (1) the act of giving Larry Quesenberry's birth date during booking, and (2) "reaffirming his false identity by confirming his alleged middle name of 'Ray.' "

Appellant responds that the answers to questions posed by the officer while filling out the prebooking form as appellant sat in the patrol car are [23 Cal. App. 4th 1676] simply part of the initial falsehood, and each response should not be characterized as an additional act within the meaning of section 529.

Respondent's "compounding act" analysis is taken from the discussion in *People v. Robertson*, supra, 223 Cal.App.3d at page 1282, in which defendant falsely identified himself to the arresting officer as his brother. Following his arrest, a complaint was filed against him titled, "People of the State of California versus Joseph Robertson." He continued to masquerade as his brother through his arraignment and was released from custody on his own recognizance. He signed both a booking form and a release form using his brother's name. When he failed to appear at the next scheduled hearing, a bench warrant was issued for his brother's arrest. His brother subsequently was arrested on the outstanding warrant in Texas and extradited to California where criminal proceedings were reinstated. His brother was found incompetent to stand trial and was committed to Atascadero State Hospital. Authorities at Atascadero discovered the gambit and appellant was apprehended.

The Robertson court concluded, "The initial falsehood on appellant's part was compounded many times by what happened thereafter." (*People v. Robertson*, supra, 223 Cal.App.3d at p.

1282). It was abundantly clear from the record in Robertson that defendant engaged in acts in addition to the act of providing false identification to a police officer.

There necessarily must be something to distinguish an act punishable as a felony under section 529 from an act punishable as a misdemeanor under section 148.9. According to respondent's analysis, if a person provides any additional information beyond a false name, the crime is elevated to a felony. We conclude such a construction of section 529 is unreasonable and not compelled by Robertson.

The conduct described in Robertson was substantially more than merely providing a police officer with false identification. Here, however, giving a false birth date and middle name was no more than part of the act of providing the false information upon which the false identity was based. Each statement made in the course of providing contemporaneous statements amounting to false identification logically cannot be construed as separate acts compounding each prior statement.



The record does not support the felony conviction; however, it does support a misdemeanor conviction. A new trial is not necessary. The judgment of conviction on count III will be reversed and upon remand the trial court will be directed to modify the judgment to reflect a conviction **[23 Cal. App. 4th 1677]** for violation of section 148.9, subdivision (a), and to impose sentence accordingly.

Disposition

The judgment of conviction in count III (violation of § 529, subd. 3) is reversed; upon remand on that count the superior court is directed to enter a judgment of conviction of a violation of section 148.9, a misdemeanor.

Source: FPD Property Crimes Unit – August 12, 2019

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