

67313-1

67313-1

NO. 67313-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

KEONTE BEAVER,

Appellant.

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2012 MAR 29 PM 2:23

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL J. TRICKEY

**BRIEF OF RESPONDENT**

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

BRIDGETTE E. MARYMAN  
Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000

TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
1. PROCEDURAL FACTS .....	1
2. SUBSTANTIVE FACTS .....	2
C. <u>ARGUMENT</u> .....	4
1. SUFFICIENT EVIDENCE SUPPORTS BEAVER'S CONVICTION FOR MAKING A FALSE STATEMENT TO A PUBLIC SERVANT .....	4
2. BEAVER HAS FAILED TO PROVE THAT THE STATUTE PROHIBITING FALSE STATEMENTS TO PUBLIC SERVANTS IS UNCONSTITUTIONALLY VAGUE .....	10
D. <u>CONCLUSION</u> .....	17

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Grayned v. City of Rockford, 408 U.S. 104,  
92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972)..... 11

Terry v. Ohio, 392 U.S. 1,  
88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)..... 14

Washington State:

City of Bellevue v. Acrey, 37 Wn. App. 57,  
678 P.2d 1289, reversed on other grounds,  
103 Wn.2d 203, 691 P.2d 957 (1984)..... 15, 16

Spokane v. Douglass, 115 Wn.2d 171,  
795 P.2d 693 (1990)..... 12

State v. Clark, 48 Wn. App. 850,  
743 P.2d 822 (1987)..... 7

State v. Fiser, 99 Wn. App. 714,  
995 P.2d 107 (2000)..... 4, 5

State v. Huff, 111 Wn.2d 923,  
767 P.2d 572 (1989)..... 11

State v. Kennedy, 107 Wn.2d 1,  
726 P.2d 445 (1986)..... 14

State v. Lalonde, 35 Wn. App. 54,  
665 P.2d 421 (1983)..... 14

State v. Salinas, 119 Wn.2d 192,  
829 P.2d 1068 (1992)..... 4

State v. Smith, 111 Wn.2d 1,  
759 P.2d 372 (1988)..... 12

<u>State v. Watson</u> , 160 Wn.2d 1, 154 P.3d 909 (2007).....	11
<u>State v. White</u> , 97 Wn.2d 92, 640 P.2d 1061 (1982).....	12, 13, 14, 15, 16
<u>State v. Williams</u> , 171 Wn.2d 474, 251 P.3d 877 (2011).....	14

### Constitutional Provisions

#### Federal:

U.S. Const. amend. XIV .....	11
------------------------------	----

### Statutes

#### Washington State:

BCC 10.16.030.....	15
Former RCW 9A.76.020.....	13, 15
RCW 7.80.040.....	6
RCW 7.80.070.....	6
RCW 9A.04.110 .....	5, 13
RCW 9A.08.010 .....	8, 9
RCW 9A.56.040 .....	13
RCW 9A.60.040 .....	13
RCW 9A.68.010 .....	13
RCW 9A.68.020 .....	13
RCW 9A.68.040 .....	13

RCW 9A.76.020 .....	14
RCW 9A.76.175 .....	1, 7
RCW 9A.76.180 .....	13
RCW 9A.80.010 .....	13
RCW 81.112.210.....	6
RCW 81.112.220.....	2

Rules and Regulations

Washington State:

CrR 3.6.....	1, 7
--------------	------

Other Authorities

Seattle Times Staff, <u>Sound Transit approves light-rail fares, but the honor system will apply</u> , Seattle Times, March 26, 2009 (available at <a href="http://seattletimes.nwsources.com/html/localnews/2008930875_weblightrail26m.html">http://seattletimes.nwsources.com/html/localnews/2008930875_weblightrail26m.html</a> ) .....	2
WPIC 120.04.....	9

**A. ISSUES PRESENTED**

1. Whether sufficient evidence supports Beaver's conviction for making a false statement to a public officer where Beaver gave a false name to a transit enforcement officer after failing to provide valid fare.

2. Whether Beaver has failed to establish that RCW 9A.76.175 is unconstitutionally vague where a person of common intelligence would understand that a fare enforcement officer is a public servant.

**B. STATEMENT OF THE CASE**

1. PROCEDURAL FACTS.

Juvenile respondent Keonte Beaver was charged by information with two counts of making a false statement to a public servant. CP 54-55. The case proceeded by way of a bench trial in May of 2011. Beaver filed a CrR 3.6 motion, challenging the investigatory stop. CP 13-27. The trial court denied Beaver's motion to suppress. CP 49-51. The court found Beaver guilty of making a false statement to Sound Transit Fare Enforcement Officer Willet, as charged in count II, but found him not guilty of making a false statement to King County Deputy Adams, as

charged in count I. CP 41-44. The court imposed the \$75 victim penalty assessment, but no further sanctions. CP 36-38.

## 2. SUBSTANTIVE FACTS.

Sound Transit contracts with Securitas to provide security and fare enforcement services for Link light rail. RP<sup>1</sup> 58-59. Brett Willet works for Securitas and has worked as a light rail fare enforcement officer since May of 2010.<sup>2</sup> RP 81. When a passenger is unable to provide valid fare, Willet can issue a civil infraction under RCW 81.112.220. RP 60.

On August 6, 2010, Fare Enforcement Officer Willet and his partner, Benjamin Hill, boarded a train and instructed all of the passengers to present proof of fare payment. RP 59, 65. Keonte, Malcolm, and Kesean Beaver provided Willet with Metro bus transfers. RP 65. Willet informed them that transfers were no

---

<sup>1</sup> The verbatim report of proceedings consists of one volume, which will be referred to as RP.

<sup>2</sup> In his opening brief, Beaver repeatedly refers to Willet as a "ticket collector." No evidence suggests that Willet's job was to collect tickets. Indeed, Link light rail stations do not have ticket gates or collection sites. Rather, passengers purchase tickets or passes prior to boarding the train and are subject to spot checks for fare enforcement. See Seattle Times Staff, Sound Transit approves light-rail fares, but the honor system will apply, Seattle Times, March 26, 2009 (available at [http://seattletimes.nwsources.com/html/localnews/2008930875\\_weblightrail26m.html](http://seattletimes.nwsources.com/html/localnews/2008930875_weblightrail26m.html)).

longer accepted and instructed them to leave the train at the next stop. RP 66. Once off the train, Willet asked Beaver and his friends to provide identification; they each denied having any identification card. RP 71. Willet then asked Beaver for his name and date of birth. RP 68. Beaver replied that his name was Kinds M. Marty, and that his date of birth was June 22, 1995.<sup>3</sup> RP 68, 70. He claimed that he did not know his address because he had recently been released from juvenile detention. RP 70. Malcolm and Kesean also gave false names. CP 42.

Because he had no way of verifying Beaver's identity, Willet called for back-up from Sound Transit Police. RP 72. Deputy Leland Adams arrived approximately ten minutes later. RP 72. Beaver initially told Adams that his name was Marty Kinds. RP 93. Adams cautioned Beaver that he could be charged with a crime for lying and asked him to sit in the patrol car while he tried to confirm his identity. RP 93-94. Shortly after, Beaver told Adams his true name and birth date. RP 94. When Adams asked Beaver to identify Kesean, Beaver replied that his name was also "Marty." RP 98. Because he could not tell whether Beaver was lying about Kesean's name, he allowed all three males to leave. RP 99. After

---

<sup>3</sup> Beaver's birth date is June 23, 1995. CP 42.

about an hour of further research, Adams determined Kesian's true name and learned that Kesian had an outstanding warrant. RP 99.

**C. ARGUMENT**

1. SUFFICIENT EVIDENCE SUPPORTS BEAVER'S CONVICTION FOR MAKING A FALSE STATEMENT TO A PUBLIC SERVANT.

Beaver challenges his conviction for making a false statement to a public servant, arguing that the State failed to prove that Fare Enforcement Officer Willet was a public servant, that Beaver knew he was a public servant, or that Beaver knew his false statement was material. Beaver's argument should be rejected because the State introduced sufficient evidence to prove each element beyond a reasonable doubt.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that reasonably can be drawn therefrom." Id. Circumstantial and direct evidence are equally reliable. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d

107 (2000). A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. Id. at 719. The appellate 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.

A person is guilty of making a false statement to a public servant if he “knowingly makes a false or misleading material statement to a public servant.” A public servant is defined as:

any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function.

RCW 9A.04.110(23) (emphasis added). A government function “includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government.” RCW 9A.04.110(9).

Beaver first argues that insufficient evidence demonstrates that Willet was a public servant. Beaver’s argument fails because sufficient evidence supports that Willet was performing a government function on August 6, 2010.

Regional transit agencies like Sound Transit may establish a schedule of fines and penalties for civil infractions issued for failure to pay the required fare or failure to provide proof of fare payment. RCW 81.112.210(1). Transit agencies "may designate persons to monitor fare payment who are equivalent to and are authorized to exercise all the powers of an enforcement officer, defined in RCW 7.80.040. An agency is authorized to employ personnel to either monitor fare payment, or to contract for such services, or both." RCW 81.112.210(2). Fare enforcement officers may "(i) request proof of payment from passengers; (ii) request personal identification from a passenger who does not produce proof of payment when requested; (iii) issue a citation under RCW 7.80.070; and (iv) request that a passenger leave the regional transit authority facility when the passenger has not produced proof of payment."

Id.

Contrary to Beaver's contention, the definition of "public servant" is not limited to government employees. In fact, the definition specifically includes jurors, advisors, consultants or any other person performing a government function, all of whom are unlikely to be government employees. The question is whether the evidence showed that Willet was designated to perform a

government function. Sound Transit contracted with Willet's employer, Securitas, to provide fare enforcement services. It was Willet's job to monitor fare payment, identify people who did not have adequate fare, and issue citations. As the trial court found, Willet was clearly performing a government function—fare enforcement. RP 155.<sup>4</sup> As such, the evidence supported the trial court's conclusion that Willet was a public servant.<sup>5</sup>

Beaver next argues that sufficient evidence did not support the trial court's conclusion that Beaver knew that his statement was material. A statement is material if it is "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. A person knows or acts knowingly when he or she is aware of a fact, circumstances or result described by a statute defining an offense; or he or she has

---

<sup>4</sup> The written findings incorporate the court's oral findings. CP 44.

<sup>5</sup> Although not dispositive, Beaver implicitly acknowledged that Willet was acting on behalf of the government in his CrR 3.6 challenge to Willet's investigatory stop. See State v. Clark, 48 Wn. App. 850, 856, 743 P.2d 822 (1987) (for purposes of motion to suppress based on unlawful search or seizure, the critical factors in determining whether a private person acts as a government agent include whether the government knew of and acquiesced in the intrusive conduct and whether the party performing the search intended to assist law enforcement efforts or to further his own ends).

information which would lead a reasonable person in the same situation to believe that facts exist. RCW 9A.08.010(1)(b).

Here, Beaver had been approached by Fare Enforcement Officer Willet and asked for proof of fare. When Beaver presented a Metro transfer, Willet informed him that the transfer was not valid fare, and instructed Beaver and his companions to leave the train. Once off the train, Willet asked Beaver for his identification. When Beaver replied that he did not have identification, Willet asked for his name. Willet was in full uniform, which included patches with the words "Sound Transit" and "fare enforcement." RP 75. Under these circumstances, the trial court was justified in finding that Beaver knew that Willet was reasonably likely to rely upon the false name in discharging his duties as a fare enforcement officer. Indeed, had Beaver not believed that his name was material to Willet's work, there would be no reason to give a false name. Any reasonable person in such a situation would believe that a fare enforcement officer would rely on the name that they provide.

Finally, Beaver argues that the State failed to prove that he knew Willet was a public servant. Beaver offers no authority to support his claim that the State was required to prove that Beaver

knew Willet was a public servant. Indeed, the pattern jury instruction does not include such an element:

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 (date), 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.

WPIC 120.04.

However, even if the State were required to prove that Beaver knew Willet was a public servant, sufficient evidence supports a finding that Beaver, or any other reasonable person in his situation, would know that Willet was a public servant. A person knows or acts knowingly when he or she is aware of a fact or he has information which would lead a reasonable person in the same situation to believe that fact. RCW 9A.08.010(1)(b). Willet and his partner wore uniforms that identified them as Sound Transit Fare

Enforcement Officers.<sup>6</sup> When they boarded the train, they instructed all passengers to present proof of fare payment, and proceeded to confirm that each passenger had valid fare. Any reasonable person would believe that Willet and his partner were performing a government function. Moreover, Beaver's behavior indicates that he recognized Willet's authority. When Willet asked for his fare, Beaver provided a transfer. When Willet directed Beaver to leave the train, Beaver complied. Had Beaver not believed that Willet was performing a government function, he likely would have refused to comply with Willet's instructions. Sufficient evidence supports the fact that Beaver knew that Willet was a public servant.

2. BEAVER HAS FAILED TO PROVE THAT THE STATUTE PROHIBITING FALSE STATEMENTS TO PUBLIC SERVANTS IS UNCONSTITUTIONALLY VAGUE.

Beaver argues that the statute prohibiting making false statements to public servants is unconstitutionally vague. Beaver's argument should be rejected because the statute gives notice of

---

<sup>6</sup> Willet wore the same uniform during his testimony and the trial court was able to assess how a reasonable person would perceive that uniform. RP 59.

what conduct is proscribed and does not encourage arbitrary enforcement.

The due process clause of the Fourteenth Amendment requires that statutes provide fair notice of the conduct they proscribe. State v. Watson, 160 Wn.2d 1, 6, 154 P.3d 909 (2007). A statute fails to provide the required notice if it either forbids or requires the doing of an act in terms so vague that people of common intelligence must necessarily guess at its meaning and differ as to its application. Watson, 160 Wn.2d at 7. Because it is assumed that people are able to choose between lawful and unlawful conduct, it is necessary “that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that [the person] may act accordingly.” Grayned v. City of Rockford, 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972). A statute is not unconstitutional if the general area of conduct against which it is directed is made plain. State v. Huff, 111 Wn.2d 923, 928-29, 767 P.2d 572 (1989).

Beaver has a heavy burden to meet the above standard. A reviewing court will presume a statute is constitutional. Watson, 160 Wn.2d at 11. A party challenging a statute's constitutionality bears the burden of proving its unconstitutionality beyond a

reasonable doubt. Spokane v. Douglass, 115 Wn.2d 171, 177, 795 P.2d 693 (1990). A statute is not unconstitutionally vague if the defendant's conduct falls squarely within its prohibitions. State v. Smith, 111 Wn.2d 1, 10, 759 P.2d 372 (1988).

Beaver's vagueness argument hinges on the definition of a public servant. He argues that if the statute can be applied to his false statement to Fare Enforcement Officer Willet, the statute is unconstitutionally vague because Willet was employed by a private security company. Beaver offers no authority or argument to explain how application of the statute to his case renders the statute vague. A person of ordinary intelligence would understand that a fare enforcement officer--whether an employee of the transit agency or a private individual contracted by the transit agency--performs a government function.

Beaver relies on the Supreme Court's opinion in State v. White, 97 Wn.2d 92, 640 P.2d 1061 (1982) to support his claim that the definition of "public servant" is vague. Beaver's reliance on White is misplaced. In White, the Court struck down the first two sections of the statute at issue, which provided that a person was guilty of obstructing a public servant if he or she "(1) without lawful excuse shall refuse or knowingly fail to make or furnish any

statement, report, or information lawfully required of him by a public servant, or (2) in any such statement or report shall make any knowingly untrue statement to a public servant...." Id. at 95-96 (citing former RCW 9A.76.020). The Court classified the statute as a "stop and identify" statute, and held that the language at issue was unconstitutionally vague, explaining:

The problems with the statute before us are obvious. For example, when must a citizen answer inquiries, and when does he have "lawful excuse" not to answer? What is "lawfully required" in the way of reports or information? May any "public servant", as defined in RCW 9A.04.110(22), demand information or only those charged with investigating or enforcing laws and regulations? May any citizen be stopped at any time-or only when there is suspicious conduct, or in high crime areas, or only in the course of investigating a suspected or known crime? The possible applications and interpretations are nearly endless.

Id. at 99.

Although the Court was concerned about the definition of "public servant," the opinion does not rest on that definition alone.<sup>7</sup> Instead, the Court's holding rests on the interplay of the phrases

---

<sup>7</sup> Had the opinion in White depended solely on the definition of "public servant," such a holding would have called into question the constitutionality of a number of statutes that reference the definition, including theft in the second degree (RCW 9A.56.040), criminal impersonation in the first degree (RCW 9A.60.040), bribery (RCW 9A.68.010), receiving unlawful compensation (RCW 9A.68.020), trading in public office (RCW 9A.68.040), intimidating a public servant (RCW 9A.76.180), and official misconduct (RCW 9A.80.010), none of which have since been held to be unconstitutionally vague.

"lawfully required," "lawful excuse," and "public servant." Moreover, as the Court has since acknowledged, vagueness was not the sole concern in White; rather, the Court was particularly concerned that the "stop and identify" statute at issue expanded law enforcement's ability to stop citizens. See State v. Williams, 171 Wn.2d 474, 481, 251 P.3d 877 (2011) (noting that in White, "vagueness was not our only concern...[w]e were also concerned that the stop and identify statute was an unwarranted extension of the "Terry<sup>8</sup> Stop," which required the officer to provide specific and articulable facts that gave rise to a reasonable suspicion that there was criminal activity afoot."); State v. Kennedy, 107 Wn.2d 1, 16, 726 P.2d 445 (1986) (noting that in White, "we invalidated a statute on the grounds it gave the police more authority to stop, detain, and question citizens than was provided for by Terry"). White does not hold that the definition of "public servant" alone is unconstitutionally vague.

Indeed, in State v. Lalonde, 35 Wn. App. 54, 57, 665 P.2d 421 (1983), this Court addressed whether the phrase "public servant," as used in RCW 9A.76.020(3), was unconstitutionally

---

<sup>8</sup> Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

vague. Acknowledging White, this Court held that the definition of "public servant," as used in the statute prohibiting obstruction of a public servant, was not vague. Id.

This Court's opinion in City of Bellevue v. Acrey, 37 Wn. App. 57, 62-63, 678 P.2d 1289, reversed on other grounds, 103 Wn.2d 203, 691 P.2d 957 (1984), is also instructive. Following a traffic collision, the defendants lied to a police officer about who had been driving the car. Id. at 59. They were charged with obstructing a public officer, under Bellevue City Code 10.16.030, which provided, "It is unlawful for any person to make any willfully untrue, misleading or exaggerated statement, or to willfully hinder, delay or obstruct any public officer in the discharge of his official powers or duties." Id. at 61. Relying on White, the defendants argued that the Bellevue City Code was also unconstitutionally vague. This Court distinguished the case from White, holding that the ordinance "does not require anyone, as did the [former RCW 9A.76.020], to make any statement when asked to do so by a 'public servant.'" The Bellevue ordinance only makes it illegal to

make a 'willfully untrue, misleading or exaggerated statement' to a public officer." Id. at 62. This Court further held that the Bellevue ordinance was not the sort of "standardless stop-and-identify statute" at issue in White. Id.

Just as in Acrey, the statute at issue is not a standardless stop-and-identify statute that encourages arbitrary stops; nor does it require anyone to make a statement when asked by a public servant. Rather, it prohibits knowingly making a materially false statement to a public servant. The fact that this case involves a private contractor working as a public servant does not mean that the statute fails to give adequate notice of the prohibited conduct or encourages arbitrary enforcement.<sup>9</sup> A person of ordinary intelligence would understand that a fare enforcement officer was performing a government function. Beaver has not met his burden of showing how application of the term "public servant" to Fare Enforcement Officer Willet renders the statute vague.

---

<sup>9</sup> Beaver cannot show that he was aware that Willet was a private contractor.

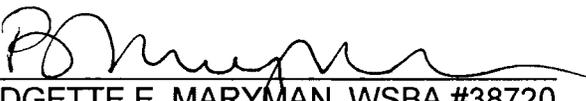
D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Beaver's conviction.

DATED this 28 day of March, 2012.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
BRIDGETTE E. MARYMAN, WSBA #38720  
Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

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 Lila Silverstein, 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. KEONTE BEAVER, Cause No. 67313-1-I, 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.

U Brame  
Name

Done in Seattle, Washington

3/29/12  
Date