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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1946**

State of Minnesota,  
Respondent,

vs.

Martha Isela Reynua,  
Appellant.

**Filed July 23, 2012  
Reversed and remanded  
Collins, Judge\***

Mower County District Court  
File No. 50-CR-09-1811

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Kristen M. Nelsen, Mower County Attorney, Jeremy L. Clinefelter, Assistant County  
Attorney, Austin, Minnesota (for respondent)

Bruce D. Nestor, De Leon & Nestor, LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Bjorkman, Judge; and  
Collins, Judge.

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals  
by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**COLLINS**, Judge

This appeal is here on remand from the supreme court following this court's earlier opinion in *State v. Reynua*, 807 N.W.2d 473 (Minn. App. 2011), *review granted, rev'd in part and remanded* (Minn. Feb. 28, 2012). This court held, in part, that admission of the federal I-9 employment-eligibility-verification form was harmless error as to the conviction for simple forgery. *Id.* at 484. The supreme court granted Reynua's petition for review and remanded for this court to reconsider whether admission of the I-9 form was harmless error as to the simple-forgery conviction. We reverse on that issue and remand.

### FACTS

The facts are detailed in this court's prior opinion, 807 N.W.2d at 475-76, and it is necessary only to summarize the facts bearing on the harmless-error issue.

The state introduced into evidence a copy of a Minnesota identification (ID) card with the name "Laura Elena Romero" and a photograph purporting to be that of Romero, but which was actually that of Reynua. An employee at Hormel Foods testified that a "Laura Romero" had been hired there based on the Minnesota ID card, as well as the I-9 form that was presented in Romero's name and to which the ID card copy was attached.

The prosecution offered the I-9 form into evidence. The defense objected, arguing that because the federal immigration statute preempted state prosecution "for presenting false documents," the I-9 form could not be entered into evidence. The district court overruled the objection, and admitted the I-9 form into evidence. Defense counsel

objected to admission of the Minnesota ID card copy on the same preemption basis, and that objection was also overruled. The state also presented evidence that the title registrations to two vehicles had been obtained in the name of “Laura Romero” by using the Minnesota ID card issued in that name.

In closing argument, the prosecutor argued:

As far as the forgery itself, it’s simply the uttering of the [Minnesota ID card]. And in this case, there’s virtually uncontroverted evidence that the document was uttered as part of the Hormel application process—the I-9 forms—in various ways.

The prosecutor also argued that Reynua, in using the Minnesota ID card, had “simply used an identification that was not her own to gain employment under an identity that was not hers.”

In his closing argument, defense counsel returned to the pretrial preemption issue, stating,

it would remain our position that the information in the I-9 form is the only information which can establish that a photo identification in the name of Laura Romero was presented at the time that the I-9 form was completed. It’s our belief that *that information may not be used to establish the forgery offenses* or the perjury offense.

(Emphasis added.)

The district court based its finding that Reynua was guilty of aggravated forgery on “[t]he evidence of the employment application; the photographs both contained on the Minnesota ID card and the identification photograph for work purposes.” As to the

simple forgery, the court made a finding of guilty based on the offense being a lesser-included offense of the aggravated forgery.

## DECISION

An error in the admission of evidence that does not implicate constitutional rights is harmless if there is no reasonable possibility that the error substantially influenced the finding of guilt. *See State v. Valtierra*, 718 N.W.2d 425, 435 (Minn. 2006).

In making a determination as to harmless error, this court must look at the impact of the error on the verdict actually rendered. *See State v. Juarez*, 572 N.W.2d 286, 291-92 (Minn. 1997). It is not enough that the other evidence of guilt was sufficient, or even overwhelming. *Id.* at 291. The reviewing court must assess the manner in which the erroneously admitted evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether the defense effectively countered it. *Townsend v. State*, 646 N.W.2d 218, 223 (Minn. 2002).

The simple-forgery statute provides that forgery is committed by one who, with the intent to injure or defraud, “uses a false writing, knowing it to be false, for the purpose of identification . . . .” Minn. Stat. § 609.63, subd. 1(1) (2010). Reynua was charged with simple forgery for using the “Laura Elena Romero” Minnesota ID card for identification when applying at Hormel. And the state presented documentary evidence that the ID card was presented in support of the I-9 form at Hormel.

But there was no testimony, or other evidence independent of the I-9 form, that Reynua presented the “Laura Elena Romero” Minnesota ID card at the Hormel office.

The state relied on the I-9 form itself, which notes that the Minnesota ID card is attached, as well as a copy of the actual attachment, which shows the Minnesota ID card.

The state acknowledges in its supplemental brief that “the [I-9 form] and attached photocopies were critical evidence against appellant.” The state notes that it did not recover the “Laura Elena Romero” ID card, but relied on the photocopy attached to the I-9 form. The state notes the probability that Reynua used this ID card regularly, but points out that it charged the forgery based only on the use of the card to support the I-9 form. The state’s heavy reliance on documentary evidence meant that the Minnesota ID card itself came into evidence only as an attachment to the I-9 form. The Minnesota ID card number is on the certificate-of-title registrations, but there was no testimony as to these transactions showing a *use* of the Minnesota ID card to complete the registrations.

The I-9 form to which the Minnesota ID card copy was attached was highly persuasive in showing a use for identification purposes. Moreover, the state relied on it in closing argument, and defense counsel was unable to counter its impact, falling back on the pretrial argument that the I-9 form should not have been admitted.

Under the factors identified in *Townsend*, 646 N.W.2d at 223, we conclude that there is at least a reasonable possibility that the admission of the I-9 form substantially influenced the district court’s finding of guilt. Without the I-9 form, there would have been no substantial evidence that the forged ID card was used for purposes of identification. Thus, the erroneous admission of the I-9 form was not harmless as to the simple-forgery conviction.

The state acknowledges in its supplemental brief, as it did in its initial appellant's brief, that admission of the I-9 form was not harmless error as to the simple-forgery conviction. This court is not bound by the state's concession of prejudicial error. *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (holding that reviewing court has an independent duty to decide cases in accordance with applicable law). But the state's concession is well-reasoned, and we have independently arrived at the same conclusion.

Because Reynua's simple-forgery conviction must be reversed and remanded under the harmless-error test for non-constitutional error, we need not address Reynua's argument that admission of the I-9 form violated her constitutional rights.

**Reversed and remanded.**