

No. 63454-2-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

SAL OU,

Appellant.

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

The Honorable Ira J. Uhrig

APPELLANT'S REPLY BRIEF

VANESSA M. LEE
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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A. ARGUMENT

REFUSAL TO GIVE INFORMATION TO A POLICE OFFICER IS CONCURRENT TO AND MORE SPECIFIC THAN FALSE STATEMENT TO A PUBLIC SERVANT, REQUIRING DISMISSAL OF MR. OU'S CONVICTION.

In analyzing two criminal statutes, if the general statute is violated every time the special statute is violated, then the statutes are concurrent and the special statute supersedes the general. *In re Personal Restraint of Taylor*, 105 Wn.2d 67, 70, 711 P.2d 345 (1985). Here, although Mr. Ou was charged with and convicted of "making a false or misleading statement to a public servant" (RCW 9A.76.175), the State was required to charge him with the more specific statute, "refusal to give information to or cooperate with an officer" (RCW 46.61.020).

1. Because the information contemplated by both statutes must be material, the statutes are concurrent. The State correctly points out that RCW 9A.76.175 requires proof that the false statement was material. SRB at 6. Therefore, the State argues, it would be possible to violate the more specific statute without violating the general statute. The State's logic is wrong.

First, the giving of a false name in violation of RCW 46.61.020 is always material. The first premise of RCW 46.61.020

is that the person is “operating or in charge of” a vehicle. Independently of that statute, anyone operating or driving a motor vehicle must be in possession of a valid, government-issued driver’s license or permit.¹ The only exceptions to this requirement (persons operating special highway construction equipment, farm equipment, or locomotive) are easily and obviously identifiable by the type of motor vehicle specified, and not relevant here. RCW 46.20.025(3)-(5). The requirement of a valid driver’s license or permit is so basic as to be widespread common knowledge. Thus, the name of anyone driving a car is always de facto material.

Second, materiality is included in the elements of RCW 46.61.020. RCW 46.61.020 does not have to specify “material” information as an element of the offense, as RCW 46. 9A.76.175 does, because it specifies certain types of information,² all of which actually are material to the lawful operation of a motor vehicle.

¹ See RCW 46.20.001 (“No person may drive a motor vehicle upon a highway in this state without first obtaining a valid driver’s license issued to Washington residents[.]”); RCW 46.20.15 (driving without a valid Washington driver’s license is a traffic infraction); RCW 46.20.342(driving with a canceled, revoked, or suspended driver’s license or identocard is a traffic infraction); RCW 46.20.025(1) (exemption for member of the United States Armed Forces or the National Guard of any state, if licensed by the military to operate an official motor vehicle); RCW 46.20.025(2) (exemption for nonresident driver with a valid driver’s license or learner’s permit issued by his or her home state or country).

² To wit: name, address, certificate of registration, insurance identification card, or driver’s license. RCW 46.61.020.

That is why the Legislature chose them. Other types of information, which might not be material, are simply not covered by this statute (and presumably would be properly charged under the general statute). Materiality is not an element of RCW 46.61.020 on its own; instead it is included in another element – the specific types of information covered by the statute.

2. It is impossible to violate RCW 46.61.020 without also violating RCW 9A.76.175. The State goes to great lengths to devise a situation in which one could commit the simple misdemeanor without also violating the gross misdemeanor. In order to posit such a situation, the State was forced to suggest the absurd scenario of a person giving the name “Bozo the Clown.” SRB at 6. This Court must avoid an interpretation that produces absurd results because the legislature is presumed not to have intended absurd results. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). Although absurd, the “Bozo the Clown” scenario would still violate the more general statute. An officer in that situation would not rely on the information that the driver’s name was “Bozo the Clown.” The officer would, however, rely on the false name and the very safe assumption that the driver was refusing to say his real

name, making it material to the discharge of his or her official duties.

The other scenario offered by the State – the officer is investigating the passenger, so the driver believes his or her name is immaterial – is illogical. SRB at 6. Any reasonable driver knows that he or she is required to possess a valid license, regardless of any other investigations or suspected offenses. Therefore, any reasonable driver knows that his or her true name will likely be relied upon by the police officer who requested it. The State could not imagine any reasonable example of violating only the special statute but not the general, because none exist.

3. Mr. Ou's conduct amounted to a clear-cut violation of both statutes, requiring the State to charge him with the special statute. Here, Deputy Bensen contacted Mr. Ou while he was operating a motor vehicle and therefore within the purview of RCW 46.61.020. RP 44. Deputy Bensen asked Mr. Ou for his license and registration; Mr. Ou responded by saying he did not have identification. RP 46-47. Mr. Ou's statement was false, but it was also a refusal to produce the requested documents, in violation of RCW 46.61.020. RP 46-47. He told the deputy his name was

Samlaey An, in clear violation of RCW 46.61.020. RP 46-47.³

These facts amount to a straightforward violation of RCW 46.61.020.

It is true, as the State asserts, that Mr. Ou knew his name was material. However, this only underscores the point that the two statutes are concurrent. The driver's name is critical under either statute – as material information under RCW 9A.76.175 or as a specifically named element under RCW 46.61.020. Neither materiality nor the knowledge of materiality can change the fact that RCW 46.61.020 is the more specific statute.

The Supreme Court has held, in no uncertain terms, “the creation of a specific statute shows a legislative intent that persons who perform the type of acts to which it is directed... should be punished under the specific statute or not at all.” *State v. Shriner*, 101 Wn.2d 576, 583, 681 P.2d 237 (1984). Here, the Legislature intended that conduct like Mr. Ou's be dealt with under Chapter 46.61, “Rules of the Road.” Mr. Ou should be punished under that statute or not at all.

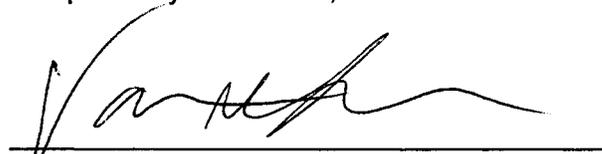
³ Mr. Sao also ignored the deputy's requests for his birthdate, but this conduct violated neither statute – silence is not a false statement, and date of birth is not among the types of information specified in the special statute. RP 46-47.

B. CONCLUSION

For the reasons presented above and in his Opening Brief, Mr. Ou respectfully requests this Court reverse and his conviction for false statement to a public servant.

DATED this 11th day of February, 2010.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Vanessa M. Lee', written over a horizontal line.

VANESSA M. LEE (WSBA 37611)
Washington Appellate Project – 91052
Attorneys for Appellant

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	311 GRAND AVENUE		
	BELLINGHAM, WA 98225		

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Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
☎(206) 587-2711