

No. 67313-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

KEONTE B.,

Juvenile Appellant.

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

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The State presented insufficient evidence to convict Keonte of knowingly making a false or misleading material statement to a public servant.

2. RCW 9A.76.175 and RCW 9A.04.110(23) are unconstitutionally vague.

3. The juvenile court erred in entering Finding of Fact 2 to the extent it implies Brett Willet was employed by the government rather than by a private security firm.

4. The juvenile court erred in concluding the State proved the elements of count 2 beyond a reasonable doubt (Conclusions of Law II, III(1)).

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. To convict a person of knowingly making a false material statement to a public servant, the State must prove the person lied to a public servant, that the person knew the listener was a public servant, and that the person knew the listener was reasonably likely to rely on the misstatement in the discharge of his or her duties. In this case, appellant Keonte B. gave a false name to a light-rail ticket collector employed by a private security firm. The ticket collector was wearing a white uniform with a "Securitas" badge and

a tool belt with no weapons, and did not identify himself as a public servant. The ticket collector did not explain that he was planning to issue a citation and needed Keonte's name for that purpose. Did the State fail to prove Keonte knowingly made a false material statement to a public servant?

2. A statute is unconstitutionally vague if it does not provide adequate notice of what conduct is prohibited or allows for arbitrary enforcement. In State v. White,¹ the Washington Supreme Court struck down the 1982 "stop and identify" statute as unconstitutionally vague, and in so doing, noted that the statutory definition of "public servant" was "entirely too broad." The statutory definition of "public servant" used to convict Keonte is exactly the same as that at issue in White. Is the statute unconstitutionally vague?

C. STATEMENT OF THE CASE

On August 6, 2010, appellant Keonte B. was riding the Link light rail with two adults. RP 65. Brett Willet was working as a ticket collector on the train that day. Willet is employed by a private company called Securitas, which has a contract with Sound Transit to handle fare validation on the light rail. RP 22, 58.

¹ 97 Wn.2d 92, 99, 640 P.2d 1061 (1982).

When Willet asked Keonte and his companions to present proof of fare payment, they gave him their bus transfers. RP 65. Willet informed them that while bus transfers used to be valid on the light rail, they were no longer accepted. RP 65. Keonte and his friends said they were unaware of the change and unfamiliar with the current system. RP 66.

Willet ordered the three to exit the train with him at the next station, but did not explain the payment system. RP 67. Instead, he asked them to identify themselves. RP 68. Keonte told the officer his name was Kinds Marty. RP 68. He said he did not have an address. RP 70.

The ticket collector contacted the King County Sheriff's Office for help, and Keonte provided his true name to Deputy Leland Adams after Deputy Adams warned him it was a crime to lie to a police officer. RP 72, 94. After Deputy Adams was finished talking to Keonte and his companions, Willet notified them that they would be receiving citations for failure to pay the light rail fare. RP 80.

Although Keonte had already been removed from the train for failure to pay and would receive a citation for the infraction, the incident did not end there. The State charged Keonte in juvenile

court with two counts of making a false statement to a public servant: one count for giving a false name to the Securitas ticket collector and another for apparently failing to correct the false name his adult companion had given to Deputy Adams. RP 135; Supp. CP ___ (sub. no. 27).² The court found him not guilty as to the count involving Deputy Adams, but guilty on the count involving the ticket collector. RP 154-55; CP 43-44. Keonte appeals. CP 40.

D. ARGUMENT

1. THE STATE PRESENTED INSUFFICIENT EVIDENCE TO CONVICT KEONTE OF KNOWINGLY MAKING A FALSE OR MISLEADING MATERIAL STATEMENT TO A PUBLIC SERVANT.

a. Due Process requires the State to prove each element of the offense charged beyond a reasonable doubt. The State bears the burden of proving each element of the crime charged beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). A criminal defendant's fundamental right to due process is violated when a conviction is based upon insufficient evidence. Id.; U.S. Const. amend. XIV;

² The second amended information was apparently inadvertently attached to the "Order of Payment of Witness Expenses" when it was scanned by the superior court. Thus, there is no separate docket entry for it and it was not originally designated. A supplemental designation of clerk's papers has been filed to include this double document.

Const. art. I, § 3; City of Seattle v. Slack, 113 Wn.2d 850, 859, 784 P.2d 494 (1989). On appellate review, evidence is sufficient to support a conviction only if, “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 318, 99 S.Ct. 628, 61 L.Ed.2d 560 (1970); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

“The reasonable-doubt standard is indispensable, for it impresses on the trier of fact the necessity of reaching a subjective state of certitude on the facts in issue.” State v. DeVries, 149 Wn.2d 842, 849, 72 P.3d 748 (2003) (internal citations omitted). “[I]t is critical that our criminal law not be diluted by a standard of proof that leaves the public to wonder whether innocent persons are being condemned.” Id.

b. The State failed to prove that Willet was a public servant, that Keonte knew he was a public servant, or that Keonte knew the statement was material; each of these failures independently requires reversal. The statute under which Keonte was convicted 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. "Public servant," in turn, means:

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). This Court and the Supreme Court have held that uniformed police officers and judges are public servants under the statute. State v. Graham, 130 Wn.2d 711, 719, 927 P.2d 227 (1996) (police); State v. Burke, 132 Wn. App. 415, 421, 132 P.3d 1095 (2006) (police); State v. Stephenson, 89 Wn. App. 794, 950 P.2d 38, 808-09 (1998) (judges).

But Willet is not a public servant, and therefore Keonte's conviction cannot stand. Willet testified that he is an employee of a private company called Securitas Security Services. RP 22, 58. Securitas has a contract with Sound Transit, but Willet himself is not an "employee of government" or an advisor or consultant to government employees. RCW 9A.04.110(23); RP 22, 58.

Even if Willet does fall within the definition of "public servant" under the statute, the State failed to prove Keonte knew he was a public servant, as required for a conviction under RCW 9A.76.175. Keonte did not testify, and the circumstantial evidence showed that Willet looked like a private security guard, not a public servant. Indeed, the prosecutor conceded, "the security uniforms are bright white and don't look like any of the law enforcement uniforms ... used in the area." RP 116. "They – the badge is a – doesn't have any government office on it, it has Securitas, which is a private company" RP 116; see also RP 27-28 (Willet's testimony consistent with prosecutor's statements). Willet wore a "tool belt" which contained no gun, knife, baton, or weapon of any kind. RP 27, 116. In contrast, Deputy Adams – to whom Keonte quickly corrected his misstatement – was wearing a "King County Sheriff" badge and a visible firearm. RP 106-107; see Graham, 130 Wn.2d

at 723 (“public servant” and scienter requirements satisfied where police officers were in uniform, were armed, identified themselves as police officers, and defendant believed them to be police officers).³

Finally, the State failed to prove Keonte knew the misstatement was reasonably likely to be relied upon by Willet in the discharge of his duties, creating a third independent basis for reversal. See RCW 9A.76.175; State v. Godsey, 131 Wn. App. 278, 290-91, 127 P.3d 11 (2006). Willet did not notify Keonte that he was planning to issue a citation until after Keonte had already given his true name and address to Deputy Adams. RP 77-81. At the time Willet asked Keonte his name, Keonte did not know why a ticket collector would need or use the information. The ticket collector had just explained to him that bus transfers were not valid (despite the absence of signage so indicating), and had asked him to exit the train. RP 65-68. A person does not need to provide a name to buy a ticket, so when Willet then asked Keonte for his name, Keonte did not know his answer would be relied upon by Willet to perform his duties. At the very least, the State did not

³ The prosecutor in closing argument even hinted at the absence of knowledge regarding Willet’s status as a public servant: “In this case both these individuals are public servants, FEO Willet and Deputy Adams, clearly Deputy Adams.” RP 136 (emphasis added).

prove beyond a reasonable doubt that Keonte knew the statement was material.

In sum, the State failed to prove (1) that the Securitas employee was a “public servant,” (2) that Keonte knew he was a public servant, or (3) that Keonte knew his statement was material. Each of these failures independently requires reversal.

c. Reversal and dismissal is the appropriate remedy. In the absence of evidence from which a rational trier of fact could find beyond a reasonable doubt Keonte committed the offense for which he was convicted, the judgment may not stand. State v. Spruell, 57 Wn. App. 383, 389, 788 P.2d 21 (1990). The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution prohibits a second prosecution for the same offense after a reversal for lack of sufficient evidence. State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996) (citing North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969)). The appropriate remedy for the error in this case is dismissal of the conviction based upon the State’s failure to prove Keonte knowingly made a false or misleading material statement to a public servant.

2. THE STATUTE PROHIBITING FALSE STATEMENTS TO PUBLIC SERVANTS IS UNCONSTITUTIONALLY VAGUE.

a. A statute is unconstitutionally vague if it does not provide adequate notice of what conduct is proscribed or allows for arbitrary enforcement. Due process requires that individuals (1) receive adequate notice of what conduct is proscribed and (2) are protected from arbitrary enforcement. U.S. Const. amend. XIV; State v. Moultrie, 143 Wn. App. 387, 396, 177 P.3d 776 (2008). Ordinary people must be able to “understand what is and is not allowed.” State v. Valencia, 169 Wn.2d 782, 791, 785, 239 P.3d 1059 (2010).

A statute that does not comport with these requirements is unconstitutionally vague. Kolender v. Lawson, 461 U.S. 352, 357, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983). Courts are “especially cautious in the interpretation of vague statutes when First Amendment interests are implicated.” Bellevue v. Lorang, 140 Wn.2d 19, 31, 992 P.2d 496 (2000); accord Kolender, 461 U.S. at 358.

b. The statute prohibiting false statements to public servants does not provide adequate notice of what conduct is proscribed and allows for arbitrary enforcement. “Stop and identify” statutes like the one at issue here are notoriously vague. In Kolender, for

example, the U.S. Supreme Court held a California statute requiring certain individuals to provide a “credible and reliable identification” to police officers was void for vagueness. Kolender, 461 U.S. at 353-54. In City of Columbus v. New, the Ohio Supreme Court invalidated an ordinance which provided, “No person shall knowingly make a false, oral or written, sworn or unsworn, statement to a law enforcement officer who is acting within the scope of his duties.” City of Columbus v. New, 1 Ohio St.3d 221, 223, 438 N.E.2d 1155 (1982). The court held the law “casts a net which is too large to be constitutionally permissible.” Id.

Furthermore, the statute failed to give adequate notice as to precisely what conduct was proscribed:

[I]t is unclear whether “knowingly” means only that the accused must have known that his/her statement was false in order to have violated the ordinance, or that the accused must have known that the statement was false and that the statement was made to a law enforcement officer, or that the accused knew that the statement was false, and that the statement was made to a law enforcement officer, and that the law enforcement officer was acting within the scope of the officer’s duties at the time of the rendering of the false statement.

Id. at 224 (emphases in original). The same infirmities exist in our statute if it can be applied to Keonte’s conduct in this case.

In State v. White, our supreme court struck down the then-existing “stop and identify” statute as unconstitutionally vague. State v. White, 97 Wn.2d 92, 99, 640 P.2d 1061 (1982). The statute in question made it a misdemeanor to “obstruct a public servant” by failing, “without lawful excuse”, to provide true information “lawfully required” of an individual by a “public servant”. Id. at 95 (citing RCW 9A.76.020(1) and (2) (1982)). The Court noted, “The problems with the statute before us are obvious.” Id. at 99. It explained that a determination of what information was “lawfully required” was subjective and that the term “lawful excuse” was “nowhere defined.” Id. at 100. The Court continued, “Beyond these difficulties, the RCW Title 9A definition of “public servant” is entirely too broad and encompasses nearly any person who is employed by government.” Id. at 100 (emphasis added). The statutory definition of public servant the Court condemned in White is exactly the same provision applied to convict Keonte in this case. Compare White, 97 Wn.2d at 100 (citing RCW 9A.04.110(22) (1982)) with RCW 9A.04.110(23) (2010).

In State v. LaLonde, this Court acknowledged that White “held that the term ‘public servant,’ as used in those sections of the statute, was too broadly defined.” State v. LaLonde, 35 Wn. App.

54, 58, 665 P.2d 421 (1983) (citing White, 97 Wn.2d at 100). But this Court held the term “is not overbroad as applied in this case to uniformed police officers.” Id. (emphasis added). In Keonte’s case, however, the complaining witness was not a uniformed police officer, and was not even a government employee. He was an employee of a private security company, wearing the uniform of a private company. If the “making a false statement to a public servant” statute can be applied to Keonte’s statements to this private employee, it is unconstitutionally vague. White, 97 Wn.2d at 100.

In sum, Keonte did not violate the statute at issue in this case, and if he did, the statute is unconstitutionally vague. This Court should accordingly reverse his conviction and dismiss the charge with prejudice.

E. CONCLUSION

Because the State failed to prove that Keonte knowingly made a false material statement to a public servant, Keonte respectfully requests that this Court reverse his conviction and dismiss the charge with prejudice. In the alternative, this Court should hold the statute at issue is unconstitutionally vague.

DATED this 28th day of November, 2011.

Respectfully submitted,



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Attorney for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 67313-1-I
)	
KEONTE B.,)	
)	
Juvenile Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF NOVEMBER, 2011, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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