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67726-8

NO. 67726-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

ERISTUS JORDAN JOHNSON,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY  
THE HONORABLE JUDGE BRUCE HELLER

---

**BRIEF OF RESPONDENT**

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**A. SUMMARY OF ARGUMENT**

The defendant was convicted of Obstructing a Law Enforcement Officer in violation of RCW 9A.76.020, a statute that makes it unlawful if a person “willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties. On appeal, the defendant challenges the constitutionality of the statute under the First Amendment. This is a challenge that may appropriately be raised for the first time on appeal, although the challenge fails because the statute is not overbroad.

Next, the defendant takes apart his actions piecemeal and argues that individual specific acts he took—taken in isolation—were protected by the constitution and therefore could not be used to support a conviction. This argument is not properly before the court. If certain acts or actions were protected by certain constitutional provisions, the defendant should have challenged the admission of the evidence by way of a motion to suppress at the trial court. This Court does not decide facts or trial motions. Further, the defendant’s argument fails because he ignores the *mens rea* of his actions. When his actions are taken in context, his actions fall outside constitutional protections. See Virginia v. Black,

538 U.S. 343, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003) (cross burning is protected speech but it is not protected speech when there is a *mens rea* of intent to intimidate associated with the act).

**B. ISSUES PRESENTED**

1. Whether the Obstructing a Law Enforcement Officer statute is constitutionally overbroad.
2. Whether the defendant can challenge individual actions he took for the first time on appeal.
3. Whether any of the defendant's actions were protected by the constitution.
4. Whether a rational trier of fact could have found the defendant guilty of Obstructing a Law Enforcement Officer.

**C. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

The defendant was charged with Obstructing a Law Enforcement Officer. CP 1. He was found guilty by the court. CP 13-18. He received a disposition of two months supervision, 18 hours of community restitution, and four days of detention. CP 8-10.

## 2. SUBSTANTIVE FACTS

On February 14, 2011, at approximately 7:00 p.m., Geraldine Johnson called the police because her underage daughter, RJ, was drunk, assaultive and threatening. RP 11, 17, 54, 57, 59. When officers responded to Johnson's home, RJ was gone. RP 15. However, a short time later Geraldine called 911 again, as her daughter had returned to the residence and in a "highly intoxicated" and "very belligerent" state, threatened to fight Geraldine and smash the windows of the house. RP 11, 17, 59.

When officers arrived the second time, Geraldine said that she wanted RJ to leave and had the officers escort RJ outside. RP 18. The officers did not place RJ under arrest, nor did they plan to do so. RP 25, 52. Rather, the officers felt that the situation could be resolved very quickly by getting RJ to calm down and providing her with a courtesy ride to a bus stop. RP 24, 52. In fact, officers were indeed able to get RJ calmed down. RP 39, 45. However, things changed quickly when an "irate" defendant—RJ's brother, came outside and interceded, with one officer testifying that with "the brother being there it escalated very quickly into a very hostile situation." RP 23, 39.

While officers were still trying to investigate what had occurred earlier, and trying to get RJ to calm down, the defendant interjected himself into the situation, started talking to RJ, and “interfering.” RP 19. RJ decided she did not want to leave while the defendant was there, and her hostility increased due to his interactions and presence. RP 21-22. In fact, the officers were forced to physically take hold of RJ because her agitation level escalated so much due to the defendant’s actions. RP 34, 36. With the defendant just making matters worse, the officers asked him to return to the house so that they could calm RJ down. RP 21-22, 40-41. The defendant refused, despite being asked multiple times. RP 20, 40-41. Finally, one of the officers—Officer Sean Jenkins—had to devote his entire attention to the defendant who was calling the officers “fat fucks,” “mother-fuckers,” “bitches” and yelling racial slurs at them. RP 43-44, 60.

The defendant was warned repeatedly that if he did not curtail his actions and return to the house he could be arrested for obstruction. RP 41. The defendant still refused to cooperate. RP 41. Showing restraint, the officers neither physically touched the defendant nor place him under arrest. RP 41. Finally, one

officer was able to walk the defendant back up to the house—again without physically touching him. RP 41.

Once at the house, the defendant stood in the doorway but refused to close the door. RP 42-43. The officers wanted the door closed because the defendant had not been patted down for weapons (there would have been no lawful authority for them to do so), he was irate, still yelling profanities which escalated the issue of dealing with RJ, and the officers wanted to be able to deal with her without having safety concerns involving the defendant. RP 42-45, 54-55.

At one point, Officer Jenkins closed the door himself, only to have the defendant open it right back up. RP 43. This happened four or five times. RP 43. Another officer, who had been inside talking with RJ's mother and trying to get bus fare for RJ, had to come outside and assist with the situation because Officer Jenkins had to deal exclusively with the defendant. RP 18, 45.

Finally, after approximately 20 minutes of having to deal with the defendant's irate behavior, he was placed under arrest for obstructing. RP 25, 53. Geraldine unlocked the cast-iron outer door, which the defendant had locked, letting the officers inside where the defendant was placed under arrest. RP 61-62.

Geraldine did not witness any of the actions that occurred outside the house, but she confirmed that the defendant had been calling the officers racial slurs. RP 60.

The defendant, who is six feet four inches tall, testified and claimed that he was there “to supervise” the officers. RP 70. He claimed that the officers were going to arrest RJ and that they were going to beat her with a nightstick. RP 69-70. He said he was “pissed off” that he was being told what to do and said that he felt he had the right to refuse the orders of the officers. RP 71-73, 78-79.

Prior to trial, the defendant did not raise a motion to suppress any evidence or statements he had made other than to assert that his statements were subject to the hearsay rules of evidence. RP 5-6. In fact, the defendant affirmatively agreed that no suppression hearings were necessary in his case. Id.

**D. ARGUMENT**

**1. THE OBSTRUCTING A LAW ENFORCEMENT OFFICER STATUTE IS NOT OVERBROAD.**

The defendant contends that the Obstructing a Law Enforcement Officer statute is constitutionally overbroad. It is not. The language of the statute challenged here, which focuses on

conduct, not speech, has been in effect for over 100 years and does not violate the First Amendment.

In 1909, the legislature enacted the precursor to the current obstructing statute. The statute provided that:

Every person who, after due notice, shall refuse or neglect to make or furnish any statement, report or information lawfully required of him by any public officer, or who, in such statement, report or information shall make any willfully untrue, misleading or exaggerated statement, or who ***shall willfully hinder, delay or obstruct any public officer in the discharge of his official powers or duties***, shall be guilty of a misdemeanor.

Former RCW 9.69.060 (emphasis added). In 1975, the legislature repealed RCW 9.69.060, and enacted RCW 9A.76.020, which read as follows:

Every person who, (1) without lawful excuse shall refuse or knowingly fail to make or furnish any statement, report, or information lawfully required of him by a public servant, or (2) in any such statement or report shall make any knowingly untrue statement to a public servant, or (3) ***shall knowingly hinder, delay, or obstruct any public servant in the discharge of his official powers or duties***; shall be guilty of a misdemeanor.

Former RCW 9A.76.020 (emphasis added), see Laws of 1975, 1st Ex. Sess., ch. 260, § 9A.92.010.

The current version of the obstructing statute, as amended in 1994 and 1995, provides in pertinent part as follows:

A person is guilty of obstructing a law enforcement officer if the person ***willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties.***

RCW 9A.76.020(1) (emphasis added); see Laws of 1994, ch. 196, § 1; Laws of 1995, ch. 285, § 33. Thus, the same statutory language at issue here, the language in bold type, has been in effect for over 100 years.<sup>1</sup>

The Supreme Court has held that the statutory language in question here does not regulate First Amendment rights; rather, the focus of the language is “on conduct other than speech.” State v. Grant, 89 Wn.2d 678, 686, 575 P.2d 210 (1978). Thus, while “Washington courts have long limited the application of obstruction statutes [or provisions thereof] based upon speech” in the over 100 years of the statutory language’s existence—the language challenged here has *never* been ruled unconstitutional. State v. Williams, 171 Wn.2d 474, 478, 251 P.3d 877 (2011); Grant, 89 Wn.2d at 685-86.

A statute is presumed constitutional and the party challenging the statute has the burden of proving its

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<sup>1</sup> The legislature’s use of the term “willfully,” changed to the term “knowingly,” and then changed back to the term “willfully” was not an intent to change the *mens rea* element of the obstructing statute. Bishop v. City of Spokane, 142 Wn. App. 165, 171, 173 P.3d 318 (2007). To act willfully is to act knowingly. Id.

unconstitutionality. State v. Myers, 133 Wn.2d 26, 31, 941 P.2d 1102 (1997).<sup>2</sup> A statute that sweeps constitutionally protected speech within its prohibitions may be overbroad. City of Seattle v. Huff, 111 Wn.2d 923, 925, 767 P.2d 572 (1989). But, as the Supreme Court has emphasized, where a statute regulates expressive conduct, the scope of the statute does not render it unconstitutional unless its overbreadth is not only "real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." Osborne v. Ohio, 495 U.S. 103, 112, 110 S. Ct. 1691, 109 L. Ed. 2d 98 (1990). Even where a statute at its margins infringes on protected expression, "facial invalidation is inappropriate if the remainder of the statute. . . covers a whole range of easily identifiable and constitutionally proscribable. . . conduct." Osborne, 495 U.S. at 112.<sup>3</sup>

The threshold inquiry in an overbreadth analysis is whether the statute prohibits a substantial amount of constitutionally

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<sup>2</sup> The defendant asserts that the State bears the burden of justifying a restriction on speech. Def. br. at 26. This may be true where a statute regulates speech. See, e.g., Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103, 114-15, 937 P.2d 154 (1997) (city ordinance regulating adult cabarets). However, as stated above, the Supreme Court has held the language at issue here regulates conduct, not speech. Grant, 89 Wn.2d at 686.

<sup>3</sup> The defendant cites to multiple cases that are inapplicable to the case at hand because they deal with statutes that regulate pure speech. See, e.g., State v. Kilburn, 151 Wn.2d 36, 84 P.3d 1215 (2004), and Watts v. United States, 394 U.S. 705, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969).

protected speech. Huff, 111 Wn.2d at 925. On its face, RCW 9A.76.020 does not prohibit a substantial amount of speech; rather, it only prohibits the knowing hindrance, delay or obstruction of a law enforcement officer discharging his or her duties. Thus, a person can violate the act without uttering a single word or engaging in expressive conduct. Therefore, the defendant's argument fails.

The defendant's argument is similar to the argument rejected in State v. Hahn, 162 Wn. App. 885, 256 P.3d 1267 (2011). Hahn asserted that the criminal solicitation statute was overbroad because it punished constitutionally protected speech in violation of the First Amendment.

A person is guilty of criminal solicitation when,

with intent to promote or facilitate the commission of a crime, he offers to give or gives money or other thing of value to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission or attempted commission had such crime been attempted or committed.

RCW 9A.28.030(1). While a great deal of a defendant's speech may be used as evidence to prove a charge of criminal solicitation, the court rejected Hahn's First Amendment challenge. The court held that Hahn had not even met the threshold burden of proving that the statute prohibited a substantial amount of constitutionally

protected speech. "On its face," the court said, "RCW 9A.28.030 clearly does not prohibit a substantial amount of speech; rather, it only prohibits remuneration in exchange for the commission or attempted commission of a crime. Thus, Hahn's argument fails." Hahn, 162 Wn. App. at 900-01, reversed on other grounds, 174 Wn.2d 126 (2012).<sup>4</sup>

Finally, even if the obstruction statute prohibited speech, it does not prohibit constitutionally protected speech. In Virginia v. Black, 538 U.S. 343, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003), the United States Supreme Court was asked to rule on the constitutionality of Virginia's cross-burning statute. The statute made it illegal to burn a cross with the intent to intimidate others. The Court noted that cross-burning *is* a form of protected speech that can be used to express political ideas. However, the Court stated, the State of Virginia could still proscribe cross-burning because that statute requires that the cross-burning be done "with

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<sup>4</sup> See also State v. Dyson, 74 Wn. App. 237, 243, 872 P.2d 1115, rev. denied, 125 Wn.2d 1005 (1994) (telephone harassment requires an intent to harass and therefore "[b]ecause the requisite intent establishes the criminality of the communicative conduct, any impact ... on speech is insubstantial"); State v. Strong, 167 Wn. App. 206, 272 P.3d 281, 284-89 (2012) (extortion statute not overbroad even though crime may involve a great deal of speech as "extortionate speech has no more constitutional protection than that uttered by a robber while ordering his victim to hand over the money, which is no protection at all").

the intent to intimidate" and thus it was not protected speech.<sup>5</sup> Black, 538 U.S. at 362. Such is the case here. Under Black, because the obstructing statute requires the State prove that the defendant "willfully" hindered, delayed or obstructed an officer performing his official duties, the statute satisfies First Amendment analysis.

## 2. THE DEFENDANT'S ACTIONS.

Next, the defendant contends that certain parts or acts of his course of action during this incident were constitutionally protected and cannot be used against him. Specifically, he claims that the things he said to the officers cannot be used against him, nor can the acts he committed in his own home. This argument is flawed for multiple reasons.

To begin, this is not a First Amendment "as applied" challenge as the defendant asserts.<sup>6</sup> The obstructing statute does

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<sup>5</sup> The Court still struck down the statute because of a legal presumption contained in a separate section of the statute. A provision of the statute created a presumption that allowed a jury to find that any cross-burning was done with the intent to intimidate--even if the cross-burning was done for political or ideological reasons. Black, at 363-64.

<sup>6</sup> In certain situations a party may challenge a statute "as applied" to him. See, e.g., City of Redmond v. Moore, 151 Wn.2d 664, 668-69, 91 P.3d 875 (2004).

not prohibit the conduct or acts the defendant complains.<sup>7</sup> Thus, if the defendant felt that his acts were constitutionally protected acts, he needed to raise a motion to suppress before the trial court. His failure to do so constitutes waiver. See State v. Robinson, 171 Wn.2d 292, 304, 253 P.3d 84 (2011) (it is “a narrow class of cases” that may be raised for the first time on appeal; State v. Millan, 151 Wn. App. 492, 212 P.3d 603 (2009) (failure to raise motion to suppress evidence seized during search of vehicle constitutes waiver), reversed on other grounds, 171 Wn.2d 292 (2011)).<sup>8</sup>

Additionally, the defendant ignores two things when arguing that his speech was used to convict him in violation of the First Amendment.

First, he ignores the fact that there is a *mens rea* element to the crime of obstructing, specifically that the obstructer must “willfully” engage in acts that hinder or obstruct the officer from

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<sup>7</sup> For example, the statute does not make it illegal to call an officer a racial slur. It is only acts that are done with the willfulness to obstruct that fall under the scope of the statute.

<sup>8</sup> Appellate courts generally do not consider issues raised for the first time on appeal. RAP 2.5(a); State v. McFarland, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995). A party may raise an issue for the first time on appeal only if it is a “manifest error affecting a constitutional right.” Id. However, under this exception, an appellant must do more than identify a constitutional error; he must show that the asserted error is “manifest,” meaning the alleged error is apparent on the record and actually affects his rights. Id. If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest. Id. The defendant makes no attempt to meet burden.

performing his duties. As stated in Virginia v. Black, *supra*, this *mens rea* element eliminates the argument that the speech is protected under the First Amendment.

Second, he ignores the plethora of Supreme Court cases that hold that the First Amendment does not prohibit the use of speech to prove the elements of a crime.

[I]t has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.

Cox v. Louisiana, 379 U.S. 559, 563, 85 S. Ct. 476, 13 L. Ed. 2d 487 (1965) (quoting Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502, 69 S. Ct. 684, 93 L. Ed. 834 (1949)); *see also* State v. Talley, 122 Wn.2d 192, 206-07, 858 P.2d 217 (1993) (upholding use of speech to prove crime under Washington's "hate crime" malicious harassment statute); Wisconsin v. Mitchell, 508 U.S. 476, 489-90, 113 S. Ct. 2194, 124 L. Ed. 2d 436 (1993); Haupt v. United States, 330 U.S. 631, 641, 67 S. Ct. 874, 91 L. Ed. 1145 (1947); Price Waterhouse v. Hopkins, 490 U.S. 228, 251-52, 109 S. Ct. 1775, 104 L. Ed. 2d 268 (1989); Street v. New York, 394 U.S. 576, 594, 89 S. Ct. 1354, 22 L. Ed. 2d 572 (1969). In short, the defendant's speech here "has no more constitutional protection

than that uttered by a robber while ordering his victim to hand over the money, which is no protection at all.” United States v. Quinn, 514 F.2d 1250, 1268 (5th Cir.1975), cert. denied, 424 U.S. 955 (1976).

Next, the defendant’s claim that his actions that occurred in his doorway of the Johnson home were protected under the Fourth Amendment and article I, section 7 of the Washington State Constitution is equally unavailing.

The Fourth Amendment states that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated.” U.S. Const. amend. IV. Article I, section 7 of our state constitution provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Const. art. I, § 7.

While article I, section 7 provides greater protection to individual privacy rights than the Fourth Amendment to the United States Constitution, it focuses on those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass. State v. Budik 173 Wn.2d 727, 746-47, 272 P.3d 816 (2012). “However, [i]f no search occurs, then article 1, section 7 is not implicated.” Budik, 173 Wn.2d at 747

(citing State v. Young, 123 Wn.2d 173, 181, 867 P.2d 593 (1994)). Here, no search occurred inside the Johnson home. Additionally, any and all actions of the defendant were conducted in open view of the officers. State v. Kennedy, 107 Wn.2d 1, 10, 726 P.2d 445 (1986) (When a law enforcement officer observes something in open view from a lawful vantage point, the observation is not a search triggering the protections of article I, section 7). And finally, the officers were invited into the home by the true owner of the property—Geraldine Johnson, and thus they had the right to be in the home (although they did not seize or observe any evidence while in the home). See State v. Khounvichai, 110 Wn. App. 722, 729, 42 P.3d 1000 (2002), aff'd, 149 Wn.2d 357 (2003) (absent a pre-entry intent to conduct a search, officers being invited into a residence are entitled to obtain evidence in open or plain view); State v. Hastings, 119 Wn.2d 229, 235, 830 P.2d 658 (1992) (warrant not required when agent is invited into the home).

### **3. SUBSTANTIVE DUE PROCESS.**

Next, the defendant claims his conviction violates substantive due process because he had a right to watch the police. The defendant's argument is flawed for multiple reasons. First, whatever right there is to watch the police, that right is not

prohibited by the obstruction statute. Second, that is not what the defendant was doing and the police acted reasonably in trying to perform their duties.

The Due Process Clause of the Fourteenth Amendment provides: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. The Due Process Clause protects the individual from the arbitrary exercise of government power. Daniels v. Williams, 474 U.S. 327, 331, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986). It requires the government to follow appropriate, fair procedures before it deprives any person of a protected interest; this is commonly referred to as "procedural due process." Id.; United States v. Salerno, 481 U.S. 739, 746, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). The Due Process Clause also "prevents the government from engaging in conduct that 'shocks the conscience' or interferes with rights 'implicit in the concept of ordered liberty'"; this is referred to as "substantive due process." Salerno, 481 U.S. at 746 (internal citations omitted). The due process clause of the Washington Constitution does not afford broader protection than that of the Fourteenth Amendment. State v. McCormick, 166 Wn.2d 689, 699, 213 P.3d 32 (2009).

It is unclear how the defendant seeks to invoke substantive due process to his conviction. Due process is sometimes used to challenge the justification of a statute that curtails or limits some fundamental right. E.g., Becker v. Washington State University, 165 Wn. App. 235, 255, 266 P.3d 893 (2011), rev. denied, 173 Wn.2d 1033 (2012). However, the obstructing statute does not prohibit a person from observing the police. Thus, the application of due process to the statute in this manner is inapplicable.

While the defendant does not cite to the applicable case law, substantive due process can be a tool used to challenge specific egregious actions of the police. To make such a claim, however, a defendant must prove that “outrageous police conduct” has occurred. See State v. Myers, 102 Wn.2d 548, 551, 689 P.2d 38 (1984) overruled on other grounds by, State v. Lively, 130 Wn.2d 1, 19, 921 P.2d 1035 (1996). Use of substantive due process in this manner is founded on the principle that the conduct of the police is “so outrageous that due process principles would absolutely bar the government from invoking judicial process to obtain a conviction.” Lively, 130 Wn.2d at 19 (quoting United States v. Russell, 411 U.S. 423, 431-32, 93 S. Ct. 1637, 36 L. Ed. 2d 366 (1973)). Dismissal based on outrageous conduct requires more than a mere

demonstration of flagrant police conduct and is reserved for only the most egregious circumstances. Lively, at 19-20. The police conduct must “shock the universal sense of fairness.” Russell, 411 U.S. at 432. A court will evaluate the police conduct based on the “totality of the circumstances,” bearing in mind the “proper law enforcement objectives.” Lively, at 22-23.

While the defendant does not cite this line of cases, it is clear that the police conduct here does not amount to “outrageous conduct” that “shocks the universal sense of fairness.” Rather, the police acted with complete restraint, spending 20 minutes trying to calm RJ down and get her away from the home without having to place her under arrest. The police spent an equal amount of time and restraint trying to get the defendant away from the situation that he was knowingly making worse. In short, instead of committing acts that “shock the universal sense of fairness,” the police acted with the restraint that we expect officers to exhibit.

Finally, the defendant’s claim is based on his assertion that he was merely attempting to watch the police. If he had been, then at least he could begin to make a meritorious argument. But again, the defendant ignores the court’s finding that by all his actions he was willfully obstructing the police and by all accounts he continued

to hurl profanities at the police and willfully hinder them from performing their duties.

**4. A RATIONAL TRIER OF FACT COULD HAVE FOUND THE DEFENDANT GUILTY OF OBSTRUCTING.**

Evidence is sufficient to support a conviction if viewed in the light most favorable to the State, the evidence permits a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Tilton, 149 Wn.2d 775, 786, 72 P.3d 735 (2003). A reviewing court will draw all reasonable inferences from the evidence in favor of the State and interpret the evidence most strongly against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A factual sufficiency review "does not require the reviewing court to determine whether it believes the evidence at trial established guilt beyond a reasonable doubt but rather only whether any rational trier of fact could be so convinced." State v. Smith, 31 Wn. App. 226, 640 P.2d 25 (1982). A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533, rev. denied, 119 Wn.2d 1011 (1992).

Here, in arguing that there was insufficient evidence for the court to find him guilty, the defendant ignores the standard of review. Instead, he makes his sufficiency of the evidence argument based on only some of the evidence—asking the court to ignore the evidence he believes should not have been admitted or used against him. There is no such legal concept in a sufficiency of the evidence claim on appeal. The court reviews the entire record and draws all reasonable inferences from the evidence in favor of the State. Salinas, supra. Here, there was substantial evidence that the defendant was willfully hindering the police in performing their duty. Both officers who testified said that they had RJ calmed down and that things escalated to a hostile and volatile situation due to the defendant's clearly purposeful interjection into the mix. They both testified that they were hampered in performing their duties because they had to turn their attention to dealing with the defendant and because his actions were agitating RJ. In short, to prevail here, the defendant must prove that no rational trier of fact could have found him guilty of obstructing—even when the evidence is viewed in the light most favorable to the State. He fails to meet this burden.

**E. CONCLUSION**

For the reasons cited above, this Court should affirm the defendant's conviction.

DATED this 19 day of June, 2012.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:



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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Lindsay Calkins, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. JOHNSON, Cause No. 67726-8-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

W Brame  
Name  
Done in Seattle, Washington

6/19/12  
Date