

BRIEF ON NAMES IN SUPPORT OF MOTION TO DISMISS

1. The state has argued two main points regarding common law name change in relation to Charlie Steward.

a. The cited cases the author would cite, are old.

b. The name, Charlie Steward, is fraudulent.

2. IN RELATION TO POINT (a) - OUTDATED CASES

3. The very first [Revised Statute] of the STATE OF MISSOURI says that MISSOURI'S statutes are based on the common law of king James the first - *whose reign began on March 24, 1603*.

4. No statutes have been enacted to abrogate common law names. [*Matter of Natale*, 527 S.W.2d 402 (Mo.App.1975)] (See attached MEMORANDUM OF LAW, number 8):

"This court is unaware of any constitutional or statutory provision which abrogates the English common law right to change names through usage,..."

5. IN RELATION TO POINT (b) - FRAUDULENT NAME

6. The state has alleged that the name Charlie Steward is somehow fraudulent, and therefore, illegal, and any usage thereof constitutes forgery. This argument fails miserably.

7. INTRINSICALLY, IT IS IMPOSSIBLE FOR A NAME TO BE FRAUDULENT

8. Under the common law, a man is free to name himself whatever he desires - and as often as he desires - and for whatever reason he desires. A name in and of itself cannot be fraudulent.

[**Smith v. United States Casualty Co.** 197 NY 420, 90 NE 947 - 1910] See MEMORANDUM OF LAW, number 6).

"The legislature in 1852 provided a mode of changing the name, but that act was in affirmance and aid of the common law, to make a definite point of time at which a change shall take effect. Without the aid of that act, a man may change his name or names, first or last, and when his neighbors and the community have acquiesced and recognized him by his new designation, that becomes his name."

"The elementary writers are uniform in laying down the rule that at common law a man may change his name at will."

9. For example, if a man, given his parent's name at birth was "Harvey Euge," wakes up one morning and decides to call himself "Dayton Horn," he is entirely free to do so.

10. Say this "Euge" takes a checkbook - *that does not belong to him* - and bears the name "Dayton Horn" on the checks. Is he free to take that checkbook as his own, write and cash checks with the name "Dayton Horn?" After all, that's his name.

11. Of course not, even though his name is LEGALLY "Dayton Horn" - **because he calls himself that name - by usage** - he would be guilty of forging the name of the rightful owner of the checkbook. It's forgery regardless of the name he calls himself. **His crime is not his name.** His crime would be in the forging of *another* man's name for the purpose of committing fraud - *theft by trickery or deception in the taking of another man's money or property.*

12. **The crime is not the name or the usage thereof.** The crime is the **fraud** perpetrated on the real, rightful owner of the checkbook, whose name is also "Dayton Horn" and it would be theft regardless of the name of the person committing the fraud.

13. This argument is very clearly stated from the MISSOURI supreme court. In *another* Missouri supreme court case, [400 S.W.2d119 (1966) STATE of Missouri, Respondent, v. Harvey F. EUGE,

Appellant. No. 51030. Supreme Court of Missouri, Division No. 1. March 14, 1966], the court makes it clear that a **crime is not in the usage of a name**. (See attached MEMORANDUM OF LAW, number 14).

14. HISTORY OF EUGE

15. Harvey F. Euge (*name given at birth*) opened a checking account using the name "Dayton Mitchell Horn." He opened the account with \$40. The next morning, he went to the bank and attempted to withdraw \$45 from the account. He was subsequently charged with writing a bogus check because it was discovered that his "*real name*" was Harvey Euge, not Dayton Mitchell Horn.

16. In Euge, the court quoted the Charging Portion of Euge's grand jury indictment:

"...the said HARVEY F. EUGE at the time unlawfully, feloniously, and with intent to cheat and defraud did obtain the aforesaid money and property from BANK of ST. LOUIS INCORPORATED, a corporation, and the defendant knew at the time he tendered the said check that the name of DAYTON MITCHELL HORN was in fact the name of a fictitious person and that the aforesaid check was bogus; contrary to Section 561.450, Missouri Revised Statutes, in such case made and provided, and against the peace and dignity of the State."

17. In the lower court, Euge was found guilty.

18. On appeal [400 S.W.2d119 (1966)], the court said,

"In the case before us, defendant opened an account under the name Dayton Mitchell Horn by depositing \$40 cash in the Manchester Bank. He subsequently drew a check in the amount of \$45 on said account and signed it with the name Dayton Mitchell Horn. **Defendant had authority to sign the name Dayton Mitchell Horn to the check.**"

19. The court stated that Euge/Horn attempted to withdraw more money than what was in the account.

The crime was theft by attempting to withdraw more money from the account than what was in the account - **not the use of his name.**

20. The court **ALL CONCURRED** that Euge **had the authority to sign the name Dayton Mitchell Horn.** The court concluded the crime was in the **attempted theft** - NOT THE NAME.

"Defendant had authority to sign the name Dayton Mitchell Horn to the check."

21. In the case of MISSOURI v SAMPLES¹, the state is alleging that because the name Charlie Steward was on the bill of sale for a car **THAT HE LAWFULLY PURCHASED**, the use of the name Charlie Steward is forgery.

22. The complaint says:

"The defendant, with the purpose to defraud, made a writing, namely a title, so that it purported to have been made by another." (See attached COMPLAINT).

23. Who was being defrauded? Who is the "another?" Whose property was being attempted to be stolen or taken by trickery or deception by forgery? Is there a challenge that the car rightfully belonged to someone other than the author of this brief? Absolutely not.

24. It is undisputed that the author lawfully purchased the car from James Ennis of Springdale, Arkansas in June of 2014. He had the bill of sale stating such.

25. Is the STATE claiming there is another man named Charlie Steward that purchased the car from James Ennis, and that the author, also named Charlie Steward was attempting to steal a car that did not belong to him by signing for another man named Charlie Steward?

26. In order for this charge to have any merit whatsoever, there must be two *flesh and blood* Charlie Steward(s) - one who is the rightful owner of the car, and the other who is trying to steal the car by

forging the rightful owner's name.

27. Since there clearly are NOT two Charlie Steward(s) involved, there can be no crime merely for the usage of a name on the bill of sale for a lawfully purchased car.

28. If one Charlie Steward was trying to steal another Charlie Steward's car, by signing the name Charlie Steward - the forgery would be in someone - *anyone* - signing the name of the rightful owner of the car. It would not matter what the name of the perpetrator was. Forgery is one man signing the name of *another* man without that man's permission. Forgery with the intent to defraud is one man signing another man's name for the purpose of stealing that man's money or property.

29. The STATE'S agents may be attempting to claim that the name Charlie Steward was acquired for the purpose of perpetrating a fraud. Euge clearly renders that argument moot. Forgery with the intent to defraud is crime - *name is not*.

30. The car was purchased by Charlie Steward. There is no one upon whom a fraud was perpetrated. As long as Charlie Steward was the purchaser of the car - he could have used the name "Donald Duck" as his name on the bill of sale for HIS car. The use of a name is not a crime.

31. Charlie Steward is the ONLY name of the man being affected by these proceedings. It is the ONLY name he would have used in the purchase of a car.

32. STATE'S agents trying to charge innocent people with crimes merely because of their names is not new - *and continues* - in spite of the overwhelming number of court cases saying otherwise.

33. [593 F.2d 46, 55 A.L.R.Fed. 507, **UNITED STATES of America, Plaintiff-Appellee, v. Forrest Richard COX, Defendant-Appellant**. No. 78-5251. **United States Court of Appeals, Sixth Circuit**. Argued Nov. 29, 1978. Decided Feb. 26, 1979.] (See attached MEMORANDUM OF LAW, number 15).

34. HISTORY OF COX

"...That on or about March 11, 1975, in the Eastern District of Michigan, Southern Division, FORREST RICHARD COX, JR., defendant herein, willfully, unlawfully and knowingly did make and aid and abet in the making of a false statement in an application for a passport with intent to induce and secure for his own use the issuance thereof under the authority of the United States, contrary to the laws regulating the issuance of such passports and the rules prescribed pursuant to such laws, in that, in such application, executed at Detroit, Michigan, in the name of "Carl Richard Stein", Forrest Richard Cox, Jr., defendant herein, stated and caused to be stated that his name was "Carl Richard Stein" whereas in truth and fact, as he then knew, his name was not "Carl Richard Stein"; in violation of Section 1542 and 2, Title 18, United States Code. "

35. Cox was found guilty in the district court and on appeal, the US court of appeals said (ibid):

"The question to be answered is whether the defendant in this case made a false statement in his application by using the name Carl Richard Stein."

"Under the law of Michigan, where the defendant had lived since infancy except while away in college, a person may adopt any name he chooses, as at common law. In *Piotrowski v. Piotrowski*, 71 Mich.App. 213, 215-16, 247 N.W.2d 354, 355 (1976), the court stated this rule as follows:

Under the common law a person may adopt any name he or she wishes, without resort to any court and without any legal proceedings, provided it is not done for fraudulent purposes.

The statutory name change procedure in Michigan, M.C.L.A. § 711.1, is not exclusive; it merely provides an additional method for effecting a name change as a matter of public record.

71 Mich.App. at 216, 247 N.W.2d 354. There was no showing that the defendant assumed the name Stein for fraudulent purposes. In the absence of such proof he was legally entitled to use that name as his own.

It is interesting to note that regulations of the Department of State recognize that a name may be changed without court action. The following appears in Subpart B of passport regulations:

An applicant whose name has been changed by court order or decree shall submit with his application a certified copy of the order or decree. An applicant who has changed his name by the adoption of a new name without formal court proceedings shall submit with his application evidence that he has publicly and exclusively used the adopted name over a long period of time.

The court has not overlooked the fact that federal law controls the meaning of the language used in this federal statute. However, the statute does not define "false statement" with respect to use of a legally assumed name which is different from the name given at birth, and there appears to be no decisional authority from federal courts on the subject. In such a situation we apply two widely accepted rules of statutory construction. The first is that criminal statutes are to be strictly construed. The second rule is that statutes are to be interpreted with reference to the common law and where there is no indication to the contrary, given their common law meaning. *United States v. Monasterski*, 567 F. 2d 677, 681-82 (6th Cir. 1977). Applying these principles to section 1542 we conclude that it is not violated by one who lists a legally adopted name on a passport application. The term " false statement," strictly construed, cannot be held to include use of a legally adopted name. Under the common law a person may freely change his or her name without any legal formalities. Thus, application of both rules of statutory construction leads to the conclusion that there was no evidence that the defendant made a false statement on his passport application."

"The judgment of the district court is reversed. The cause is remanded with direction to dismiss the indictment."

36. A common misconception regarding names is that a "legal" name is only a name that appears on a birth certificate, or is one that has been changed by court order.

37. As has been proven above, a common law name change is a legal name, *for all purposes*. [**Smith v. United States Casualty Co.** 197 NY 420, 90 NE 947 - 1910]

"Mr. Throckmorton, in his article on Names in the Cyclopedia of Law and Procedure, says: "It is a custom for persons to bear the surname of their parents, but it is not obligatory. **A man may lawfully change his name without resort to legal proceedings, and for all purposes the name thus assumed will constitute his legal name just as much as if he had borne it from birth.**" (29 Cyc. 271.)"

38. As shown, a change of name by proceeding is not the exclusive means of acquiring a legal name. That procedure is a "statutory" name change - not a "legal" name change. The "statutory" name change procedure was added as another method for procuring a name change, and did not abrogate the common law method.

[In **Smith**] "The legislature in 1852 provided a mode of changing the name, but that act was in affirmance and aid of the common law, to make a definite point of time at which a change shall take effect. Without the aid of that act, a man may change his name or names, first or last, and when his neighbors and the community have acquiesced and recognized him by his new designation, that becomes his name."

39. **A common law name change is a legal name change**, and that name change is lawful and legal for all purposes, and that name becomes the name of the individual so much as if he was born with that

name. It is without question lawful for the bill of sale of a car. And it is without question lawful for an inspection certificate regarding the said car.

40. Differing from the statutory name change, under the common law, a man is not required to state the reasons for his name change and his name change cannot be prevented by statute. Courts have held that judges may "approve" the reason for a name change in statutory proceedings. But in common law name change, one need not declare his reasons for changing his name and he is free to assume ANY name he chooses:

[Court of Appeals of New Mexico. **IN RE: the PETITION OF VARIABLE for Change of Name, Petitioner-Appellant, v. District Court Judge Nan G. NASH, Respondent-Appellee. No. 28,488. Decided: June 27, 2008]**

Variable, Los Alamos, NM, Pro Se Appellant. Gary K. King, Attorney General, Santa Fe, NM, for Appellee.

OPINION

{1} Petitioner appeals the denial of his name change request. In our notice, we proposed to affirm. Petitioner has timely responded. Not persuaded by his arguments, we affirm.

{2} Petitioner filed a request in district court to change his name to "F**k Censorship!" The district court denied the request stating that the "proposed name change would be obscene, offensive and would not comport with common decency." This denial is consistent with our view as stated in *In re Mokiligon*, 2005-NMCA-021, ¶ 3, 137 N.M. 22, 106 P.3d 584, that courts may deny a name-change request when the choice of name is offensive to common decency and good taste. We review the district court's denial of the name-change request for abuse of discretion. *Id.* ¶ 2.

{3} Petitioner argues on appeal that he is entitled to call himself whatever he wishes. He argues that the First Amendment to the United States Constitution gives him that right and that it is improper government censorship to deny him that right.

{4} We do not believe that the district court's action infringes on Petitioner's right to free speech. Petitioner has a right under the common law to assume any name that he wants so long as no fraud or misrepresentation is involved. In re Ferner, 295 N.J.Super. 409, 685 A.2d 78, 80 (Ct. Law Div.1996); In re Rivera, 165 Misc.2d 307, 627 N.Y.S.2d 241, 244 (Civ.Ct.1995). He may do so without making any application to the state. Thus, under the common law, Petitioner may exercise his right to free speech and use any name at all.

However, once Petitioner files an application for a name change pursuant to NMSA 1978, § 40-8-1 (1989), and seeks the approval of the courts for a name, it becomes the responsibility of the courts to ensure that there are no lawful objections to the name change. See In re Mokiligon, 2005-NMCA-021, ¶¶ 3-4, 137 N.M. 22, 106 P.3d 584 (requiring the court to show that lawful objections exist to the name change application); Rivera, 627 N.Y.S.2d at 244 (stating that petition for name change becomes subject to close scrutiny once court approval is sought). (See attached MEMORANDUM OF LAW, number 16).

41. WHAT IS THE FRAUDULENT USE OF A NAME?

42. Say a man resembles the famous quarterback, Peyton Manning. The man would be free to call himself Peyton Manning - and that would become his name. However, if this man assumed the name Peyton Manning, then went around the countryside autographing NFL memorabilia claiming that he was the real quarterback, "Peyton Manning," this would be the fraudulent use of a name, but the crime would STILL not be the name. It would be that this impersonator was claiming the real "Peyton Manning's" autograph as his own, hence, the crime would be forgery with the intent to defraud (*anyone*

buying memorabilia from the impersonator). He would be forging the real Peyton Manning's name - not his own. The crime has NOTHING to do with the fact that the man assumed the name "Peyton Manning." The crime is that he represented himself as another man, for the purpose of perpetrating a fraud - taking by trickery or deceit another man's money or property. The crime of forgery is signing *another* man's name for the purpose of stealing that man's money or property.

43. When a man takes a new name at common law, and uses that name in the community as his own, that becomes his name and it is impossible for his name to be called a forgery.

44. Muslims in America change their names all the time because they feel it is what Allah wants them to do. Many of them, the late Muhammad Ali, for instance, are praised as great men and athletes. But a Christian man, who changed his name because he believes he is following Christ is hounded like a dog and treated like a criminal - because he changed his name? Is this what America has become?

45. Somehow the STATE'S agents have taken it upon themselves to decide what a man's name is, and if he chooses/uses anything other, it is called forgery, and is thrown into a cage for using his own name. The STATE'S agent, prior to December 10, 2015 had not only never met this author, and had not even known anyone who knows this author. Yet, he somehow knows the author's name - better than the author's own parents? Attached are notarized affidavits from the author's parents stating what his name is. Does the STATE'S agent know better than this author's own parents? (See attached Affidavits).

46. For these reasons, the court, based on its own decision, should sustain this motion and dismiss the actions affecting the man, Charlie Steward.

This **BRIEF ON NAMES IN SUPPORT OF MOTION TO DISMISS** has been mailed or hand delivered to the following people at the following addresses:

Steven W. Kahre [Cf. Clerk of Court] Lawrence County Judicial Center, Mt Vernon, Mo
Don Trotter [Cf. Prosecutor] Lawrence County Judicial Center, Mt Vernon, Mo

Jack Aaron Louis Goodman

On this 5th day of June in the Year of our LORD and Savior Jesus, the Christ, 2017, I , a man, known only as Charlie Steward, the author, verify the above by affixing my autograph in a non-representative capacity. This is personal first hand knowledge to which the author will declare in open court fully aware of the penalty of bearing false witness before God and man.

Charlie Steward