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Court of Appeals
Division II
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No. 51623-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

TRACEY K. BAILEY
Appellant.

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

The Honorable Christine Schaller
Cause No. 16-1-02274-34

BRIEF OF RESPONDENT

Joseph J.A. Jackson
Attorney for Respondent

2000 Lakeridge Drive S.W.
Olympia, Washington 98502
(360) 786-5540

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether assuming a false identity and providing false information in that persona for more than 30 minutes for the purpose of avoiding the consequences of a traffic stop sufficiently constitutes assuming a false identity and committing an act in that persona for an unlawful purpose.
2. Whether State v. Ramirez applies prospectively such that the Superior Court is required to strike the \$200 filing fee and \$100 DNA fee.

B. STATEMENT OF THE CASE.

The State accepts the statement of facts contained in the appellant's opening brief with additional facts contained within the State's argument.

C. ARGUMENT.

1. The State presented sufficient evidence to demonstrate that Bailey assumed a false identity and did an act in that identity for an unlawful purpose.

When facing a challenge to the sufficiency of the evidence, a reviewing court asks whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A challenge to the sufficiency of the evidence admits the truth of the evidence. State v. Salinas, 119 Wn.2d 192, 201,

829 P.2d 1068 (1992). The appellate court should defer to the trier of fact's resolution of conflicting testimony, evaluation of witness credibility, and decisions regarding the persuasiveness of the evidence. State v. Walton, 64 Wn.App. 410, 415-416, 824 P.2d 533 (1992).

Under RCW 9A.60.040(1)(a), a person is guilty of criminal impersonation in the first degree if the person assumes a false identity and does an act in his or her assumed character with intent to defraud another or for any unlawful purpose. In this case, Bailey was stopped for a traffic violation and identified herself falsely as Stracey Jones. 2 RP 47.1 The trooper asked her to clarify and she spelled the name out for him. 2 RP 47. Bailey then gave a date of birth for Ms. Jones. 2 RP 47.

The trooper ran an image of Stracey Jones on his mobile computer program and noticed that it did not match Bailey. 2 RP 48. After noticing the discrepancy, Trooper Roe re-contacted her and asked for the last four digits of her social security number. 2 RP 48-49. Bailey provided a number that did not match Stracey Jones. 2 RP 49. The trooper then asked for a street address and

¹ For purposes of this brief, the State will use the designations of the volumes of the report of proceedings identified by the appellant in Appellant's Opening Brief, footnote 1. Therefore, the trial proceedings from 3/12/18, 3/13/18 and 3/20/18 will be referred to as 2 RP.

Bailey provided a couple of different streets. 2 RP 49-50. None of the information that she provided matched Stracey Jones. 2 RP 50. Trooper Roe asked another trooper, Trooper Krantz, to look at the photo on his computer and compare the photo to Bailey. 2 RP 51.

Trooper Roe also informed Bailey that there were warrants out for Stracey Jones. 2 RP 55-56. In response Bailey again said that she was Stracey Jones and even went as far as to tell the troopers that she had a sister named "Tracey Bailey" who had used her identity. 2 RP 56; Ex. 3 at 25:40-25:50; 26:00-26:40.2 Trooper Roe arrested Bailey on the warrants for Stracey Jones and read her constitutional rights to her. 2 RP 62. Trooper Krantz then spoke with Bailey and confronted her about providing a false name. 2 RP 94. At that point Bailey admitted that her real name was Tracey Bailey. 2 RP 95. Stracey Jones is Bailey's sister. 2 RP 76. While conducting his investigation, Trooper Roe discovered that Bailey's license was suspended and Ms. Jones' license was clear. 2 RP 63.

Viewing the evidence in a light most favorable to the State, Bailey assumed a false identity and acted in that identity with the intent of deceiving law enforcement for at least 36 minutes and 28

² The state's cites to exhibit 3 in the same manner as the Appellant's opening brief as noted in Appellant's footnote 2.

seconds. 2 RP 68. During that time, Bailey committed several acts; such as providing a date of birth, providing an incorrect social security number, providing addresses, blaming her sister “Tracey Bailey” for her alternate persona’s warrants, etc., all with the intent of keeping law enforcement from discerning her true identity in an apparent effort to avoid the consequences of her traffic stop. The evidence was sufficient for a rational juror to find her guilty of criminal impersonation in the first degree, beyond a reasonable doubt.

Bailey argues that the rule of lenity somehow requires that this Court find that she did not commit an act while in the false persona. An act is defined as “the doing of a thing.” Webster’s Collegiate Dictionary, 10th ed. (1998) at 11. Clearly, Bailey committed several acts during the over 30 minutes that she provided false information to Trooper’s Roe and Krantz. The rule of lenity does not apply to this situation.

2. The State concedes that the \$200 criminal filing fee and \$100 DNA fee and \$100 warrant fee should be stricken pursuant to the recent decision of the State Supreme Court in *State v. Ramirez*.

The trial court imposed a \$200 filing fee and a \$100 DNA fee

as part of the judgment and sentence. CP 38-39. Following a failure to appear while this case was pending, the trial court imposed a \$100 warrant service fee. CP 47. Legislative amendments to RCW 43.43.7541 and RCW 36.18.020(2)(h), which took effect on June 7, 2018, require that costs as described in RCW 10.01.160, which include the \$200 filing fee and \$100 warrant service fee, “shall not be imposed on a defendant who is indigent as defined in RCW 10.101.010(3)(a) through (c), and that the \$100 DNA fee not be collected if the State has previously collected the offender’s DNA as a result of a prior conviction. Laws of 2018, ch. 269, § 17.

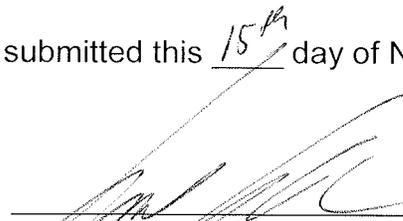
The amendments apply prospectively to defendants whose appeals were pending when the amendment was enacted. State v. Ramirez, ___ Wn.2d ___, ___ P.3d ___, 2018 WL 4499761, at *8, No. 95249-3, (Sept. 20, 2018). In this matter, the trial Court specifically found that Bailey was indigent. CP 46. Further, the record demonstrates that Bailey has multiple prior felony convictions, each of which would have ordered that she submit a DNA sample. CP 34. The notice of appeal in this matter was filed on March 20, 2018, and the appeal is still pending. CP 44. Therefore, in light of Ramirez, the State does not oppose an order

requiring the Superior Court to strike the \$200 filing fee, \$100 warrant service fee and \$100 DNA fee that were imposed.

D. CONCLUSION.

Sufficient evidence supported the jury's finding that Bailey committed an act while using a false identity. Bailey adopted her sister's identity and acted to deceive law enforcement during a prolonged traffic stop by providing further false information and even blaming herself for warrants that had been issued for her sister while in the persona of her sister. The evidence, when viewed in a light most favorable to the State, clearly supports the conviction. The State does not oppose Bailey's request for an order striking the \$200 filing fee and \$100 DNA fee pursuant to the holding of State v. Ramirez. The State respectfully asks that this Court affirm Bailey's conviction and remand the matter to the Superior Court for entry of an order striking the \$200 filing fee, \$100 warrant fee, and \$100 DNA fee from the judgment and sentence.

Respectfully submitted this 15th day of November, 2018.



Joseph J.A. Jackson, WSBA# 37306
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of Respondent's Brief on the date below as follows:

ELECTRONICALLY FILED AT DIVISION II

TO: DEREK M. BYRNE, CLERK
COURT OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
TACOMA WA 98402-6045

VIA E- MAIL

TO: CASEY GRANNIS
NIELSEN BROMAN & KOCH, PLLC
1908 E MADISON ST
SEATTLE WA 98122-2842

GRANNISC@NWATTORNEY.NET

ERIC J. NIELSEN
NIELSEN BROMAN & KOCH, PLLC
1908 E MADISON ST
SEATTLE WA 98122-2842

NIELSENE@NWATTORNEY.NET

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

Dated this 15th day of November, 2018, at Olympia, Washington.



JENA GREEN, PARALEGAL

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

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