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Court of Appeals
Division I
State of Washington

SUPREME COURT NO. ________

COURT OF APPEALS NO. 70167-3-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ERIC DAVIS,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Mary Yu, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner, Eric Davis, the appellant below, asks this Court to review the Court of Appeals decision referred to in Section B.

B. COURT OF APPEALS DECISION

Davis requests review of the Court of Appeals unpublished decision in State v. Eric Davis, Court of Appeals No. 70167-3-I (filed August 4, 2014). Appendix.

C. ISSUES PRESENTED FOR REVIEW

1. The name of the respondent in the no-contact order is the same as petitioner's but there was nothing in the order describing the person named, and the judgment and sentence corresponding to the no-contact orders has the same name, a set of fingerprints, a date of birth and describes the defendant's gender (M) and race (B). Was there insufficient evidence to show petitioner was the same person named in the no-contact order where the State did not present any independent evidence that petitioner was the same person?

2. Is petitioner entitled to a new trial where the trial court improperly admitted the hearsay testimony of two police officers that he was the subject of the no-contact order?

D. STATEMENT OF THE CASE

1. Facts

On August 13, 2012, Seattle Police officer Mathew Lilje responded to a 911 call that a man was seen forcing a woman into a silver Buick. 3RP 16-19.[1] A few minutes later Lilje stopped a car matching the description. There were two men and a woman in the car. 3RP 22-25.

After stopping the car Lilje asked the woman for her name and date of birth. Lilje conducted a records check based on the information the woman gave him. Lilje could not find any records of a woman with that name and birth date. 3RP 26-28. It was later discovered the woman gave Lilje a false name.

Officers William Griffin and Lauren Hill arrived at the scene shortly after Lilje. 3RP 36-39. While Lilje spoke with the woman, Griffin spoke with Eric Davis, one of the men in the car, who handed Griffin a temporary Washington State Driver's License. 3RP 40-41. The temporary license, however, was never admitted into evidence and all Griffin said was the photograph on the license looked liked Davis. Griffin explained to Davis "the nature of the 911 call" and Davis told Griffin the

[1] The citations to verbatim report of proceedings are as follows: 1RP January 28, 2013; 2RP January 29, 2013; 3RP January 30, 2013; 4RP January 31, 2013; 5RP March 29, 2013 (sentencing).

caller was mistaken. 3RP 42. Davis told Griffin he and the woman had known each other for about five years. Id.

During direct examination, the prosecutor asked Lilje what he learned about Davis during the stop. Over Davis's hearsay objection, Lilje was allowed to testify that he received information through his computer and radio that there was a no-contact order that listed an Eric Davis as the "respondent," and Sabrina Anderson, with a birth date of January 1, 1968, as the "protected" party. 3RP 31-32. Lilje testified he obtained a photograph of a Sabrina Anderson with the same birth date noted on the no-contact order and the photograph matched the woman in the car. 3RP 32-33. Davis was then arrested for violation of a no-contact order. 3RP 34.

Officer Hill testified that Anderson tried to interfere with Davis's arrest. Anderson was arrested for "false reporting, giving a fake name, and for obstructing, trying to interfere with our duties at the scene." 3RP 47. The prosecutor asked Hill if "during your time on the scene, were you aware that there was a no contact order between Mr. Davis and Ms. Anderson." Over Davis's hearsay objection the court allowed Hill to answer the question. Hill responded with a "yes." 3RP 49.

Lilje identified Exhibit 11, a no-contact order issued by the King County Superior Court in cause number 10-1-02386-7 SEA, as containing

the same information he received prior to arresting Davis. 3RP 57-58; Ex. 11. There are no descriptors of the Eric Davis named in the no-contract order (Exhibit 11). Davis objected to the admission of the exhibit on relevancy grounds. 3RP 59, 69. Davis argued that because there was no evidence the Eric Davis named in the order was the same Eric Davis on trial the exhibit was irrelevant. 3RP 59-61. The prosecutor responded the evidence showed police "ran his name" and as a result "learned of the no contact order." 3RP 61. And, the order "has his name" and "Ms. Anderson's name." 3RP 61. The overruled the objection and admitted the exhibit. Id.

The prosecutor then asked Lilje if the "information that you were able to view on your computer screen in your patrol car related to the no-contact order. Did that give you descriptors of Mr. Davis and Ms. Anderson?" 3RP 68-69. Lilje said it did. 3RP 69. Davis's hearsay objection to the testimony was overruled. Id. Lilje was then asked "And did those descriptors that you were able to observe match Mr. Davis and Ms. Anderson?" Id. Lilje responded. "yes." Id.

The State also moved to admit Exhibit 12, the 2010 judgment in the same cause number as the no-contact order (Exhibit 11). 3RP 62, 71; Ex. 12. The defendant's name on the judgment was Eric Davis and it contained a set of fingerprints, a date of birth and described the

defendant's gender (M) and race (B). The exhibit was admitted over Davis's relevancy objection. 3RP 63-64, 71.

After the State rested, Davis moved to dismiss. 3RP 72. Davis argued there was no evidence that he was the Eric Davis named in the no-contact order (Exhibit 11) or the judgment (Exhibit 12). 3RP 72-74, 76-79. The State responded that Lilje pulled up the no-contact order on the computer in his patrol car, and the descriptions of Davis and Anderson matched. 3RP 74-75. Although the no-contact order had no descriptors of the Eric Davis named in the order, contrary to the State's response, the court nonetheless denied the motion. It inexplicably reasoned that Davis was the person who Lilje contacted on August 13th and who produced the temporary driver's license. 3RP 78-79. Whether Davis was the person Lilje arrested, however, was not the issue. This issue was whether Davis was the same person named in the no-contact order.

Davis was charged with felony violation of a court order. CP 1-5; RCW 26.50.110 (1) and (5). A jury convicted him of the charge. CP 41.

2. <u>Appeal</u>

Davis argued on appeal the evidence failed to prove he was the same Eric Davis named in the no-contact order. The Court of Appeals rejected the argument. It ruled because Davis admitted he knew Anderson "for a substantial length of time," Anderson tried to conceal her identity

and prevent Davis' arrest, and they matched the "descriptor's" of the two persons named in the no-contact order, the evidence was sufficient to prove Davis was the same Eric Davis named in the no-contact order. Slip Op. at 6-7.

Davis also argued the trial court erroneously admitted Lilje's and Hill's hearsay testimony that there was a no contact order between Davis and Anderson because that testimony was based solely on the information in the no-contact order that the two received on via their computers and radios. The Court of Appeals ruled that assuming the testimony was hearsay admission of the testimony was harmless. It reasoned "[T]he testimony that the officers learned of the existence of a no-contact order between two people named Eric Davis and Sabrina Anderson is precisely the information established by the document [the no-contact order]." Slip. Op. at 8.

E. REASONS WHY REVIEW SHOULD BE ACCEPTED AND ARGUMENTS

1. THE COURT OF APPEALS DECISION THAT THERE WAS SUFFICIENT EVIDENCE TO PROVE PETITIONER WAS THE PERSON NAMED IN THE NO-CONTACT ORDER CONFLICTS WITH DIVISION TWO'S DECISION IN STATE V. HUBER, DIVISION THREE'S DECISION IN STATE V. SANTOS, AND RAISES A SIGNIFICANT CONSTITUTIONAL ISSUE ON THE NECESSARY EVIDENCE TO PROVE THE PERSON ON TRIAL IS THE SAME PERSON NAMED IN A NO-CONTACT ORDER.

The State is required to prove beyond a reasonable doubt all the necessary facts of the crime charged. U.S. Const. Amend. 14; Const. art. 1, § 3; In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Crediford, 130 Wn.2d 747, 749, 927 P.2d 1129 (1996). Evidence is sufficient to support a conviction only if, viewed in the light most favorable to the State, a rational trier of fact could find each element of the crime beyond a reasonable doubt. State v. Smith, 155 Wn.2d 496, 502, 120 P.3d 559 (2005).

A violation of a no-contact order requires the State to prove: (1) willful contact with another, (2) the prohibition of such contact by a valid no-contact order, and (3) the defendant's knowledge of the order. State v. Washington, 135 Wn. App. 42, 49, 143 P.3d 606 (2006) (quoting State v. Clowes, 104 Wn. App. 935, 944, 18 P.3d 596 (2001)). The violation is a

felony if the accused has at least two previous convictions for violating the provisions of an order issued under various statutes. RCW 26.50.110 (5). The State must also prove the identity of the accused as the person who committed the offense. State v. Huber, 129 Wn.App. 499, 501, 119 P.3d 388 (2005).

When criminal liability depends on the accused being the person to whom a document pertains, such as a no-contact order, the State must do more than authenticate and admit the document. Huber, 129 Wn. App. at 502. It must show beyond a reasonable doubt that the accused is the person named in the document; the identity of names is insufficient. Id. The State does not meet this burden merely because the defense presents no evidence refuting identity. Id. at 503. It must present affirmative independent evidence that the person named in the document is the defendant on trial. Id. at 502. Independent evidence can include booking photographs or fingerprints, eyewitness identification, or distinctive personal information. State v. Santos, 163 Wn.App. 780, 784, 260 P.3d 982 (2011); Huber, 129 Wn.App. at 502–03.

In Huber, a bail jumping case, the State presented documents showing a Wayne Huber was charged with crimes, an order directing Huber to appear in court, clerk's minutes showing Huber failed to appear, and bench warrant for Huber's arrest for failing to appear. Huber, 129

Wn.App at 500-501. Division Two reversed the conviction. Id. at 504. The Huber court held because the State failed to show the documents were related to the Wayne Huber on trial the evidence was insufficient to prove he was the same Wayne Huber named in the documents. Id. at 50-502.

In Santos, Heraquio Santos was charged with felony driving under the influence. To prove the felony the State was required to prove Santos was convicted of four or more prior offenses. To meet its burden the State admitted judgments and sentences that identified the defendant named in those as Heraquio Santos. Santos, 163 Wn.App. at 782-783. Division Three held the State failed to produce sufficient evidence showing Santos was the same person named in the judgments and sentences. The Santos court ruled, "None of the information in the State's exhibits can be compared to Mr. Santos, the defendant in this case, by simple observation to determine whether he is the person named in the judgments." Id. at 785. The court found it significant that the State "produced no evidence of Mr. Santos's address, birth date, or criminal history" nor did it produce "photographs of 'Santos, Heraquio' or 'Heraquio Santos' to compare to Mr. Santos, who appeared in person at trial." Id.

The evidence in this case suffers from the same infirmities as the evidence in Huber and Santos. According to Griffin, Davis gave him a temporary Washington State Driver's License. Griffin testified the

photograph on the license matched Davis but there was no testimony or evidence that the date of birth on the temporary driver's license Griffin said he saw was the same as the date of birth of the Eric Davis named in the judgment and sentence corresponding to the no-contact order. Indeed, there was no evidence that there was even a date of birth on the license. There was simply no evidence linking the license to the no-contact order.

Lilje testified he "learned" from information on his computer and through his radio there was a no contact order naming Davis as the "respondent" and Anderson as the "protected" party. 3RP 31. That information came from the no-contact order (Exhibit 11) and Lilje said it was that information that gave him the descriptors of Davis. 3RP 58, 68-69. Exhibit 11, however, does not contain any descriptors whatsoever. Ex. 11.

The only descriptors or identifying information is found in Exhibit 12, the judgment and sentence relate to the no-contact order (Exhibit 11). Those descriptors are the person's gender (M) and race (B), a set of fingerprints, and a date of birth. Ex. 12. Like in Santos, the State failed to produce any evidence that compared Davis's fingerprints with those on the judgment or any evidence of Davis's date of birth to compare with the date of birth on the judgment.

Here the only descriptors in the judgment that could be compared to Davis are gender and race. In Huber, one of the warrants contained a general physical description presumably similar to the generic gender and race description in the judgment and sentence in this case, but the Huber court found that general description insufficient to show the Wayne Huber on trial was the same Wayne Huber named in the warrant because the record did not reflect any comparison between that description and the person on trial. Huber, 129 Wn. App. at 503, n. 18. As in Huber, in this case the record does not reflect any such comparison was made between Davis and the person named in either the no-contact order or the judgment and sentence. See, Livingston v. State, 537 N.E.2d 75, 77–78 (Ind.Ct.App.1989) (Although the prosecution argued the same birth dates and social security numbers provided a link between the defendant and the prior conviction documents the court held, without more such as photographs or a fingerprint comparison, the evidence was insufficient to demonstrate that it was indeed the defendant who was convicted of the prior offense).

The Court of Appeals recognized the holdings in Huber and Santos require independent evidence beyond the same name and generic description but ruled this case was different because Davis admitted he knew Anderson "for a substantial length of time," Anderson tried to

conceal her identity and prevent Davis' arrest, and they matched the "descriptor's" of the two persons named in the no-contact order. Slip Op. at 6-7. That is not independent evidence establishing Davis's identity as the person named in the no-contact order.

First, it is mere speculation that because Davis knew Anderson, and Anderson tried to conceal her identity and prevent Davis's arrest he was the same Eric Davis named in the no-contact order. The existence of a fact, in this case that Davis is the same Eric Davis named in the no-contact order, cannot rest upon guess, speculation, or conjecture. State v. Hutton, 7 Wn.App. 726, 728, 502 P.2d 1037 (1972).

Second, contrary to the Court of Appeals ruling that Davis matched the descriptors of the person named in the no-contact order, there are no descriptors in the no-contact order. Ex. 11. Additionally, there was no fingerprint comparison and no evidence Davis's birth date is the same as the birth date of the person named in the judgment and sentence (Exhibit 12). And, although Davis is a black man, that is not distinctive, and like the similarity of names, is too generic to prove he was the same person named in the no-contact order.

The independent evidence required by the Santos and Huber courts includes comparisons of booking photographs and fingerprints, eyewitness identification, or distinctive personal information. State v. Santos, 163

Wn.App. at 784; State v. Huber, 129 Wn.App. at 502-03. Although it would not be difficult for the State to marshal that type of independent evidence to show whether Davis was the person named in the no-contact order, like in Huber and Santos it failed to do so.[2] The evidence the Court of Appeals held was sufficient to prove Davis is the Eric Davis named in the no-contact order does not make this case distinguishable.

The decision of the Court of Appeals conflicts with the Division Two's decision in Huber and Division Three's decision in Santos. The decision also raises a substantial constitutional issue regarding the sufficiency of the evidence that the person on trial is the same person named in the documents used to prove an essential element of the offense. This Court should accept review. RAP 13.4 (b)(2) and (3).

2. THE COURT OF APPEALS MISAPPLIED THIS COURT'S HARMLESS ERROR STANDARD.

"Hearsay" is a statement, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted. ER 801(c) and 802; State v. Johnson, 61 Wn. App. 539, 545,

[2] For example, the State could have compared Davis's fingerprints taken when he was booked with the fingerprints on the judgment and sentence. Also, according to Andrea Williams, records manager for the King County Jail, when a person is booked into jail a photograph is taken. 3RP 55. If Davis was the person named in Exhibits 11 and 12, the State could have compared his booking photograph related to that case with his booking photograph in this case.

811 P.2d 687 (1991). A statement includes "an oral or written assertion." ER 801(a)(1).

Hearsay is objectionable because the witness repeating it does not have personal knowledge and, as such, hearsay is inadmissible. State v. Babich, 68 Wn. App. 438, 439-40, 447, 842 P.2d 1053 rev. denied, 121 Wn.2d 1015 (1993). Washington courts long have held that in general a law enforcement officer may not repeat at trial information relayed by a dispatcher or an informant, or the contents of written information received during an investigation. State v. Miles, 73 Wn.2d 67, 436 P.2d 198 (1968); State v. Johnson, 61 Wn. App. at 549; State v. Aaron, 57 Wn. App. 277, 787 P.2d 949 (1990); State v. Lowrie, 14 Wn. App. 408, 542 P.2d 128 (1975), rev. denied, 86 Wn.2d 1010 (1976); State v. Murphy, 7 Wn. App. 505, 500 P.2d 1276, rev. denied, 81 Wn.2d 1008 (1972). Rather, these out-of-court statements are admissible only when relevant to a material issue in the case and when not offered to prove the truth of the matters asserted. State v. Miles, 73 Wn.2d at 69-70; State v. Aaron, 57 Wn. App. at 280.

Here the prosecuting attorney asked officer Lilje what he learned from information he received on his computer and radio, and he responded he learned there was a no-contact order naming Davis as the "respondent" and Anderson as the "protected" party. 3RP 31, 68-69. The prosecutor

asked Hill if "during your time on the scene, were you aware that there was a no contact order between Mr. Davis and Ms. Anderson." Hill responded with a "yes." 3RP 49. The questions to both officers called for a hearsay response because neither officer had any personal knowledge there was a no-contact order restricting the Davis who was in the car with the Eric Davis named in the order. The information was only relevant to prove the truth of the matter asserted, that the Davis they arrested and who was on trial was the same Davis named in the no-contact order.

The Court of Appeals ruled the even if the testimony was hearsay its admission was harmless. Slip. Op. at 7-8. The Court reasoned the testimony "that the officers learned of the existence of a no-contact order between two people named Eric Davis and Sabrina Anderson is precisely the information established by the document [no-contact order]." The problem with Court's reasoning is that it misunderstands the testimony. The officers did not testify they received information a person named Eric Davis was named as the respondent and a Sabrina Anderson was named as the protected party in a no-contact order, which <u>was</u> established by the no-contact order. Instead they testified the Eric Davis they arrested was the Eric Davis named in the order, which was not established by the no-contact order and was the issue at trial.

Furthermore, the jury asked "Does the booking process include confirming the identities of a booked person by verifying uniquely identifying features or marks such as fingerprints or tattoos?" CP 22; 3RP 125. The question indicates the jury was struggling with the lack of evidence that identified Davis as the Eric Davis named in the no-contact order. It is likely jurors used the hearsay testimony to satisfy any doubts they had that Davis was the same Eric Davis named in the order.

An evidentiary error is prejudicial if, "within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected." State v. Smith, 106 Wash.2d 772, 780, 725 P.2d 951 (1986). The admission of the hearsay testimony was not harmless because it went to the heart of the issue at trial---whether Davis was the Eric Davis named in the no-contact order. The Court of Appeals decision conflicts with Smith and this Court should accept review. RAP 13.4(b)(1).

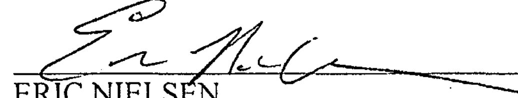
F. CONCLUSION

For the above reasons, this Court should accept review and reverse the Court of Appeals decision.

DATED this 12 day of August 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ERIC LEE DAVIS, Appellant.	)	No. 70167-3-I DIVISION ONE UNPUBLISHED OPINION FILED: August 4, 2014

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APPELWICK, J. — A jury convicted Davis of felony violation of a no-contact order. Davis claims the State failed to prove that he was the same person named in the no-contact order he allegedly violated and in the prior judgment relied upon to establish the felony offense. He also claims the trial court erred in admitting testimony about police officers' awareness of the existence of a no-contact order. We conclude that sufficient evidence supports the jury's determination that the defendant was the same person that was identified in the admitted court documents. Davis also fails to establish that the challenged testimony about police officers' knowledge of the no-contact order was prejudicial in view of the fact that the order itself was admitted at trial. We affirm.

FACTS

On August 13, 2012 Seattle Police Officer Matthew Lilje responded to a 911 call reporting that a man was forcing a woman against her will into a silver Buick with a bumper sticker containing the letters "V" and "J".

Officer Lilje was parked about five blocks away from where the call originated. Less than a minute after hearing the call, Officer Lilje intercepted a Buick matching the 911 caller's description. There were two men and one woman in the car. When asked, the female passenger provided a name and date of birth, but there were no records associated with that information and the name appeared to be misspelled.

Meanwhile, another police officer, William Griffin, arrived and spoke to the male back seat passenger. The passenger provided Officer Griffin with a temporary driver's license with the name Eric Davis and a photograph. The photograph appeared to depict the person Officer Griffin was speaking with. Officer Griffin explained the nature of the 911 call and why the police had stopped the car. Davis told the officer that he had known the female passenger for about five years, that the caller was "mistaken" about their interaction, and explained that they were only "playing around."

Once Officer Lilje learned Davis's name, he was able to discover through his computer and radio dispatch that there was a protection order in place prohibiting contact between Eric Davis and Sabrina Anderson, who had a birth date of January 1, 1968. The information on the computer in Davis's patrol car also provided "descriptors" of both Davis and Anderson, which matched the male and female passengers.[1] When confronted with the information about the no-contact order, the female passenger denied that she was Sabrina Anderson.

Officer Lilje determined that the passenger was, in fact, Sabrina Anderson after he located a photograph of Anderson on his computer, which appeared to be the same

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[1] In his testimony, the officer did not provide any details about the "descriptors."

person as the female passenger. The passenger also turned to look at him when the officer called out the name "Sabrina."

The officers arrested Davis for violating the no-contact order. When they did so, Anderson tried to interfere with the arrest. The police then also arrested Anderson for false reporting and obstruction. The booking record for Anderson's arrest listed her name and January 1, 1968 birth date.

The State charged Davis with felony violation of a court order. At trial, the State presented the testimony of the three officers involved in stopping and arresting Davis and Anderson. Neither Davis nor Anderson testified at trial.

The State admitted as an exhibit a certified copy of a judgment and sentence showing that Eric Lee Davis was convicted in 2010 of two counts of felony violation of a no-contact order. The State also admitted a certified copy of the 2010 no-contact order entered as a result of that judgment prohibiting contact between Eric Lee Davis and Sabrina M. Anderson for five years, until June 25, 2015.

The jury convicted Davis. The trial court imposed a sentence under the Drug Offender Sentencing Alternative. Davis appeals.

DISCUSSION

I. Sufficiency of the Evidence

Davis challenges the sufficiency of the evidence supporting his conviction. He concedes that the evidence was sufficient to prove that the Eric Davis identified in the 2010 judgment is the same person named in the no-contact order. Those documents bear the same signature, the same case number, and reveal that the no-contact order was imposed on Eric Davis as a condition of the 2010 judgment sentence. But, Davis

contends there was no evidence from which the jury could conclude that he is the same Eric Davis named in those court documents.

In considering a challenge to the sufficiency of the evidence, this court construes the evidence in the light most favorable to the State and asks whether any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A defendant who challenges the sufficiency of the evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn from the evidence. Id. Direct and circumstantial evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Credibility issues are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Due process requires that the State prove every element of the charged crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). There are three essential elements of the crime of violation of a no-contact order: (1) willful contact with another, (2) the prohibition of such contact by a valid no-contact order, and (3) the defendant's knowledge of the no-contact order. State v. Washington, 135 Wn. App. 42, 49, 143 P.3d 606 (2006); see RCW 26.50.110. Violation of a no-contact order under chapter 10.99 RCW becomes a felony if the offender has at least two previous convictions for violating the provisions of an order issued under chapter 26.50, 7.90, 9.94A, 9A.46, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW. RCW 26.50.110(5).

In addition, the State has the burden to establish the "identity of the accused as the person who committed the offense." State v. Hill, 83 Wn.2d 558, 560, 520 P.2d 618

(1974). "Identity involves a question of fact for the jury and any relevant fact, either direct or circumstantial, which would convince or tend to convince a person of ordinary judgment, in carrying on his everyday affairs, of the identity of a person should be received and evaluated." Id.

In Huber, Division Two of this court held, "[W]hen criminal liability depends on the accused's being the person to whom a document pertains . . . the State must do more than authenticate and admit the document; it also must show beyond a reasonable doubt 'that the person named therein is the same person on trial.'" State v. Huber, 129 Wn. App. 499, 119 P.2d 388 (2005) (quoting State v. Kelly, 52 Wn.2d 676, 678, 328 P.2d 362 (1958)); see also State v. Santos, 163 Wn. App. 780, 784, 260 P.3d 982 (2011). To satisfy this obligation, the State cannot rely on an "identity of names alone." Huber, 129 Wn. App. at 502. Rather, it must show by evidence independent of the documents "that the person named therein is the defendant in the present action." Id.

In Huber, the State presented only documentary evidence to establish the crime of bail jumping. Id. The State introduced the following documents into evidence: a criminal information charging Huber with crimes, an order directing Huber to appear in court on a certain date, clerk's minutes indicating that Huber failed to appear on that date, and a bench warrant for Huber's arrest. Id. at 500-501. "The State did not call any witnesses or otherwise attempt to show that the exhibits related to the same Wayne Huber who was then before the court." Id. at 501. This court reversed the conviction. Id. at 504. Noting that many people have the same name, the court concluded that the evidentiary flaw was the failure to provide any link between the paperwork from the first case with the defendant currently on trial for bail jumping. Id. at 502.

Likewise, in Santos, Heraquio Santos was charged with felony driving under the influence (DUI), which required the State to prove that the defendant had been convicted of previous DUIs within a specific time frame. 163 Wn. App. at 782. The State presented certified copies of prior judgments and sentences bearing the name "Santos, Heraquio" or "Heraquio Santos." Id. at 785. However, the State presented no evidence to link those judgments to the defendant on trial and this court reversed the conviction. Id. at 785-86.

Davis acknowledges that here, the 2010 judgment contains certain identifying information for "Eric Davis," including a date of birth, race, gender, and fingerprints. The jurors could use some of this information to compare with the defendant who appeared in the courtroom. But, Davis claims that this evidence was insufficient in the absence of evidence of "comparison between fingerprints, booking or other photographs, dates of birth, or addresses" or "witness testimony based on personal knowledge that the Eric Davis named in the no[-]contact order and judgment is the same Davis that was on trial." But, contrary to Davis's argument, while independent evidence of common identity may include booking photographs, fingerprints, or eyewitness identification, no authority establishes that this is type of evidence is the exclusive means to establish identity.

Viewed in the light most favorable to the State, there was sufficient evidence to convince a rational trier of fact that Eric Davis, the defendant, was the same Eric Davis named in the no-contact order and the prior judgment. The State did not rely solely on the fact that documents bore the identical name, "Eric Davis," to establish that the defendant was the same person named in those documents. There was a significant

amount of circumstantial evidence the jury could rely upon to reach this conclusion. When the police stopped the Buick, Davis explained that the 911 caller misinterpreted the interaction between himself and the female passenger. The female passenger attempted to conceal her identity. Police officers testified that at the scene of the arrest, they were able to identify the two passengers as Sabrina Anderson and Eric Davis, based on the identification card Davis provided and a photo of Anderson. They also learned that Eric Davis and Sabrina Anderson were subject to a no-contact order and that "descriptors" of those two individuals matched the appearance of the male and female passengers. Davis admitted to knowing Anderson for a substantial length of time. Anderson tried to prevent Davis's arrest. This evidence all supports the conclusion that the defendant Eric Davis who was arrested in the company of Anderson, was the same person identified in the judgment and no-contact order. In contrast to the circumstances in Huber and Santos, the State proved that the defendant was the same Eric Davis named the court documents by more than "identity of names alone." Huber, 129 Wn. App. at 502.

II. Hearsay

Over Davis's hearsay objection, the trial court admitted Officer Lilje's testimony that, after Davis provided his name, the officer learned through a radio transmission and his computer of the existence of a no-contact order listing Eric Davis "as a respondent." During another police officer's testimony, Davis objected to the prosecutor's question about whether, at the scene of the arrest, the officer was "aware that there was a no[-]contact order between" Davis and Anderson. After the court overruled the objection,

the officer answered, "Yes." Davis contends that the trial court erred in admitting this testimony and that the evidence materially affected the verdict.

"Hearsay" is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." ER 801(c). We review a trial court's evidentiary rulings for abuse of discretion. State v. Magers, 164 Wn.2d 174, 181, 189 P.3d 126 (2008). Abuse of discretion occurs when a trial court's decision is manifestly unreasonable or based upon untenable grounds or reasons. Id. An evidentiary error is grounds for reversal only if it results in prejudice. State v. Neal, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001). An error is prejudicial if, within reasonable probabilities, it materially affected the outcome of the trial. Id.

The State argues that the testimony was admissible, not for the truth of the matter asserted, but to explain the course of the investigation, why the officers sought to establish the female passenger's identity, and why they eventually arrested Davis. But, even assuming for the sake of argument that the testimony about the officers' awareness of a no-contact order was hearsay, Davis fails to demonstrate that the error was not harmless. He provides no persuasive explanation of how the evidence was not cumulative in light of the fact that the testimony he identifies provided no more information than the properly admitted no-contact order itself. The testimony that the officers learned of the existence of a no-contact order between two people named Eric Davis and Sabrina Anderson is precisely the information established by the document. Accordingly, this argument fails.

Finally, Davis has filed a pro se statement of additional grounds for review. He alleges a violation of his right to confront witnesses. However, he fails to adequately

inform the court of the nature and occurrence of the alleged error. See RAP 10.10(c). We are unable to review the claim of error.

Affirmed.

Appelwick, J.

WE CONCUR:

Dickey, J. Spearman, C.J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondent, vs. ERIC DAVIS, Petitioner.	)	SUPREME COURT NO. ______ COA NO. 70167-3-I

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 14TH DAY OF AUGUST, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITION FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ERIC DAVIS
DOC NO. 962344
WASHINGTION STATE PENITENTIARY
1313 N. 13TH AVENUE
WALLA WALLA, WA 99362

SIGNED IN SEATTLE WASHINGTON, THIS 14TH DAY OF AUGUST, 2014.

x Patrick Mayovsky

NIELSEN, BROMAN & KOCH, PLLC

FILED
Aug 14, 2014
Court of Appeals
Division I
State of Washington

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