

Supreme Court No. 88270-3  
(Court of Appeals No. 67313-1-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

KEONTE B.,

Juvenile Petitioner.

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PETITION FOR REVIEW

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**FILED**

JAN - 4 2013

CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON

CPB

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Keonte B. asks this Court to review the opinion of the Court of Appeals in *State v. K.L.B.*, No. 67313-1-I. A copy is attached as Appendix

A. The order denying reconsideration is attached as Appendix B.

B. ISSUES PRESENTED FOR REVIEW

1. In *State v. White*, 97 Wn.2d 92, 99, 640 P.2d 1061 (1982), this Court struck down Washington's "stop and identify" statute as unconstitutionally vague. Among other reasons, the Court noted "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. In this case, the Court of Appeals applied the definition to someone who is not even employed by government, holding Keonte was guilty of making a false statement to a public servant when he gave a false name to a light rail "fare enforcement officer" employed by a private security firm. The court rejected Keonte's argument that the statute was unconstitutionally vague if it could be applied to a private security firm employee. Does the Court of Appeals' opinion conflict with *White* and raise a significant issue of constitutional law, warranting review under RAP 13.4(b)(1) and (3)?

2. Keonte argued that not only was the definition of "public servant" unconstitutionally vague as applied, but also the "false statement"

statute was unconstitutionally vague because it was not clear whether the mens rea of “knowingly” applied to the word “public servant” or only to other elements of the statute. The Court of Appeals agreed with Keonte that the statute should be read such that “knowingly” applies to “public servant,” but did not publish its decision on this issue of first impression. Absent a published opinion on the issue, does this statute remain unconstitutionally vague, warranting review under RAP 13.4(b)(3)?

3. Issues of first impression regarding statutory construction are matters of substantial public interest that should be addressed by this Court. *See, e.g., State v. Moeurn*, 170 Wn.2d 169, 240 P.3d 1158 (2010); *State v. Engel*, 166 Wn.2d 572, 210 P.3d 1007 (2009). Should this Court grant review to decide whether the “making a false statement to a public servant” statute encompasses statements made to employees of private security firms contracted by government? RAP 13.4(b)(4).

4. No published Washington opinion addresses the question of whether the mens rea of “knowingly” in the false-statement statute applies to the “public servant” element or only to the other elements. The State in this case argued the mens rea does not apply to the “public servant” element. The Court of Appeals agreed with Keonte that it does, but did not publish its opinion on this issue of first impression. Should this Court

grant review to address this important issue of statutory construction that has never been addressed in a published opinion? RAP 13.4(b)(4).

C. STATEMENT OF THE CASE

On August 6, 2010, petitioner Keonte B. was riding the Link light rail with two adults. RP 65. Brett Willet was working as a ticket collector (“fare enforcement officer”) 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.

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 had until recently been 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; CP 54-55. 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. Over Keonte's objections that the Securitas employee was not a "public servant" under the statute, the juvenile court said, "he is performing a government function, so I think he is a public servant." RP 155.

Keonte appealed, arguing insufficient evidence supported his conviction because, inter alia, a private security firm employee is not a "public servant" within the meaning of the statute. The statute defines "public servant" as a government officer or employee or "any person participating as an advisor, consultant, or otherwise in performing a governmental function." RCW 9A.04.110(23). The State argued that the

Securitas employee was a public servant because he was “performing a government function,” without recognizing that the person performing the government function must be an advisor, consultant or something similar. Keonte also argued that if the statute could be applied to his statements to the Securitas employee, then it was void for vagueness under *White* and other cases.

The Court of Appeals affirmed, but not on the ground relied on by the trial court or the State. The court held that the Securitas employee was a public servant because he was an “officer” of government, even though “officer” means someone who is “a person holding office under a city, county, or state government.” Slip Op. at 6 (citing RCW 9A.04.110(13)). The court held the statute was not unconstitutionally vague as applied because a person of reasonable intelligence would know that a light rail ticket collector was an office-holder, even though the State had not even argued as much. And it held this Court’s decision in *White* did not control because “vagueness was not [the] sole concern in *White*”. Slip Op. at 11-12.

Keonte filed a motion to reconsider, arguing that an employee of a private security firm collecting tickets on a train is not an “office holder” under the statute. He also renewed his vagueness challenge. The Court of Appeals denied the motion to reconsider.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

**The Court of Appeals' holding that an employee of a private security company is a "public servant" for purposes of the false-statement statute is contrary to this Court's decision in *White* and raises significant issues of constitutional law and public interest.**

1. This case presents important questions of statutory construction regarding the definition of "public servant" and whether the adverb "knowingly" applies to the phrase "public servant".

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 Court of Appeals 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

under the plain meaning of the statute, the Securitas employee at issue here was not a public servant.

In arguing the Securitas employee was a public servant, the State acknowledged he was not a government employee, but underlined the following clause of the statute: “any person participating as an advisor, consultant, or otherwise in performing a governmental function.” Brief of Respondent at 5 (citing RCW 9A.04.110(23)). The State then claimed, “[Keonte’s] argument fails because sufficient evidence supports that Willet was performing a government function on August 6, 2010.” Brief of Respondent at 5. The trial court had similarly stated, “he is performing a government function, so I think he is a public servant.” RP 155.

Keonte pointed out that the State and trial court read the preceding clause out of existence. The statute does not say that any person performing a government function is a public servant; the person must be “participating as an advisor, consultant, or otherwise.” RCW 9A.04.110(23). Under settled principles of statutory construction, the word “otherwise” must be interpreted to mean something similar to “advisor” or “consultant”. Reply Brief at 8 (citing interpretive canons of *noscitur a sociis* and *eiusdem generis*).

The Court of Appeals affirmed but did not rely on the clause on which the State and trial court relied. It instead held that the Securitas

employee was “an officer of government”, even though “officer” means someone who is “a person holding office under a city, county, or state government.” Slip Op. at 6 (citing RCW 9A.04.110(13)). This Court should grant review because an employee of a private security firm is not “a person holding office” under the plain meaning of the statute, and statutory interpretation is an issue of public importance warranting review by this Court. RAP 13.4(b)(4); *see, e.g., Moeurn*, 170 Wn.2d 169; *Engel*, 166 Wn.2d 572.

This Court should also grant review of another issue of statutory interpretation raised in this case: whether the word “knowingly” in RCW 9A.76.175 applies to the phrase “public servant,” or only, as the State argued, to the words “material” and “false”. Although the Court of Appeals resolved that issue in Keonte’s favor, the opinion was unpublished and therefore the State may continue to argue in trials that it need not prove defendants knew they were speaking to public servants in order to convict them of making a false statement to a public servant. This is another important issue of first impression for which this Court should grant review. RAP 13.4(b)(4).

2. The statutes at issue are unconstitutionally vague as applied, and the Court of Appeals' holding to the contrary conflicts with this Court's decision in *White*.

This Court should also grant review because the statutes at issue are unconstitutionally vague as applied and the Court of Appeals' holding to the contrary conflicts with this Court's decision in *White*, 97 Wn.2d at 99. The definitional statute, RCW 9A.04.110(23), is unconstitutionally vague and overbroad if the phrase "public servant" can be applied to an employee of a private security company, and RCW 9A.76.175 is unconstitutionally vague because it is not clear whether the word "knowingly" applies to "public servant".

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. Sanchez Valencia*, 169 Wn.2d 782, 791, 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.

In *White*, this Court struck down a “stop and identify statute” as unconstitutionally vague based in part on the overbreadth of the “public servant” definition. *White*, 97 Wn.2d at 99-100. The statutory definition of public servant this 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). But the Court of Appeals rejected Keonte’s vagueness challenge on the basis that “vagueness was not [the] sole concern in *White*” and because the *White* Court rested its holding on “the overall vagueness of the statute given the phrases ‘lawfully required,’ ‘lawful excuse,’ and ‘public servant’” – only the last of which is at issue here. Slip Op. at 11-12.

But this Court in *White* stated, “the RCW Title 9A definition of “public servant” is entirely too broad and encompasses nearly any person who is employed by government.” *White*, 97 Wn.2d at 100 (emphasis added). Here, the Court of Appeals extended it to someone who is not even employed by government. If this Court held the definition was “entirely too broad” as applied to government employees, it is certainly overbroad as applied to the private employee at issue here.

The Court of Appeals also held the definition is not vague because a “reasonable person” would understand that the ticket collector was an “officer of government” under the first clause of the statute. Slip Op. at 13. But the prosecutors apparently did not even think the Securitas employee fell under that clause, and presumably they are reasonable people. Brief of Respondent at 5-7. If the prosecutors were not on notice that this private employee fell within that clause, surely a 15-year-old boy did not have such notice. This Court should grant review because the statutory definition of “public servant” is unconstitutionally vague and the Court of Appeals’ decision to the contrary conflicts with *White*. RAP 13.4(b)(1), (3).

RCW 9A.76.175 is also unconstitutionally vague because it is unclear whether the word “knowingly” applies to “public servant” or only to “false” and “material”. As Keonte pointed out, it suffers the same infirmity that an Ohio ordinance suffered in *City of Columbus v. New*, 1 Ohio St.3d 221, 223, 438 N.E.2d 1155 (1982). In that case, 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.” 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 until and unless this Court clarifies the application of the verb “knowingly”.

The State argued it does not have to prove a defendant knows he is speaking to a public servant in order to be convicted of knowingly making a false statement to a public servant. The Court of Appeals agreed with Keonte that “knowingly” does apply to “public servant,” but because the opinion is unpublished, the statute remains vague. There is no published opinion giving notice that “knowledge” as to the status of the listener is an element of the crime, and the statute is subject to arbitrary enforcement because the State will likely continue to argue before trial courts that it does not have to prove knowledge with respect to the “public servant” element. Thus, this statute is unconstitutionally vague until and unless this

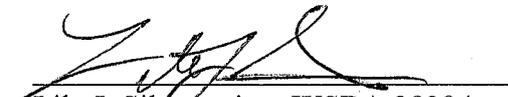
Court construes it in a published opinion. For this reason, too, this Court should grant review. RAP 13.4(b)(3).

E. CONCLUSION

Keonte B. respectfully requests that this Court grant review.

DATED this 10th day of December, 2012.

Respectfully submitted,



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Lila J. Silverstein – WSBA 38394  
Washington Appellate Project  
Attorney for Petitioner

## APPENDIX A

RICHARD D. JOHNSON,  
*Court Administrator/Clerk*

*The Court of Appeals*  
of the  
*State of Washington*  
*Seattle*

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July 30, 2012

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CASE #: 67313-1-I  
State of Washington, Respondent v. K.L.B., Appellant  
King County, Cause No. 11-8-00865-9 SEA

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"Affirmed."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

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67313-1-I, State v. K.L.B.  
July 30, 2012

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

khn

Enclosure

c: The Honorable Michael J. Trickey  
K.L.B.

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 67313-1-1
Respondent,	)	
	)	DIVISION ONE
.v.	)	
	)	
K.L.B.,	)	UNPUBLISHED OPINION
(D.O.B. 01/01/91)	)	
	)	
Appellant.	)	FILED: <u>July 30, 2012</u>

SPEARMAN, A.C.J. — This appeal arises from juvenile K.B.’s adjudication of making a false statement to a public servant, based on his giving a false name to a fare enforcement officer (FEO) after failing to present proof of payment while riding the LINK light rail. The FEO was employed by a private company that contracts with Sound Transit to provide fare enforcement services. K.B. claims on appeal that (1) the evidence was insufficient to support his adjudication and (2) the statute under which he was adjudicated, RCW 9A.76.175, is unconstitutionally vague if it can be applied to his statement to an FEO. His main argument is that an FEO cannot be a “public servant” under RCW 9A.76.175. Rejecting this argument, we hold that the evidence was sufficient to support K.B.’s adjudication and that RCW 9A.76.175 is not unconstitutionally vague as applied to his case.

FACTS

K.B. was charged by second amended information with two counts of making a false statement to a public servant. After a bench trial, the juvenile court entered the following predominantly undisputed findings of fact<sup>1</sup>:

1. On the morning of August 6, 2010, the respondent was on the Sound Transit LINK light rail train with two other males.
2. Brett Willet is a Sound Transit Fare Enforcement Officer [FEO], a limited-commission officer authorized to issue citations for civil infractions on LINK light rail and Sounder heavy rail trains.
3. FEO Willet was working with his colleague, FEO Ben Hill, on August 6, 2010.
4. Pursuant to their training and Sound Transit policy, FEOs Willet and Hill entered the train car at the Rainier Beach Station, and Hill went to the opposite end of the car. The FEOs instructed all of the passengers on the train to present proof of fare.
5. When FEO Willet approached the respondent and his two companions, they had bus transfer passes, which they were informed was not valid as fare on light rail trains.
6. Bus transfer passes were accepted as fare when the light rail service began in June 2009, but were no longer accepted as of December 31, 2009.
7. [K.B.] stated that he did not know how to use the fare system.
8. [K.B.] and his two companions were instructed by FEO Willet to exit the train at the Othello Station.
9. Pursuant to Sound Transit standard operating procedure, the FEOs asked [K.B.] and his companions for identification once [they] exited the train and were standing on the platform at the Othello Station. [K.B.] was either unwilling or unable to present identification to the FEOs.
10. Neither [K.B.] nor his companions were able to provide their address to the FEOs.
11. [K.B.] identified himself to FEO Willet as Kinds M. Marty (DOB 6/22/1995). One of [K.B.'s] companions identified

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<sup>1</sup> K.B. challenges only finding of fact 2, contending it is erroneous to the extent it implies Willet was employed by the government. For our analysis, however, we will assume the trial court's finding to be consistent with the evidence presented at trial: that Willet was employed by Securitas, a private company under contract with Sound Transit.

- himself as James J. King (DOB 4/2/1994), and the other identified himself as Jamal J. Johnson (DOB 1/1/1993).
12. Because the FEOs were unable to ascertain [K.B.'s] identity based upon the limited information he had provided, he was temporarily detained at the Othello Station, and Sound Transit Police was called to assist in identifying [K.B.] and his companions for the purpose of issuing citations for the civil infraction of fare evasion.
  13. Within about 10 minutes, Deputies Lee Adams, Jon Nelson, and Eddie Draper responded to the Othello Station.
  14. Deputy Adams contacted [K.B.] for the purposes of identification, while Deputy Draper contacted the male who identified himself as James King, and Deputy Nelson contacted the male who identified himself as Jamal Johnson.
  15. When initially asked for his name and date of birth, [K.B.] initially gave Deputy Adams the same information that he had provided to FEO Willet.
  16. Deputy Adams informed [K.B.] that it was a crime to falsely identify himself to a police officer. At this point, [K.B.] admitted that his name was not Kinds M. Marty, but was in fact [K.B.]. [K.B.] also gave Deputy Adams his date of birth as 6/23/1995.
  17. Deputy Adams was able to confirm via photos viewed on his computer and through dispatch that the identification provided by [K.B.] was his true identity, and that [K.B.'s] address was [address redacted] in Seattle.
  18. Deputy Adams asked [K.B.] to identify one of the other males he was with. [K.B.] said that he didn't know his name, and only knew him as "Marty." This was the surname that [K.B.] had initially provided as his.
  19. Being unable to determine whether the other male provided true identity, Deputy Adams decided to give him the benefit of the doubt and released him.
  20. FEO Willet informed the three male subjects that they may receive citations for Fare Evasion in the mail.
  21. Deputy Adams returned to the station and checked through computer databases cross-referencing names with [K.B.] and [M.B.].<sup>2</sup> After an hour of research, Deputy Adams was able to confirm that the male who [K.B.] identified as "Marty" was in fact Kesean Beaver (DOB 1/1/1991) who lived at the same address as [K.B.]. At the time, there was

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<sup>2</sup> M.B.'s name has been redacted because he was a juvenile at the time of the incident.

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- a \$3,100.00 Assault warrant for Kesean Beaver out of Tukwila.
- 22. Deputy Adams went to [address redacted] to locate and arrest Kesean Beaver. Kesean Beaver was not present at that time.
- 23. The Court finds the testimony of FEO Brett Willet to be credible.
- 24. The Court finds the testimony of Deputy Lee Adams to be credible.

One of the counts of making a false statement to a public servant was based on K.B.'s statement to Willet and the other count was based on his statement to Adams that Kesean Beaver's name was Marty. The trial court concluded the State had proven guilt only as to the count involving Willet.

#### DISCUSSION

K.B. appeals his adjudication, claiming the evidence was insufficient and that, in the alternative, the statute under which he was adjudicated is unconstitutionally vague. We address his claims in turn.

#### Sufficiency of the Evidence

On a challenge to the sufficiency of the evidence, this court must decide whether, viewing the evidence in a light most favorable to the State, any rational trier of fact could have found all the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). All reasonable inferences must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). This court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. State v.

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Walton, 64 Wn. App. 410, 415–16, 824 P.2d 533 (1992) (citing State v. Longuskie, 59 Wn. App. 838, 801 P.2d 1004 (1990)).

K.B. was adjudicated under RCW 9A.76.175, which 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.

K.B. contends the State failed to prove (1) Willet was a public servant, (2) K.B. knew Willet was a public servant, and (3) K.B. knew his statement was material.

K.B. first contends the State failed to prove Willet was a public servant.

RCW 9A.04.110(23) defines a “public servant” 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.

Police officers and judges are public servants. State v. Graham, 130 Wn.2d 711, 719, 927 P.2d 227 (1996) (off-duty police officer is public servant with authority to respond to emergencies and react to criminal conduct for purposes of obstruction statute); State v. Burke, 132 Wn. App. 415, 421, 132 P.3d 1095 (2006) (police); State v. Stephenson, 89 Wn. App. 794, 808-09, 950 P.2d 38 (1998) (judges).

K.B. contends Willet was not a public servant because he was an employee of a private company, Securitas Security Services, and did not “participat[e] as an advisor, consultant, or otherwise in performing a governmental function.” But we conclude that the evidence was sufficient to show Willet was a public servant because he was a “person . . . who presently

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occupies the position of . . . any officer . . . of government . . . .” RCW

9A.04.110(23). “Officer” and “public officer” are defined, in pertinent part, as “a person holding office under a city, county, or state government . . . who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes . . . all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer.” RCW 9A.04.110(13).

The evidence supports that Willet was “lawfully exercising or assuming to exercise any of the powers or functions of a public officer” when he was working as an FEO on August 6, 2010. Regional transit authorities like Sound Transit may establish a schedule of fines and penalties for civil infractions issued for failure to pay the required fare, failure to provide proof of fare payment, or failure to depart the facility when requested to do so by a person monitoring fare payment. RCW 81.112.210(1). A regional transit authority “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”<sup>3</sup> and “is authorized to employ personnel to either monitor fare payment, or to contract for such services, or both.” RCW 81.112.210(2)(a). Persons designated to monitor fare payment 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)

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<sup>3</sup> “Enforcement officer” is defined in RCW 7.80.040 as “a person authorized to enforce the provisions of the title or ordinance in which the civil infraction is established.”

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request that a passenger leave the facility when the passenger has not produced proof of payment. RCW 81.112.210(2)(b).

Here, Sound Transit contracted with Securitas to provide fare enforcement services in accordance with Sound Transit's statutory authority. Willet's job as an FEO was to monitor fare payment and identify people who did not provide proof of fare payment. When a passenger is unable to provide such proof, Willet can issue a civil infraction, as he did to K.B. in this case. The trial court properly found that Willet was a public servant at the time K.B. made the statement.

K.B. next contends that even if Willet is a public servant, the State failed to prove K.B. knew Willet was a public servant.<sup>4</sup> His argument is that, given Willet's appearance, no reasonable person would believe he was a public servant. K.B. points out that Willet's uniform was described as having a different color and appearance from the uniforms worn by other law enforcement officers in the area. Furthermore, his badge stated "Securitas,"<sup>5</sup> and his tool belt contained no

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<sup>4</sup> As a preliminary matter, the parties dispute whether this knowledge is required under RCW 9A.76.175. The State argues it is not, relying on the pattern jury instruction's apparent lack of such an element. K.B. contends that under the plain language of the statute, the mens rea of "knowingly" applies to each element of the phrase "makes a false or misleading material statement to a public servant" in RCW 9A.76.175, including the object of the verb phrase, "public servant." He cites Flores-Figueroa v. United States, 556 U.S. 646, 129 S.Ct. 1886, 173 L.Ed.2d 853 (2009). We agree with K.B. The statute implicitly contains this mens rea requirement. The legislature could not have intended it to apply where a defendant has no reason to believe the listener is a public servant. Flores-Figueroa supports his argument. The statute at issue in that case punishes a person who "knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person." Id. at 647 (citing 18 U.S.C. 1028A(a)(1)). The court held that the word "knowingly" applied to the object of the verb phrase, and the government was required to show that the defendant knew the means of identification belonged to another person. Id. at 650-51, 657. The court explained, "As a matter of ordinary English grammar, it seems natural to read the statute's word 'knowingly' as applying to all the subsequently listed elements of the crime." Id. at 650.

<sup>5</sup> K.B. notes on appeal that Securitas is a private company, but there is no evidence that K.B. knew at the time of the incident that Securitas was a private company or that Willet was a private contractor.

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weapons. Verbatim Report of Proceedings (VRP) at 27, 116. In contrast, Adams wore a "King County Sheriff" badge and carried a visible firearm.

Sufficient evidence supports the trial court's finding that K.B. knew Willet was a public servant. A person knows or acts knowingly when "he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense" or when "he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense." RCW 9A.08.010(1)(b)(i)(ii). Here, when Willet and his partner boarded the train, they instructed all passengers to present proof of fare payment and proceeded to confirm that each passenger had proof of payment. Willet's uniform included patches indicating he worked in fare enforcement for Sound Transit. He wore a tool belt with various items on it.<sup>6</sup> A reasonable person in K.B.'s situation would believe that Willet, notwithstanding differences between his uniform and that of a police officer, was a public servant lawfully exercising a public function. K.B.'s behavior indicates he recognized Willet's authority. When Willet asked for his fare, K.B. provided a transfer. When Willet directed K.B. to leave the train, he complied. This evidence, when viewed in the light most favorable to the State, is sufficient to support the trial court's finding that K.B. knew Willet was a public servant.

Finally, K.B. contends the State failed to prove he knew his statement was a material statement, i.e., reasonably likely to be relied upon by Willet in the

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<sup>6</sup> At trial Willet described the items on his tool belt: a radio, handcuffs, glove pouch with gloves, and key ring. He testified to having worn the belt as part of his full uniform on the day in question. It is unclear which items were specifically visible to K.B.

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discharge of his official duties. He points out Willet did not say he was planning to issue a citation until after K.B. gave his true name and address to Adams. He also argues that when Willet asked for his name, K.B. did not know why Willet would need or use it. K.B. contends that because a person need not provide a name to buy a ticket, there was no reason for K.B. to think Willet would rely on K.B.'s name in performing his duties.

The evidence was sufficient to show that K.B. knew his statement giving a false name was a material statement. Willet was in full uniform, wearing patches stating "Sound Transit" and "fare enforcement." VRP at 75. He approached K.B. and asked for proof of fare. When K.B. presented a Metro transfer, Willet informed him the transfer was not valid fare and instructed K.B. and his companions to leave the train. Once off the train, Willet asked K.B. for identification. When K.B. replied that he did not have identification, Willet asked for his name. These actions were consistent with Willet's authority to request proof of payment, request personal identification from any passengers who failed to present proof of payment, and issue citations. RCW 81.112.210(2)(b). Under these circumstances, the trial court did not err in finding that K.B. knew that his giving of a false name was a statement upon which Willet was reasonably likely to rely in discharging his duties as an FEO. That K.B. did not know that Willet was planning to issue a citation is not determinative of whether he knew the statement was material. Regardless of whether K.B. knew the specific purpose for which Willet sought the information, the evidence was sufficient to conclude

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that K.B. knew the information was sought for a purpose related to Willet's official duties and was reasonably likely to be relied upon by him to that end.

#### Unconstitutional Vagueness of Statute

K.B. also claims that RCW 9A.76.175, the statute under which he was adjudicated, is unconstitutionally vague if it applies to his statement to an FEO. A reviewing court presumes a statute is constitutional. State v. Watson, 160 Wn.2d 1, 11, 154 P.3d 909 (2007). A challenging party bears the burden of proving a statute's unconstitutionality beyond a reasonable doubt. City Spokane v. Douglass, 115 Wn.2d 171, 177, 795 P.2d 693 (1990).

"Under the due process clause of the Fourteenth Amendment, a statute is void for vagueness if either: (1) the statute does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed; or (2) the statute does not provide ascertainable standards of guilt to protect against arbitrary enforcement." Watson, 160 Wn.2d at 6. 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. Id. at 7. 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). Nor is it unconstitutional if the general area of conduct against which it is directed is made plain. City of Seattle v. Huff, 111 Wn.2d 923, 928-29, 767 P.2d 572 (1989). Courts are "especially cautious in the interpretation of vague statutes when First Amendment interests

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are implicated.” City of Bellevue v. Lorang, 140 Wn.2d 19, 31, 992 P.2d 496 (2000).

K.B.’s vagueness argument rests on the definition of “public servant.” He relies primarily on State v. White, 97 Wn.2d 92, 640 P.2d 1061 (1982), where the court struck down the following provisions of RCW 9A.76.020(1) and (2) (1982) as unconstitutionally vague:

Obstructing a public servant. Every person who, (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. The court explained that the determination of what information is “lawfully required” is subjective and that the term “lawful excuse” is nowhere defined and left a citizen to guess as to whether his Fifth Amendment privilege provided a “lawful excuse.” Id. at 100. It went on to state, “Beyond these difficulties, the RCW Title 9A definition of ‘public servant’ is entirely too broad and encompasses nearly any person who is employed by the government[.]” Id. K.B. points out that the court was criticizing the same definition of “public servant” that was used here. Compare id. (citing RCW 9A.04.110(22) (1982)) with RCW 9A.04.110(23) (2010).

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K.B.'s reliance on White is misplaced.<sup>7</sup> Although the court expressed concern about the definition of "public servant," its holding did not rest on that term alone. Instead, the holding rested on the overall vagueness of the statute given the phrases "lawfully required," "lawful excuse," and "public servant." Vague phrases such as "lawfully required" and "lawful excuse" do not appear in RCW 9A.76.175. White did not invalidate the definition of "public servant" under RCW 9A.04.110.<sup>8</sup> Finally, the Washington Supreme Court has subsequently acknowledged that vagueness was not its sole concern in White; rather, it was also concerned that the "stop and identify" statute expanded law enforcement's ability to stop citizens beyond that provided for by Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d

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<sup>7</sup> K.B. also makes brief reference to Kolender v. Lawson, 461 U.S. 352, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983) and City of Columbus v. New, 1 Ohio St.3d 221, 438 N.E.2d 1155 (1982), but those cases involve substantially dissimilar statutes. The void-for-vagueness statute in Kolender provided:

'Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor: . . . (e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself and to account for his presence, when requested by any peace officer to do so, if the surrounding circumstances are such as to indicate to a reasonable man that the public safety demands such identification.'

Id. at 354 (citing Cal. Penal Code § 647(e)). City of Columbus involved an ordinance stating, "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, 1 Ohio St.3d at 223. The Ohio Supreme Court held the law cast a net too wide to be constitutionally permissible and failed to give adequate notice of what conduct was proscribed. Id. at 223-24. The laws in Kolender and City of Columbus were more widely sweeping than the statute here.

<sup>8</sup> The State correctly observes that, had the outcome of White depended solely on the definition of "public servant," such a holding would call 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), requesting 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 these statutes have, since White, been held to be unconstitutionally vague.

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889 (1968). State v. Williams, 171 Wn.2d 474, 481, 251 P.3d 877 (2011); State v. Kennedy, 107 Wn.2d 1, 16, 726 P.2d 445 (1986).

In State v. Lalonde, 35 Wn. App. 54, 665 P.2d 421 (1983), we rejected the defendant's contention that under White, it followed that "public servant" as used in a different statute, RCW 9A.76.020(3) (making it a misdemeanor to obstruct a public servant), was unconstitutionally overbroad. Lalonde, 35 Wn. App. at 58. We held that "public servant" was not overbroad as applied in that case to uniformed police officers. Id. K.B. points out that Willet was not a uniformed police officer. But nowhere in Lalonde did we limit the constitutionality of "public servant" to uniformed police officers.

We are not persuaded under these cases that RCW 9A.76.175 is vague as applied to K.B.'s statement to Willet. A reasonable person would understand that an FEO is a public servant by virtue of lawfully exercising or assuming to exercise any of the powers or functions of a public officer, as we explained in our sufficiency of the evidence analysis. A reasonable person would understand, in turn, that RCW 9A.76.175 applies to false or misleading material statements made to an FEO.

*Affirmed.*

WE CONCUR:

Leach, C. J.

Sperry, J.

Becker, J.

## APPENDIX B

RICHARD D. JOHNSON,  
*Court Administrator/Clerk*

*The Court of Appeals  
of the  
State of Washington*

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November 14, 2012

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CASE #: 67313-1-I  
State of Washington, Respondent v. K.L.B., Appellant  
King County No. 11-8-00865-9 SEA

Counsel:

Enclosed please find a copy of the order denying appellant's motion to reconsider entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this court. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

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67313-1-I, State v. K.L.B.  
November 14, 2012

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,

A handwritten signature in black ink, appearing to read "R.D. Johnson", with a long horizontal line extending to the right.

Richard D. Johnson  
Court Administrator/Clerk

khn

Enclosure

c: The Hon. Michael J. Trickey

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 67313-1-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	ORDER DENYING
K.L.B.,	)	APPELLANT'S MOTION TO
(D.O.B. 01/01/91)	)	RECONSIDER
	)	
Appellant.	)	

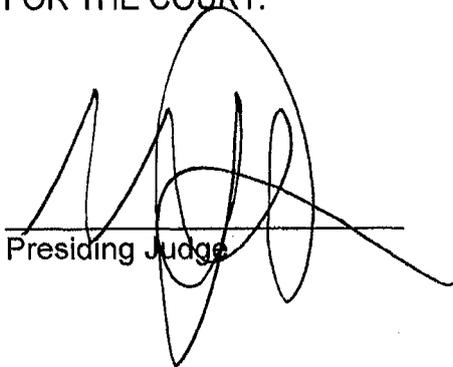
Appellant, K.L.B. has filed a motion for reconsideration of the opinion filed on July 30, 2012 in the above case and the respondent filed an answer to the motion. A majority of the panel has determined the motion for should be denied

Now, therefore, it is hereby

ORDERED that appellant's motion to reconsider is denied.

DATED this 14<sup>th</sup> day of November 2012.

FOR THE COURT:

  
\_\_\_\_\_  
Presiding Judge

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**DECLARATION OF FILING AND MAILING OR DELIVERY**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 67313-1-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent Bridgette Maryman, DPA  
King County Prosecutor's Office-Appellate Unit
- petitioner
- Attorney for other party

  
MARIA ANA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: December 10, 2012

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