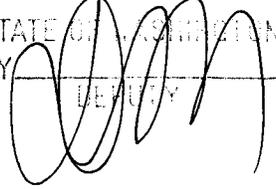


COURT OF APPEALS
DIVISION II

09 JUN -5 PM 12:00

STATE OF WASHINGTON
BY 
DEPUTY

NO. 38599-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

RICHARD CARL HOWARD, III, Appellant.

APPELLANT'S BRIEF

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I. ASSIGNMENTS OF ERROR

1. The trial court erred by convicting Mr. Howard of obstruction of a law enforcement officer without sufficient evidence that the investigation was delayed in any way.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Is the evidence sufficient to prove Mr. Howard is guilty of obstructing a law enforcement officer where the Officer testified that he was not delayed or obstructed in his duties by Mr. Howard giving him a false name

III. STATEMENT OF THE CASE

April 29, 2008, around 5 p.m., Officer Dana Smitley conducted a traffic stop of the car driven by Richard Howard because the car had expired license tabs. RPII 39. Smitley approached Howard and asked for his license, registration and proof of insurance. RPII 40. Howard said he did not have those with him. RPII 40. Smitley then asked Howard if he had any other identification—Howard said he did not and, according to

Smitley, gave the name “Sacier” and an incomplete social security number. RPII 40-41.

Without running the name “Sacier,” Smitley decided to arrest Howard for driving without a license, and asked him to step out of the vehicle. RPII 41. Smitley immediately handcuffed Howard and searched him. RPII 42. In Howard’s bag, Smitley found one pill in a plastic bag. RPII 42. He also found a current identification card with Howard’s name. RP 44.

Later tests confirmed that the pill was methylenedioxy-methamphetamine. RPII 65, 70. This drug is a stimulant and hallucinogenic “rave drug.” RPII 71, 72.

Following the search, Smitley placed Howard in his patrol vehicle and ran the name from the Washington identification card. RPII 45. Smitley determined that Howard’s license was revoked in the first degree. RPII 45.

Howard testified that he did not give Smitley a false name and did not know there was a pill in his bag. RPII 111, 116. He candidly admitted that he was driving with a suspended license. RPII 96.

Howard was charged with Unlawful Possession of a Controlled Substance, Driving While in Suspended or Revoked Status in the First Degree, and Obstruction of a Law Enforcement Officer. CP 3-4.

Following jury trial, he was found guilty on all charges. CP 25-27. He was sentenced to the longest standard-range sentence, 24 months, on the UPCS and 365 days each on the two misdemeanor charges, suspended. CP 246, 254.

This appeal timely follows.

IV. ARGUMENT

ISSUE 1: IS THE EVIDENCE SUFFICIENT TO PROVE MR. HOWARD IS GUILTY OF OBSTRUCTING A LAW ENFORCEMENT OFFICER WHERE THE OFFICER TESTIFIED THAT HE WAS NOT DELAYED OR OBSTRUCTED IN HIS DUTIES BY MR. HOWARD GIVING HIM A FALSE NAME?

Due process requires the State to prove all elements of a crime beyond a reasonable doubt. *State v. Aver*, 109 Wn.2d 303, 310, 745 P.2d 479 (1987). Evidence is insufficient to support a conviction when, viewed in the light most favorable to the prosecution, it would not permit a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

A person is guilty of obstructing a law enforcement officer if he or she 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). The essential elements of the crime are: “(1) that the action or inaction in fact hinders, delays, or obstructs; (2) that the hindrance, delay, or

obstruction be of a public servant in the midst of discharging his official powers or duties; (3) knowledge by the defendant that the public servant is discharging his duties; and (4) that the action or inaction be done knowingly by the obstructor.” *State v. Contreras*, 92 Wn.App. 307, 315-16, 966 P.2d 915 (1998) (quoting *State v. CLR*, 40 Wn.App. 839, 841-42, 700 P.2d 1195 (1985)).

The State failed to prove in this case that Howard giving Smitley a false name “in fact” hindered, delayed, or obstructed Smitley. According to Smitley, he was suspicious of Howard and arrested him based on him not having a license, but never checked out the false name. RPII 41. In his immediate search, he found a Washington ID card with Howard’s name and later used that name to check Howard’s record. RPII 44-45.

There is no evidence that Smitley changed his course of action at all based on the false information or that it caused him any delay. Moreover, Smitley was asked if he was hindered at all in his investigation when Howard told him a false name, and Smitley said no.¹ RPII 58-59.

[Prosecutor]: By giving you a name and not having the ID, and having just four digits of a social security number, what does this do to you—your investigation when you pull somebody over?

1

[Smitley]: It's—it raises my suspicion when someone gives me—the social security part was kind of the real suspecting one because I was only given four numbers. . . .

[Prosecutor]: Does it slow you down at all?

[Smitley]: Doesn't slow me down, no.

RPII 58-59.

Therefore, there is no evidence whatsoever that the investigation was actually hindered or delayed in any way. Because that is an element of the crime of obstructing a law enforcement officer, *see State v. Contreras*, 92 Wn.App. 307, 315-16, 966 P.2d 915 (1998), there is insufficient evidence to support the conviction and it must be reversed.

V. CONCLUSION

This court should reverse Howard's conviction for obstruction of a law enforcement officer because the State failed to prove that the investigation was actually hindered or delayed.

DATED: June 4, 2009

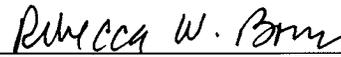
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CERTIFICATE OF SERVICE

I certify that on June 4, 2009, I caused a true and correct copy of this Appellant's Brief to be served on the following via prepaid first class mail:

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