

No. 63454-2-I

**COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE**

---

**STATE OF WASHINGTON, Respondent,**

**v.**

**SAL OU, Appellant.**

---

**BRIEF OF RESPONDENT**

---

**DAVID S. McEACHRAN,  
Whatcom County Prosecuting Attorney  
By HILARY A. THOMAS  
Appellate Deputy Prosecutor  
Attorney for Respondent  
WSBA #22007**

**Whatcom County Prosecutor's Office  
311 Grand Avenue, Second Floor  
Bellingham, WA 98225  
(360) 676-6784**

**FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2010 JAN 13 AM 10:28**

*3*

**TABLE OF CONTENTS**

**A. ASSIGNMENTS OF ERROR .....1**

**B. ISSUES PERTAINING TO APPELLANT'S  
ASSIGNMENTS OF ERROR .....1**

**C. FACTS .....1**

**D. ARGUMENT .....3**

**E. CONCLUSION .....7**

**TABLE OF AUTHORITIES**

**Washington State Court of Appeals**

State v. Heffner, 126 Wn. App. 803, 110 P.3d 219 (2005)..... 4

State v. Karp, 69 Wn. App. 369, 848 P.2d 1304, *rev. denied*, 122 Wn.2d 1005 (1993)..... 4

State v. Presba, 131 Wn. App. 47, 126 P.3d 1280 (2005), *rev. denied*, 158 Wn.2d 1008 (2006) ..... 4

**Statutes**

RCW 46.61.020 ..... 1, 3, 6

RCW 9A.76.175..... 1, 3, 5

**Other Authorities**

WPIC 120.04..... 5

**A. ASSIGNMENTS OF ERROR**

None.

**B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR**

1. Whether the misdemeanor under RCW 46.61.020, refusal to give information to an officer, is a concurrent statute with the gross misdemeanor under RCW 9A.76.175, making a false statement to a public servant, where the gross misdemeanor has the additional elements of knowledge and materiality such that the defendant has to know that the statement is false and material whereas the misdemeanor does not require such proof.

**C. FACTS**

On September 10, 2008 Appellant Sal Ou was charged with Criminal Impersonation in the First Degree, in violation of RCW 9A.60.040, Driving While License Suspended in the First Degree, in violation of RCW 46.20.342(1)(A) and Ignition Interlock Device Violation, in violation of RCW 46.20.740 for acts he committed on September 5, 2008. CP 45-47. During the course of his jury trial the information was amended to change count I, Criminal Impersonation, to False Statement, in violation of RCW 9A.76.175. CP 39-40; RP 57-73. Ou was convicted by the jury on all counts of the amended information. CP 19-20.

At trial Deputy Bensen of the Whatcom County Sheriff's Office testified that while on duty September 5, 2008 he came in contact with Sal

Ou during a traffic stop. He had observed Ou's vehicle at a stop sign and learned that the registered owner of the vehicle, Sal Ou, had had his license revoked and had an ignition interlock device requirement. RP 44-46. After stopping the car, Bonsen asked the driver, Ou, for his license, registration and insurance. RP 46. Ou told Bonsen that he didn't have any identification with him, and when Bonsen asked for his name, Ou said that it was Samlaey An, and spelled the name for Bonsen. RP 46, 47. When Bonsen asked for his date of birth, Ou responded that he didn't have the registration for the car. RP 47. When Bonsen asked again for his date of birth, Ou again responded that he didn't have the registration. Id.

When Ou gave Bonsen the title to the car, Bonsen noticed that the title was in Ou's name. RP 47. Bonsen asked Ou if he was Sal Ou and if he was the registered owner of the car. Ou admitted that he was. RP 47. Bonsen then placed Ou under arrest and read him his rights, which Ou waived. RP 47-48. Ou told Bonsen that the name that he had given Bonsen, An, was the name of a friend of his in Seattle. RP 48. He also said that he gave Bonsen a false name because he knew his license was revoked and that he had warrants, and that he didn't want to be arrested. Id. Ou also told the officer that he didn't have an ignition interlock device on the car because he didn't drink and drive anymore. RP 48, 52.

When Bensen searched the car he found a Washington identification card for Ou, contrary to Ou's earlier statement that he didn't have one with him. RP 50, 54. Bensen did not find an interlock device on the car. RP 51.

Ou stipulated that he was required to have an interlock device and a certified copy of his driving record was entered into evidence showing that Ou's license was revoked in the first degree on September 5, 2008. RP 48-50.

After the State rested and the information was amended, Ou testified that he had been driving, but that when the deputy asked his name, he said Samlaey, but also gave the officer his wallet, containing his identification. RP 83-84. He testified that he admitted to the deputy that he was the registered owner, Sal Ou, and that his license was revoked, but he denied telling the deputy that he gave a different name because he was revoked. RP 86.

**D. ARGUMENT**

Ou asserts that he should have been charged with the more specific statute of refusal to give information to an officer, under RCW 46.61.020, because that statute is concurrent with the making of a false statement to a public servant statute under RCW 9A.76.175. The two statutes, however, are not concurrent because making a false statement requires that the

statement be material, *i.e.*, reasonably likely to be relied upon by the officer in the discharge of his or her duties, and that the defendant know that it is material. As the general statute of making a false statement is not always violated when the statute of refusal to give information to an officer is violated, Ou was properly charged with making a false statement.

Under the rules of statutory construction, where two statutes are concurrent the State may only charge the defendant with the more specific statute. State v. Presba, 131 Wn. App. 47, 52, 126 P.3d 1280 (2005), *rev. denied*, 158 Wn.2d 1008 (2006). Statutes are concurrent if the more specific statute punishes the same conduct as the more general statute such that the general statute is violated every time the more specific statute is violated. *Id.* “In order to determine whether two statutes are concurrent, [the court] examine[s] the elements of each statute to determine whether a person can violate the special statute without necessarily violating the general statute. State v. Heffner, 126 Wn. App. 803, 808, 110 P.3d 219 (2005). A difference in the mens rea elements will preclude statutes from being concurrent. *See, State v. Karp*, 69 Wn. App. 369, 848 P.2d 1304, *rev. denied*, 122 Wn.2d 1005 (1993) (second degree assault and unlawful display of a weapon were not concurrent because second degree assault required proof that the offense was committed knowingly).

The statutes here are not concurrent. The statute regarding making a false statement provides:

A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. "Material statement" means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties.

RCW 9A.76.175. Under the statute, and as charged in this case, in addition to proving that the defendant made a false statement to a public servant, the State had to prove that the statement was material, and that the defendant knew that the statement was false and knew that it was material. WPIC 120.04<sup>1</sup>; CP 37 (Inst. No. 14).

The criminal offense of refusing to provide information to a police officer provides:

It is unlawful for any person while operating or in charge of any vehicle to refuse when requested by a police officer to give his or her name and address and the name and address of

---

**<sup>1</sup> WPIC 120.04 Making a False or Misleading Statement To a Public Servant—Elements**

To convict the defendant of the crime of making a false or misleading statement to a public servant, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about \_\_\_\_\_, the defendant made a false or misleading statement to a public servant;
- (2) That the statement was material;
- (3) That the defendant knew both that the statement was material and that it was false or misleading; and
- (4) That this act occurred in the *[State of Washington][City of][County of]*.

the owner of such vehicle, or for such person to give a false name and address ...

RCW 46.61.020. Under that provision of the statute the State need only prove that the defendant gave a false name to an officer (or refused to provide his/her name upon the officer's request), in addition to proving that the defendant was in operation of a vehicle at the time the officer made the request. There is no requirement that the State prove that the false name provided was "material," i.e., reasonably likely to be relied upon by the officer in the discharge of his/her duties, or to prove that the defendant *knew* that the false name was reasonably likely to be relied upon by the officer in the discharge of his/her duties.

It is the difference in the elements, the materiality of the statement and knowing mens rea, that warrants the difference in penalties between the two statutes. As the refusal to give information statute does not have those elements, it is possible to violate the refusal to give information statute without violating the false statement statute. For example, a driver could provide a false name like "Bozo the Clown," which would not be reasonably likely to be relied upon by the officer. Or the circumstances could be such that the driver might not know that it was reasonably likely that the officer would rely on the false name he gave, *e.g.*, where the officer is investigating a passenger.

In this case, Ou did not just give the deputy a false name when the deputy requested his name. Ou first told the deputy that he did not have identification with him, when he in fact did. He ignored the deputy's requests for his date of birth, choosing to reply instead that he did not have the registration certificate. He also told the deputy afterwards that he knew his license was revoked and that he had warrants out for his arrest, and that he gave him a false name because he did not want to be arrested. These additional circumstances were proof that the false name Ou gave to the deputy was material and that Ou, in addition to knowing that the name he gave was false, knew that the false name was material. Given his status and his knowledge of his status, Ou knew that it was reasonably likely that the deputy would run his name and if he gave him his true name, that the deputy would discover the warrants and determine that his license was suspended and arrest him. Under these circumstances, Ou was charged properly with the gross misdemeanor of making a false statement to a public servant.

**E. CONCLUSION**

For the foregoing reasons, the State respectfully requests that the appeal be denied and Ou's conviction for False Statement be affirmed.

Respectfully submitted this 11<sup>th</sup> day of January, 2010.

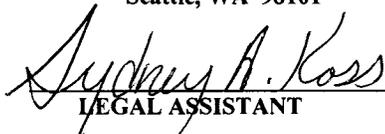


HILARY A. THOMAS, WSBA#22007  
Appellate Deputy Prosecuting Attorney  
Attorney for Respondent

**CERTIFICATE**

I certify that on this date I placed in the mail a properly stamped and addressed envelope, or caused to be delivered, a copy of the document to which this Certificate is attached to this Court and Appellant's attorney, Vanessa Mi-Jo Lee, addressed as follows:

Washington Appellate Project  
1511 Third Avenue, Suite 701  
Seattle, WA 98101

 01/12/2010  
LEGAL ASSISTANT                      DATE