IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,	Court of Appeal No. B287387
vs.	Superior Court No. SA087410
STEVE CLARK OBERDIEAR, Defendant and Appellant.	

APPELLANT'S PETITION FOR REHEARING

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

Hon. Upinder Kalra, Judge

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Appellant respectfully petitions the court for rehearing after the issuance of its unpublished opinion in *People v. Oberdiear* (B287387), filed October 19, 2020 (per Dillon), pursuant to California Rules of Court, rule 8.268, subdivision (a). Rehearing is necessary because the opinion omits important and relevant facts, causing a mischaracterization of the impact of the facts below and resulting in an erroneous judgment.

I.

APPELLANT PRESENTED EVIDENCE TO SUPPORT HIS THEORY THAT TEXT MESSAGES HAD BEEN "SPOOFED"

In coming to the conclusion that the trial court did not err in not permitting appellant to reopen in order to show the jury that the cell phone report included a message that was dated "2058," this Court relied on the claim that "Oberdiear did not present any evidence to support his spoofing defense." (*People v. Oberdiear*, *supra*, at p. 29.) Rehearing is required because appellant had, in fact, presented evidence that supported his spoofing defense.

As appellant noted in his Statement of Facts,

> The extracted messages contained some inconsistencies. (6 S.R.T. p. 1875-1876.) For example, on one exhibit, Zaun's contact is listed as his number, but on another, it is listed as his name. (6 S.R.T. pp. 1875-1876.) In addition, one exhibit lists the contact "self" in three different formats. (6 S.R.T. p. 1877.)

(A.O.B. p. 23.)

A closer look at the relevant testimony shows that in Exhibit 8A—the forensic examination report Officer David Williams produced by searching for Jim Zaun's phone number via Blacklight—Jim Zaun's name is not listed because "it is not resident on the phone." (6 S.R.T. pp. 1847-1849, 1875-1876.) Williams stated, "Since there's no name, it's not resident in the phone. It puts the phone number because it doesn't have a name to associate it. Then it puts the phone number of what would have been the phone number of the name." (6 S.R.T p. 1876.)

However, in Exhibit 10A—a portion of the same extraction report produced in the same manner as Exhibit 8A, and also was purported to

contain texts between appellant and Jim Zaun—the recipient is listed as "Jim Zaun," instead of a phone number. (6 S.R.T. pp. 1856-1857, 1876.)

In addition, the participant phone numbers in Exhibits 8A and 10A—both a series of texts between appellant and Zaun—display differently. (6 S.R.T. pp. 1876-1877.) Last, Exhibit 9A, which was retrieved in the same way from the same phone and included texts between appellant and Shawn Sedaghat, included three different manners of representing "Self." (6 S.R.T. pp. 1853-1854, 1877.)

Thus, this evidence revealed significant inconsistencies within the extraction report. For example, if the program were assigning a name to a number only if that information was resident in the extracted phone, that would occur consistently throughout the extraction report. This is because a contact can only be on a phone or not, and the extraction report somehow shows both. Similarly, "self" would be represented consistently, which it was not. Thus, these inconsistencies support the defense that someone had used a program to spoof appellant by injecting the texts and surrounding data into appellant's phone, but had simply failed to do so in a way that was consistent with other data and texts on the phone.

Appellant argued this point at closing, stating,

> The expert was not able to give any reason why this information would be displayed differently. Based on his testimony, all of these texts should display identically. It'll say from the sender and recipient and the date and time and the text itself, but the format should always be the same, because same device did the extraction at the same time. And no data is ever added to whatever is pulled off the phone. So supposedly that accurately reflects what was on that iPhone.

(7 S.R.T. p. 2150.)

Therefore, appellant presented evidence in support of his spoofing defense. Since this Court found the notion that appellant had not presented evidence of spoofing significant to its analysis of the issue of whether the court erred in denying appellant's motion to reopen, appellant submits that rehearing is required. (Rules of Court, rule 8.268, subd. (a).)

CONCLUSION

To address the error stated herein, Mr. Oberdiear respectfully requests that this court grant his petition for rehearing.

Robert Booher, 248642
Attorney at Law
Attorney for Appellant and Defendant

CERTIFICATION OF WORD COUNT

Appellate counsel certifies that this document contains 784 words as calculated by the Microsoft Word software in which it was written.

Dated: November 2, 2020

Robert Booher
Attorney at Law
Attorney for Appellant and Defendant

Re: *People v. Oberdiear*, No. B287387

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party within the action; my business address is 2103 Harrison Ave NW, Ste 2 Pmb 332, Olympia, WA 92160.

On November 2, 2020, I served the attached

APPELLANT'S PETITION FOR REHEARING

by placing a true copy thereof in an envelope addressed to the persons named below at the addresses shown, and by sealing and depositing said envelope in the United States Mail at Olympia, Washington, with postage thereon fully prepaid. There is delivery service by United States mail at each of the places so addressed, or there is regular communication between the place of mailing and each of the places so addressed.

Clerk of the Court
Airport Courthouse
Attn: Honorable Upinder S. Kalra
Dept. 70
11701 S. La Cienega
Los Angeles, CA 90045

Steven Oberdiear
3921 Hillcrest Dr., #14
Los Angeles, CA 90008

PROOF OF SERVICE BY ELECTRONIC SERVICE

Furthermore, I, Robert Booher, declare I electronically served the attached APPELLANT'S PETITION FOR REHEARING by transmitting a true copy via this Court's TrueFiling system.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 2, 2020, at Olympia, Washington.

ROBERT BOOHER
DECLARANT