

## Federal Courts Redefining Identity Theft

February 14, 2013 - It may sound like a stupid question but what is the definition of identity theft? If you voluntarily let someone else use your information, is that someone else committing identity theft? According the federal court system, the answer to that question appears to be "yes". At least, that's the answer so far.

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The Sixth Circuit Court of Appeals has upheld the aggravated identity theft conviction of a man who purchased his identity information from a willing seller. In the case, *US v. Lumbard*, the defendant was attempting to outwit law enforcement authorities. He had several outstanding arrest warrants and wanted to disappear.

In 2009 Nathan Lumbard was introduced to someone who was willing to sell his own personally identifiable information for \$500. For that, he received the names of the seller's parents, address information, a SSN, date of birth, etcâ€¦ Everything necessary to commit identity theft.

With this information, Lumbard got a new driver's license and a passport, and then he left the United States. In 2011, he was captured in Burma and extradited back to the US. He was charged under federal identity theft laws with using false documents to obtain a passport. A conviction under that charge triggers additional penalties including prison time and fines. In Lumbard's case, he received 4 years in prison and a \$30,000 fine.

Lumbard appealed his conviction; claiming that he had permission to use the identity of the person who sold him the information. But the court found that "permission" was not enough to avoid a criminal conviction under the aggravated identity theft statute. Their reasoning was that the statute applies to specific situations in which federal law states that it is

illegal to present false information in specific circumstances. One of those circumstances is to obtain a passport.

The Sixth Circuit is not standing alone in its decision. Six other federal circuits have made similar decisions since 2007. Because all of the federal circuits that have ruled on the issue so far have had similar opinions, it is unlikely that the Supreme Court will review the case.

byJim Malmberg

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