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No. 53717-6-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

RANDY BELL,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

---

Respondent's Brief

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I. ISSUES

A. Did the trial court erroneously admit 404(b) evidence regarding the officer safety flag?

B. Did the State present sufficient evidence to sustain Bell's conviction for Obstructing a Law Enforcement Officer?

II. STATEMENT OF THE CASE

United States Forest Service Officer Larson was working in the eastern end of Lewis County, Washington, on March 23, 2019, when he encountered an ATV being driven in an area closed to motorized vehicles. RP 59, 61-62, 65-66. Officer Larson heard the ATV before he could see it. RP 66. The ATV eventually came into sight, but was too far away for Officer Larson to get a good visual of the ATV or the driver. RP 66. Officer Larson eventually gained some additional information from other individuals, drove to another area, heard the ATV, and again, the ATV came into sight and drove off. RP 66-68.

Officer Larson followed the ATV, eventually having to continue only on foot due to terrain. RP 68-70. Officer Larson could see, through binoculars, the person driving the ATV, later identified as Randy Bell, was fairly large and wearing coveralls. RP 68. The ATV had a trailer and there were dogs following the ATV. *Id*. The trailer was distinctive and so were the dogs. RP 69. Officer Larson

began shouting and whistling when he eventually caught up to Bell, so as not to surprise Bell as he walked up through the woods. RP 69-70.

When Officer Larson was within 100 feet, it was clear Bell could hear Officer Larson, who was still shouting and whistling. RP 70. Bell's behaviors were sending Officer Larson red flags. *Id*. Bell was acting abnormally, he was not turning around and he was pacing in circles. *Id*. Bell finally acknowledged Officer Larson when his dogs came running at Officer Larson, in a friendly manner. RP 71. Officer Larson was now within 50 feet of Bell. RP 71.

Officer Larson identified himself to Bell, explaining he was with the Forest Service and inquired why, or if, Bell was riding an ATV in the area. RP 71. Bell, who was now within five feet of Officer Larson, denied he was driving the ATV in the area. RP 72. Officer Larson told Bell, "Sir, I saw you on an ATV in the area with your three dogs." *Id*. Bell denied it again, asserting there was someone else with three dogs or his dogs were chasing someone else on an ATV. RP 72. Bell, now within a foot of Officer Larson, told Officer Larson that he had been shot before, had been a victim of a violent crime, and then stated, "If you put your hand on your gun, I will put you down." RP 72-73. Bell was physically leaning over Officer Larson, who is five

feet, ten inches tall, compared to Bell who is six feet, seven inches tall. RP 73, 76. Officer Larson took Bell's statement as a death threat. RP 73. Officer Larson felt the prudent thing to do was to tell Bell, "Well, sir, I'm going to continue looking for this person on the ATV. You have a great day." RP 74. Officer Larson backed out of the situation, as it was not worth a 100 dollar citation to continue the contact with Bell, and retreated to his truck. RP 74-75.

There was no one else Officer Larson was going to look for on an ATV, instead, Officer Larson called for backup, drove back out the only road into the area and waited for a Lewis County Sherriff's Office deputy to assist. RP 75-76. Officer Larson waited a half hour for backup to arrive. RP 77. Officer Larson and the deputy looked for Bell but were unable to locate him. *Id.*

Officer Larson came back on duty on March 28th. RP 78. Officer Larson spoke to multiple members of the Lewis County Sheriff's Office regarding his encounter with Bell. RP 78-79. Officer Larson had been unable to identify Bell on his own, but with assistance from Deputy Riordan, Bell was identified and his residence located on Tunnel Road in Packwood, Washington. RP 79, 84, 154-59, 180. Officers were made aware that Bell had an

officer safety flag, which included a weapons caution and mandated a minimum of two-officer while contacting Bell. RP 80, 160, 180.

Due to safety concerns, the officers had dispatch call Bell's residence to attempt to have Bell come outside but were not successful. RP 84, 161-63. The officers spread out throughout the neighborhood looking for Bell. RP 84. Officer Larson stood post outside Bell's residence to make sure Bell did not exit the residence out the front door. RP 84. After approximately a half-hour, Bell exited the fenced inside yard of the residence and started to approach Officer Larson. RP 84. Officer Larson yelled at Bell to stop and put his hands up, but Bell did not immediately put his hands up and continued to approach Officer Larson. RP 85. Officer Larson yelled at Bell a second time to stop and put his hands up. RP 85-86. Bell put his hands up but continued to move towards Officer Larson. RP 86.

Deputy Kasinger, who had been assisting Deputy Riordan at a different residence, heard Officer Larson over the radio and ran back to Officer Larson's location. RP 181-82. Deputy Kasinger saw Bell illuminated by the spotlight in the middle of the road. RP 182. Bell was very angry and agitated that the officers were there. *Id*. Bell was not compliant with the orders Officer Larson was giving. *Id*.

Deputy Kasinger began to give Bell orders, to keep his hands visible and get down on the ground. *Id*.

Trooper Ecklund arrived on the scene, as did Deputy Riordan. RP 165, 214. Deputy Riordan was able to place Bell under arrest. *Id.* The officers explained they had probable cause for a threat on a police officer. RP 183. When Bell inquired who the threat was on, Trooper Ecklund shined his flashlight on Officer Larson. RP 183, 214. Bell called Officer Larson names, "stating that he would put him down if he was ever contacted again, if he went for his weapon." RP 183.

Bell was transported by Deputy Kasinger to the Lewis County Jail. RP 167. Deputy Riordan provided the jail with the number of Bell's neighbor, at the neighbor's request, for a ride home back to Packwood. RP 168. Bell told the jail staff and officers, "in 60 miles, he will use the time to walk home to work on his revenge, figure out his revenge." *Id*. Bell's comment was in regards to Officer Larson. *Id*. "[Bell] also made an unsolicited comment about finding Officer Larson's other half and showing her a good love." *Id*. Officer Larson was aware of Bell's statements at the Lewis County Jail and took steps to address safety concerns with his wife. RP 92-93.

The State charged Bell with three counts of felony Harassment and two counts of Obstructing a Law Enforcement

Officer. CP 19-22. The State elected to proceed only on theory of Harassment of a Criminal-Justice Participant. CP 84-86. Count I was for Bell's conduct harassing Officer Larson on March 23rd. CP 19-20, 84. Count II was for Bell's conduct harassing Officer Kasinger on March 28th. CP 20, 85. Count III was for Bell's conduct harassing Officer Larson on March 28th. CP 21, 86. Count IV, Obstructing a Law Enforcement Officer was in regard to March 23rd, while Count V was in regard to March 28th. CP 21-22. Bell elected to have his case tried to a jury. *See* RP. Bell was convicted as charged. CP 94-98. Bell timely appeals his conviction. CP 127.

The State will supplement the facts as necessary in its argument section below.

III. ARGUMENT

A. AFTER CONDUCTING AN ER 404(b) ANALYSIS, THE TRIAL COURT PROPERLY ADMITTED EVIDENCE REGARDING THE OFFICER SAFETY FLAG.

Contrary to Bell's argument, the trial court did not err in admitting the evidence there was an officer safety flag in the law enforcement database system regarding Bell. The court conducted the proper analysis and the ER 404(b) evidence was permissible to show Officer Larson and Deputy Kasinger were placed in reasonable

fear in regards to the Harassment – Criminal Justice Participant charge for the March 28th date.

1. Standard Of Review.

"[I]nterpretation of an evidentiary rule is a question of law" subject to de novo review. *State v. Gresham*, 173 Wn.2d 405, 419, 269 P.3d 207 (2012). Once it is determined the trial court correctly interpreted the rule, a determination regarding the admissibility of evidence by the trial court are reviewed under an abuse of discretion standard. *Gresham*, 173 Wn.2d at 419; *State v. Finch*, 137 Wn.2d 792, 810, 975 P.2d 967 (1999) (citations omitted). "A trial court abuses its discretion only when its decision is manifestly unreasonable or is based on untenable reasons or grounds." *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003), *citing State v. Stenson,* 132 Wn.2d 668, 701, 940 P.2d 1239 (1997).

If the trial court's evidentiary ruling is erroneous, the reviewing court must determine if the erroneous ruling was prejudicial. *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). An error is prejudicial if "within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred." *Bourgeois*, 133 Wn.2d at 403 (citations omitted).

2. The Trial Court Properly Admitted The Evidence Regarding Bell's Officer Safety Flag.

A party may not admit evidence of other crimes, wrongs, or acts of a person to show action in conformity therewith. *State v. Yarbrough*, 151 Wn. App. 66, 81, 210 P.3d 1029 (2009). The purpose and scope of ER 404(b) is that it "governs the admissibility of evidence of other crimes or misconduct for purposes other than proof of general character." 5D Karl B. Tegland, Washington Practice: Courtroom Handbook on Washington Evidence, § 404:6, at 164 (2018-19). Evidence of other crimes or misconduct is not admissible to demonstrate a defendant's propensity to commit the crime they are currently charged with. ER 404(b); *State v. Powell*, 166 Wn.2d 73, 81, 206 P.3d 321 (2009). Evidence of other crimes, acts, or wrongs by a person may be admissible for purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or accident. ER 404(b).

Prior to admitting ER 404(b) evidence a trial court must conduct a four part test. *Id.* at 81-82. The trial court must,

> (1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudicial effect.

Id. at 81-82. The reviewing court defers to the trial court regarding the admission of evidence. *Powell*, 166 Wn.2d at 81. This deference acknowledges that the trial court is best suited to determine a piece of evidence's prejudicial effect. *Id.*

In this matter, the State sought to admit evidence that there was an officer safety flag in the law enforcement database regarding Bell, and the underlying facts regarding why that flag was created. RP 16-23. The State sought to introduce evidence from Sergeant Wetzel, a non-participant in the present case, regarding what Bell previously told Sergeant Wetzel during an unrelated incident regarding Bell arming himself in order to protect himself from actions Bell considered unreasonable on the part of law enforcement. RP 19-21. The State was also seeking to introduce the existence of the officer safety flag notation in the law enforcement database. RP 16-17, 23.

Bell objected to the introduction of the State's proposed evidence surrounding the officer safety flag, arguing it was hearsay, irrelevant, and prejudicial. 17-23. The trial court ruled it would not allow Sergeant Wetzel to testify about his earlier encounter with Bell. RP 21-23. The trial court stated it would not allow the statement Bell had previously made regarding firearms and also noted Sergeant

Wetzel was not a victim or a witness in the current matter. RP 21-22. The trial court ruled it would allow the admission of the officer safety flag and whether the flag included a warning Bell owned firearms. RP 22. The trial court acknowledged the evidence was prejudicial, but ruled it was admissible due to the elements of the charged crime, harassment. *Id*. The trial court also agreed with defense counsel that there may be a need for a curative instruction once all the evidence was presented. RP 23. The trial ultimately did give a limiting instruction requested by Bell. CP 83 (Instruction 6).

Bell argues the trial court abused its discretion when it allowed the officers to testify about the officer safety flag attached to Bell's entry in the law enforcement database and what an officer safety flag meant. Brief of Appellant 8-12. Bell asserts this evidence signified to the jury Bell had a criminal history and possessed weapons. *Id.* at 9. Bell also argues the evidence's probative value was outweighed by its prejudicial effect due to it allowing propensity evidence to be admitted because the officer safety flag was not known during Officer Larson's earlier contact with Bell. *Id.* at 9. All of Bell's arguments fail.

Bell attempts to equate his case with *State v. Perrett*, an assault in the second degree case where the trial court erroneously admitted evidence regarding statements Perrett had made when he

was arrested. *State v. Perrett*, 86 Wn. App. 312, 314, 319-20, 936 P.2d 426 (1997). Perrett's demeanor when he was arrested, making a statement about the last time the police took his guns, was not relevant because it had nothing to do with the charged crime. *Perrett*, 86, Wn. App. at 319. The statement was also unfairly prejudicial because it raised the inference the defendant had committed a prior gun related crime, therefore had a propensity of committing one again. *Id.* at 319-20. The assault charged in *Perrett* involved a firearm. *Id.* at 319. It was an abuse of discretion for the trial court to admit such evidence. *Id.* at 320.

Bell's case is easily distinguished from *Perrett.* Bell was charged with three counts of Harassment of a Criminal Justice Participant. CP 19-21. Two of those counts occurred on March 28th, after the officers learned of the officer safety flag, which admittedly also contained a weapons caution. RP 79-80, 83, 159-60, 180; CP 20-21. Courts have held it is permissible to allow testimony regarding prior violent acts when the State must prove that the alleged victim's fear of the defendant was reasonable. *State v. Barragan*, 102 Wn. App. 754, 759-60, 9 P.3d 942 (2000); *State v. Ragin*, 94 Wn. App. 407, 411-12, 972 P.2d 519 (1999). In a harassment case, the victim's reasonable fear that the defendant will carry out the threat is an

essential element of the crime. RCW 9A.46.020; WPIC 36.07.05; *Barragan*, 102, Wn. App. at 759. A victim's reasonable fear is determined by an objective standard, therefore, all the facts and circumstances known to the victim at the time of the threat are relevant to the reasonableness of the victim's fear. *Barragan,* 102, Wn. App. at 759-60.

In *Barragan*, the State sought to submit evidence the victim was aware of prior assaults Barragan had bragged about committing against other inmates. *Barragan,* 102 Wn. App. at 758. Barragan was charged with harassment, the trial court found the evidence regarding the prior assaults was relevant to a charge of harassment, and admitted the statements. *Id.* The evidence was admissible under ER 404(b), the trial court did not abuse its discretion, and the jurors were entitled to know what the victim knew at the time Barragan threatened the victim to aid the jury in determining if the victim's fear was reasonable. *Id.* 759-60. Therefore, the trial court's admission of the evidence was upheld on appeal. *Id*.

In *Ragin*, the trial court permitted the victim of a felony harassment to testify that Ragin had told the victim about his violent criminal past, about being able to make bombs, owning firearms, and having connections to organized crime. *Ragin*, 94 Wn. App. at 409-

10. The Court of Appeals held this testimony was permissible for establishing the victim's reasonable fear. *Id.* at 411-12. The Court also explained that even if the evidence was prejudicial it was outweighed by the probative nature of the testimony. *Id.* at 412. The Court found that taking Ragin's behavior in isolation may not sufficiently convey to the jury why the victim was fearful. *Id.* The State was allowed to put the threats in context, even if the evidence presented portrayed Ragin in a bad light, it "was necessary to prove an essential element of the charged crime, so its probative value outweighed its prejudicial effect." *Id.*

The March 23rd incident was different than the March 28th incident. On March 23rd, Officer Larson was alone in the woods, dispatch unware of his location, with a much larger man who was unknown to Officer Larson. RP 70-71, 76, 122-23. Bell was acting bizarrely, setting off red flags, and then made what Officer Larson perceived as a death threat. RP 70-73.

On March 28th there were several officers milling around the neighborhood, looking for Bell, when Bell originally started approaching Officer Larson. RP 84-85. Then, there were two officers on the scene when Deputy Kasinger arrived. RP 181-82. The knowledge regarding the officer safety flag was relevant to the

threats made during the second incident. RP 182-84, 186-87, 189. It explains why a law enforcement officer, even with multiple officers present, would be in reasonable fear of Bell. RP 87-88, 180, 184, 186-87, 189. This is especially important for Deputy Kasinger, who had his firearm drawn. Similar to *Ragin*, it would be difficult for the State to sufficiently convey to the jury Deputy Kasinger's reasonable fear without the officer safety flag and the weapons caution, or why now, with so many officers on the scene, Officer Larson was in fear.

The trial court did not abuse its discretion when it found the probative nature of the evidence regarding the officer safety flag, including the weapons caution, outweighed the prejudicial effect, in particular due to the crime charged and the elements the State must prove. The State was required to prove reasonable fear of two law enforcement officers, as the crime was Harassment – Criminal Justice Participant. Therefore, the jury had the right to hear evidence regarding what those law enforcement officers knew at the time Bell's statements were made. This Court should affirm the trial court and Bell's convictions.

B. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUSTAIN BELL'S CONVICTION FOR COUNT V, OBSTRUCTING A LAW ENFORCEMENT OFFICER.

Bell argues that the State failed to present sufficient evidence to sustain his conviction for Count V, Obstructing a Law Enforcement Officer on March 28th. Brief of Appellant 12-15. Bell asserts the State failed to prove Bell willfully obstructed. *Id*. Bell's argument fails because the State presented sufficient evidence to sustain the jury's verdict.

1. Standard Of Review.

Sufficiency of evidence is reviewed in the light most favorable to the State to determine if any rational jury could have found all the essential elements of the crime charged beyond a reasonable doubt. *State v. Salinas,* 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

2. There Was Sufficient Evidence Presented To Prove The Essential Element That Bell Willfully Delayed, Hindered, Or Obstructed Law Enforcement Officers, Therefore The Jury's Verdict For Count V Should Be Confirmed.

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; *In re* Winship, 397 U.S. 358, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); State *v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 893 (2006). An appellant

challenging the sufficiency of evidence presented at a trial "admits the truth of the State's evidence" and all reasonable inferences therefrom are drawn in favor of the State. *State v. Goodman,* 150 Wn.2d 774, 781, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The role of the reviewing court does not include substituting its judgment for the jury's by reweighing the credibility or importance of the evidence. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). The determination of the credibility of a witness or evidence is solely within the scope of the jury and not subject to review. *State v. Myers,* 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), *citing State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). "The fact finder…is in the best position to evaluate conflicting evidence, witness credibility, and the weight to be assigned to the evidence." *State v. Olinger*, 130 Wn. App. 22, 26, 121 P.3d 724 (2005) (citations omitted).

To convict Bell of Obstructing a Law Enforcement Officer, the State was required to prove, beyond a reasonable doubt, that Bell, in Lewis County, Washington, willfully delayed, hindered, or

obstructed a law enforcement officer in the discharge of their official powers or duties. RCW 9A.76.020(1). CP 22.

The to-convict jury instruction required the jury to find:

> To convict the defendant of the crime of obstructing a law enforcement officer, as charged in count V, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about March 28, 2019, the defendant willfully hindered, delayed, or obstructed a law enforcement officer in the discharge of the law enforcement officer's official powers or duties;
>
> (2) The defendant knew the law enforcement officer was discharging official duties at the time; and
>
> (3) That this act occurred in the State of Washington, County of Lewis.
>
> If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.
>
> On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP 91 (Instruction 14), *citing* WPIC 120.02. The jury was instructed on the definition of willfully. 92, *citing* WPIC 120.02.01.

> Willfully means to purposefully act with knowledge that this action will hinder, delay, or obstruct a law enforcement officer in the discharge of the officer's official duties.

Id. (Instruction 15).

Bell asserts he exited his home, when ordered to put his hands in the air and turn around by Officer Larson he complied. Brief of Appellant 14. Bell states the fact that he continued to walk towards Officer Larson did not establish willful hindrance because the arrest took between 30 seconds to a minute. *Id.*

Bell did not simply follow orders, turn around, and was handcuffed. While, Bell did comply once Deputy Riordan came onto the scene that was after two additional officers arrived, and after Officer Larson's initial encounter with Bell. RP 85-87, 164-65, 181-84, 213-17. Nowhere in the record does Officer Larson state his contact with Bell took 30 to 60 seconds. *See* RP 84-120. The only mention of 30 seconds or a minute was in Trooper Ecklund's testimony discussing approximately how long it may have been before Deputy Riordan arrived on the scene, and that was after all three other officers were present. RP 216.

Officer Larson testified he yelled at Bell to stop and put his hands up, but Bell did not immediately put his hands up and continued to approach Officer Larson. RP 85. Officer Larson yelled at Bell a second time to stop and put his hands up. RP 85-86. Even though Bell put his hands up, he continued to move towards Officer Larson. RP 86. Bell was not following Officer Larson's directives. *Id.*

According to Officer Larson, it was only after the other officers arrived that Bell finally stopped approaching Officer Larson. *Id*.

Deputy Kasinger testified he was assisting Deputy Riordan at a different residence when he heard Officer Larson state Bell was out in front of his residence. RP 181-82. Deputy Kasinger ran back to Officer Larson and saw Bell illuminated by the spotlight in the middle of the road. RP 182. Bell was not compliant with the orders Officer Larson was giving to Bell. *Id.* Bell was very angry and agitated that the officers were there. *Id*. Deputy Kasinger began to give Bell the same orders that Officer Larson was giving. *Id.*

Deputy Riordan testified that while out with a different subject he heard someone state that they had Bell. RP 164. In response to that information, Deputy Riordan ran through backyards and fences to get to the other officers' location. *Id.* Deputy Riordan arrived on the scene and observed the other three officers, with their backs to Deputy Riordan, and Bell illuminated by flashlight. RP 164-65. Bell was yelling at the officers. RP 165. Deputy Riordan ran toward the officers "due to the fact it appeared that [Bell] was not following verbal commands that they were giving him at that time." *Id.*

Bell did not simply walk out, place his hands up, turn around, and tell Officer Larson he had an injury and could not get down on

the ground. If Bell had acted in such a fashion he would not have willfully hindered, delayed, or obstructed the law enforcement officers but that is not what occurred. While the State acknowledges Bell apparently could not comply with getting down on the ground due to an injury (although, that is still debatable but the officers ultimately allowed him not to get on the ground), this does not excuse Bell from immediately complying with Officer Larson's other directives. RP 85-87, 183.

Officer Larson told Bell to stop, put his hands up, turn around, and get on the ground. Even if Bell could only do three out of four, he would be complying. Instead, Bell continued to walk towards Officer Larson, failing to turn around and place his hands in the air. Still failing to comply, Deputy Kasinger now is on the scene giving directives, then Trooper Ecklund. When Deputy Riordan arrives he observes, "Mr. Bell was very defiant and appeared to be trying to control the situation with the three law enforcement officers who were on the scene." RP 166. Bell was purposefully acting with the knowledge that what he was doing was hindering or delaying the officers' discharge of their official duties, which in this case was to apprehend Bell. In the light most favorable to the State, with all reasonable inferences drawn in favor of the State, the State proved

Bell Obstructed a Law Enforcement officer as charged in Count V and this Court should affirm his conviction.

V. CONCLUSION

The trial court did not abuse its discretion when it admitted testimony regarding the officer safety flag. The trial court conducted the proper 404(b) analysis and determined the probative value outweighed the prejudice, particularly in this prosecution for harassment. The State presented sufficient evidence to sustain the jury's verdict for Count V, Obstructing a Law Enforcement Officer. The evidence showed Bell acted willfully when he hindered and/or delayed the officers while they were discharging their official duties. This Court should affirm Bell's convictions and sentence.

RESPECTFULLY submitted this 9th day of April, 2020.

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