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NO. ~~68632-T-1~~

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ALI ALI (dob 06/18/1995),

Appellant.

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

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Can the trial court take judicial notice of a respondent's name and date of birth based on information contained on the Order at Arraignment?

2. Was there sufficient evidence to convict Ali of the crime of making a false or misleading statement to a public servant?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On December 2, 2011, the State of Washington charged the juvenile respondent, Ali Ali, with one count of theft in the third degree and one count of making a false or misleading statement to a public servant for his actions on November 29, 2011. CP 1. This case proceeded to bench trial before the Honorable Bruce Hilyer. RP 7. After a fact finding hearing, the court found Ali guilty as charged of one count of theft in the third degree and one count of making a false or misleading statement to a public servant. RP 134-36. The court signed written findings of fact and conclusions of law in support of its verdict on May 8, 2012. CP 27-30.

The trial court imposed a sentence of three months of supervision on each count, consecutive, and ordered the respondent to complete a total of five days of work crew (with one day credit for time served. CP 21-22. This appeal timely followed. CP 31.

2. SUBSTANTIVE FACTS

On November 29, 2011, Ali was contacted by Nordstrom loss prevention officers as a suspect in a shoplifting. RP 25, 69. Ali was detained and taken back to Nordstrom's loss prevention office. RP 25, 69. Ali identified himself to loss prevention as Mohamed Asan Abdawahli. RP 37. Ali initially said he was nineteen years of age, but later said he was actually eighteen years of age. RP 37. According to loss prevention officer Lontoc, Ali told police that he was eighteen years of age, but gave a date of birth that would have made him nineteen years of age. RP 45.

Tukwila Police Officers Dan Lindstrom and James Sturgill responded to the shoplift call involving Ali. RP 78, 102. Officer Sturgill could not remember where he obtained the name and date of birth given by Ali, but believed it was from loss prevention officers. RP 105. Sturgill tried to verify the information provided by

Ali through dispatch, but was unable to do so. RP 108; Supp. CP _ (Trial Exhibit 4). Ali was present throughout Sturgill's repeated attempts to verify his identity and never made any attempt to correct Sturgill or Lindstrom. Supp. CP _ (Trial Exhibit 4). Lindstrom concluded that Ali was providing a false name and birth date based on the multitude of names and birth dates given to police. RP 89.

When Ali's identity could not be verified, Officer Lindstrom transported Ali to the Tukwila Police Department to properly identify him. RP 80. Ali told Officer Lindstrom his name was Mohamed Hassan Abdiwahli and that his birth date was January 1, 1993. RP 83, 84. The information Ali provided to Lindstrom did not match the information that Lindstrom had received from Officer Sturgill. RP 84.

Ali was eventually transported to juvenile detention and booked under the name Ali Ali. RP 88, 93. He was later charged under the name Ali Ali with a date of birth of June 18, 1995. CP 1-2.

Following a hearing, Findings of Fact and Conclusions of Law were entered. CP 27-30. Finding 8 indicates, "The respondent told the officers that his name was Mohamed Hassan Abdiwahli and that he was born in June of 1993." CP 28. Finding 10 indicates that police were unable to confirm Ali's identity based on the

information he had provided. CP 28. Finding 13 indicates that police made additional attempts to verify the information provided by Ali but were unsuccessful. CP 29. Finding 13 indicates that once at the police station Ali, "told Officer Lindstrom that his name was Mohamed Hassan Abdiwahli and that his date of birth was January 1, 1993." CP 29. The written findings of fact and conclusions of law also incorporated the court's oral findings and conclusions. CP 30.

C. ARGUMENT

1. ANY ERROR IN TAKING JUDICIAL NOTICE OF FACTS ESTABLISHED AT ARRAIGNMENT WAS HARMLESS AS THERE WAS SUFFICIENT OTHER EVIDENCE UPON WHICH TO CONVICT THE DEFENDANT. .

Judicial notice is governed by ER 201 and may be taken at any stage of a proceeding. Fusato v. Washington Interscholastic Activities Association, 93 Wn. App. 762, 772, 970 P.2d 774 (1999). Judicial notice may be taken of those facts not subject to reasonable dispute in the sense that they are generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Id. A court can take judicial notice of the record in the cause presently before it or in proceedings engrafted, ancillary, or supplementary to it. Swak v.

Department of Labor and Industries, 40 Wn.2d 51, 53, 240 P.2d 560 (1952).

At the conclusion of the fact finding hearing, Judge Hilyer took judicial notice of Ali's true and correct name noting, "The court is aware that Mr. Ali Ali was arraigned under the name Ali Ali, that he was asked if that was his true and correct name and in fact not only was it established through the arraignment but also essentially in the course of the evidence he eventually admitted to the police officer that his name was Ali Ali." RP 134-35. Ali argues that the court erred in taking judicial notice of his true name, and this error relieved the State of proving an element of the charged offense. Ali bases his argument on State v. K.N., 124 Wn. App. 875, 103 P.3d 844 (2004).

Ali's argument fails for several reasons. To prove that Ali made a false or misleading statement to a public servant the State was only required to prove that he knowingly made a false or misleading material statement to a public servant. RCW 9A.76.175. The State was not required to prove, for example, what his true name, birth date or age is, when not an element of the crime. As explained below, the court's taking of judicial notice of Ali's name and date of birth on the arraignment order was harmless, as there

was sufficient evidence to convict Ali of making a false or misleading statement to a public servant without doing so.

2. SUFFICIENT EVIDENCE SUPPORTS ALI'S CONVICTION FOR MAKING A FALSE OR MISLEADING STATEMENT TO A PUBLIC SERVANT.

At trial, the State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient if, taken in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 318, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). A claim of insufficiency of the evidence admits the truth of the State's evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." Id. The appellate court must "defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107

(2000). Furthermore, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that there is substantial evidence in the record to support the conviction. Id. at 718.

To convict Ali of making a false or misleading statement to a Public Servant, the State had to prove beyond a reasonable doubt that he knowingly made a false or misleading material statement to a public servant. RCW 9A.76.175. "Material statement" is defined as, "a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official duties." RCW 9A.76.175.

Viewing the evidence in the light most favorable to the State, there was more than sufficient evidence that Ali made a false statement to Officer Lindstrom. Loss prevention Officer Lontoc testified that Ali told police he was eighteen years of age and gave a date of birth that would have made him nineteen years of age. RP 45. During Ali's interaction with police, captured in Exhibit #4 (which was admitted at trial and part of the record on appeal), Ali is heard telling officers that his birth date is June of 1993. Supp. CP _ (Trial Exhibit 4). Officer Lindstrom testified that at the police station Ali told him that his birth date was January 1, 1993 and that the

information Ali provided him did not match that provided to Officer Sturgill. RP 83-84.

This evidence was recognized by the court and reflected in the court's oral ruling and written findings of fact and conclusions of law. In finding Ali guilty, Judge Hilyer said, "the court finds that Mr. Ali did give false information to the police officer, both with respect to his age, his birthday and with respect to his name." RP 134. The findings made by the court included that the respondent (Ali) told officers that he was born in June of 1993 and, that once at the police station Ali told Officer Lindstrom his birth date was January 1, 1993. CP 28-29.

Common sense dictates that a person cannot be both 18 and 19 years of age and cannot have two different dates of birth. Therefore, at least one set of information Ali provided to police had to be false. As testified to by Officer Sturgill, having an accurate date of birth is important in ascertaining a person's true identity. RP 107. Ali knew that officers were attempting to rely on this information and determine his identity. Viewed in the light most favorable to the State, the evidence is sufficient to find that Ali made a false or misleading statement to Officer Lindstrom by providing two separate dates of birth. His conviction for making a

false or misleading statement to a public servant should be affirmed.

D. CONCLUSION

For all of the foregoing reasons, this Court should affirm Ali's conviction for making a false or misleading statement to a public servant.

DATED this 18th day of April, 2013.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

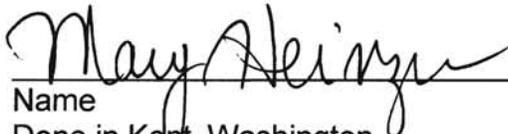
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to David L. Donnan, 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. ALI ALI, Cause No. ~~66813-8-1~~⁶⁸⁸¹³⁻⁸, 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.

Dated this 18th day of April, 2013


Name _____
Done in Kent, Washington

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