

**FILED: November 27, 2013**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

CYNDE DARLENE TORREZ,  
Defendant-Appellant.

Marion County Circuit Court  
11C40031

A149741

Albin W. Norblad, Judge.

Submitted on October 30, 2013.

Peter Gartlan, Chief Defender, and Kyle Krohn, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Patrick M. Ebbett, Assistant Attorney General, filed the brief for respondent.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Duncan, Judge.

PER CURIAM

Conviction for first-degree forgery reversed; remanded for entry of a judgment of conviction for second-degree forgery and for resentencing.

1 PER CURIAM

2 Defendant was convicted of first-degree forgery after attempting to cash a  
3 forged United States Treasury check. On appeal, she argues that her conduct constituted  
4 second-degree forgery, ORS 165.007, and that the court plainly erred by entering a  
5 conviction for first-degree forgery. The state concedes that the trial court plainly erred in  
6 that regard and urges us to remand for entry of a conviction for second-degree forgery  
7 instead. We agree with and accept the state's concession.

8 Under ORS 165.007(1), a person commits the crime of forgery in the  
9 second degree if, with intent to injure or defraud, the person "(a) [f]alsely makes,  
10 completes or alters a written instrument; or (b) [u]tters a written instrument which the  
11 person knows to be forged." The crime is elevated to first-degree forgery if "the written  
12 instrument is or purports to be," among other things, "[p]art of an issue of money,  
13 securities, postage or revenue stamps, or other valuable instruments issued by a  
14 government or governmental agency." ORS 165.013(1)(a)(A). Defendant was charged  
15 with first-degree forgery based on the following allegation:

16 "The defendant \* \* \* did unlawfully, knowingly, and with intent to  
17 injure and defraud, utter a United States Treasury check, a written  
18 instrument, that purported to be a part of an issue of United States Treasury  
19 check issued by United States Treasury, a governmental agency, defendant  
20 knowing said written instrument, to be forged."

21 The state proceeded to trial, and defendant was ultimately convicted, on the  
22 theory that a United States Treasury check is a "valuable instrument" issued by the  
23 federal government for purposes of ORS 165.013(1)(a)(A). Although the validity of that

1 theory was not challenged below, the parties now agree that the theory is foreclosed by  
2 our decision in *State v. Tarrence*, 161 Or App 583, 590, 985 P2d 225 (1999). In  
3 *Tarrence* we held, based on the text, context, and legislative history of ORS 165.013, that  
4 the phrase "other valuable instruments issued by a government or governmental agency"  
5 does not include government-issued checks. 161 Or App at 589-90.

6           We agree with the parties' contentions that, under *Tarrence*, the state  
7 alleged and proved the crime of second-degree forgery rather than first-degree forgery,  
8 and that the trial court plainly erred in entering a conviction for the more serious offense.  
9 We further agree that, given the nature and gravity of the error, the lack of any  
10 conceivable strategic reason for failing to object, and the ease by which the error can be  
11 remedied, this court should correct the error by reversing the conviction and remanding  
12 for entry of a judgment of conviction for second-degree forgery.

13           Conviction for first-degree forgery reversed; remanded for entry of a  
14 judgment of conviction for second-degree forgery and for resentencing.