In the Missouri Court of Appeals
Eastern District

STATE OF MISSOURI,	)	
	)	No. ED98844
Plaintiff/Appellant,	)	
	)	Appeal from the Circuit Court
v.	)	of Cape Girardeau County
	)	
FRANCISCO COLUNGA-DOMINGUEZ,	)	Honorable William L. Syler
	)	
Defendant/Respondent.	)	Date: April 2, 2013

The circuit court granted defendant's motion to dismiss the information charging defendant with forgery in violation of section 570.090 RSMo (2000),[1] based on the use of a false social security number on an employment document, on the ground that the prosecution was preempted by the federal Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a. We reverse the circuit court's dismissal of the information, and we reinstate the charge for further proceedings.

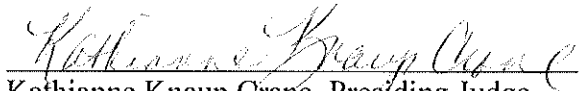
The state filed an information charging defendant, Francisco Colunga-Dominguez, with a violation of section 570.090, which makes the crime of forgery a Class C felony. The information alleged that on or about August 17, 2009, defendant, "with the purpose to defraud, used as genuine a writing, namely his signature on a Logan's Roadhouse employment document containing false information, including a false social security number, knowing that it had been made or altered so that it purported to have a genuineness that it did not possess." Defendant filed a motion to dismiss on the ground that the conduct charged in the information was the

[1] All further references to Missouri statutes are to RSMo (2000).

application for and obtaining of employment through the use of a false social security card and other documentation, and that the regulation of this activity was preempted by federal law because it was in the area of immigration. He argued that Arizona v. United States, 132 S. Ct. 2492 (2012), prohibited a state from enacting a law making it a misdemeanor for an unauthorized alien to seek or engage in work, and that the same conduct was charged against defendant. After hearing oral argument, the circuit court granted defendant's motion to dismiss without prejudice. The state appeals from this judgment.

For its sole point on appeal, the state contends that the circuit court erred in dismissing the information against defendant because the charge of forgery was not preempted by federal law because the Missouri forgery statute, section 570.090, does not seek to regulate immigration but is a generally applicable criminal statute that is not expressly preempted by federal law.

In State v. Diaz-Rey, No. ED98848, handed down concurrently herewith, we held that the prosecution of forgery under section 570.090 was not preempted by federal law. For the reasons set out in State v. Diaz-Rey, we reverse the judgment and reinstate the charge for further proceedings.



Kathianne Knaup Crane, Presiding Judge

Robert G. Dowd, Jr., J. and Lawrence E. Mooney, J., concur.