

NO. 68014-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

DARIAN DOWNING,

Appellant.

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

THE HONORABLE MICHAEL TRICKEY

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
1. PROCEDURAL FACTS.....	1
2. SUBSTANTIVE FACTS.....	2
C. <u>ARGUMENT</u>	6
1. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT DOWNING'S CONVICTION FOR OBSTRUCTING A LAW ENFORCEMENT OFFICER	6
a. Relevant Law	7
b. The State Presented Sufficient Evidence Supporting Downing's Conviction For Obstructing A Law Enforcement Officer	8
D. <u>CONCLUSION</u>	11

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Jackson v. Virginia, 443 U.S. 307,
99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)..... 7

Washington State:

State v. Delmarter, 94 Wn. App. 634,
618 P.2d 99 (1980)..... 7

State v. Fiser, 99 Wn. App. 714,
995 P.2d 107, rev. denied,
141 Wn.2d 1023 (2000)..... 8

State v. Green, 94 Wn.2d 216,
616 P.2d 628 (1980)..... 7

State v. Hernandez, 85 Wn. App. 672,
935 P.2d 623 (1997)..... 7

State v. Hudson, 56 Wn. App. 490,
784 P.2d 533, review denied,
114 Wn.2d 1016, 791 P.2d 534 (1990)..... 8

State v. Little, 116 Wn.2d 488,
806 P.2d 749 (1991)..... 8

State v. Salinas, 119 Wn.2d 192,
829 P.2d 1068 (1992)..... 7

Statutes

Washington State:

RCW 9.91.025..... 3

RCW 9A.76.020 8, 9

A. ISSUE PRESENTED

1. Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the prosecution, any rational trier of fact could find the essential elements of the crime proven beyond a reasonable doubt. Here, the State presented evidence that Downing was given multiple commands to stop by two uniformed officers, that he did not have anything obstructing his hearing, that he made eye contact and continued to walk despite officers' commands, that he pulled his arm from officers when they tried to detain him, and that he struggled and resisted officers' efforts to handcuff him. Did the State produce sufficient evidence to support Downing's conviction for obstructing a law enforcement officer?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Juvenile respondent, Darian Downing, was charged by information in King County Juvenile Court with one count of transit misconduct and one count of obstructing a law enforcement officer. CP 1-2. The juvenile court found Downing not guilty of transit misconduct and guilty of obstructing a law enforcement officer.

CP 22; RP 74-76. Downing now challenges the sufficiency of the evidence to convict him of obstructing a law enforcement officer.

2. SUBSTANTIVE FACTS

Renton Police Officers Susan Hassinger and Kevin Lane were working uniformed foot patrol at the Renton Transit Center on the evening of June 10, 2011. RP 7-8. The officers were patrolling due to the increase of criminal activity and gang violence. RP 7. Officer Lane was contacting an unrelated individual, while Officer Hassinger was acting as a cover officer for him. RP 8. During that time, Officer Hassinger's attention was drawn to a small group that included Darian Downing because she could hear loud music coming from that area. RP 8. Officer Hassinger recognized Downing from a previous contact that she made a week prior for unlawful transit conduct. RP 8. The music was loud enough for Officer Hassinger to hear it fifteen feet away. RP 9. Initially, Officer Hassinger stayed in position as the cover officer to Officer Lane on the unrelated contact for officer safety reasons. RP 9.

Downing continued to break from the group and he walked in Officer Hassinger's general direction. RP 9. Officer Hassinger noticed that Downing had a small handheld electronic device in his

hand and the music was playing from external speakers. RP 10-11. Officer Hassinger believed that Downing was in violation of RCW 9.91.025(1) (Unlawful Transit Conduct). CP 21. When Downing was approximately five feet away from her, she told him, "hey, turn your music down." RP 9. Officer Hassinger's command was louder than the music that was playing. RP 12. She was in full police uniform with a police badge. RP 9. Officer Lane was wearing a police jumpsuit with patches that said "Police." RP 39. After Officer Hassinger told Downing to turn down his music, he ignored her request and continued to walk past her as the music continued to play loudly. RP 10. Downing was not wearing headphones or earplugs or anything else that would have obstructed his hearing. RP 10, 38. Downing testified that he did not have hearing problems. RP 56. Downing also testified that he recognized Officer Hassinger from the previous contact. RP 56.

Officer Lane also heard the music and heard Officer Hassinger command Downing to turn down his music. RP 36. After Downing continued to walk past the officers, Officer Hassinger asked Downing to stop. RP 12. But Downing continued to walk away from her. RP 12. With each command she gave, she became increasingly louder because she wanted to ensure that he heard

her. RP 12. Officer Lane also gave Downing a verbal warning to stop. RP 39. Downing did not respond. RP 39. Officer Lane ended his unrelated contact. RP 40. Both officers started to walk towards Downing. RP 13, 40. The officers gave another verbal command to stop. RP 41. At that time, Downing looked over his shoulder at the officers, made eye contact, and then turned his head back around and continued walking away from the officers. RP 13, 41.

Since Downing had ignored multiple verbal commands to stop, the officers caught up with him. RP 14. Officer Lane yelled "stop" again and then grabbed Downing's arm. RP 14, 42. Downing heard Officer Lane's request, looked at the officer, and then attempted to pull his arm away from Officer Lane by making a sweeping motion. CP 21; RP 42. Downing told Officer Lane to "get your fucking hands off of [me]." RP 42. Downing then took a "bladed stance" with one leg back and one leg forward. RP 16, 42. Officer Lane and Officer Hassinger believed this was a pre-attack, fighter stance. RP 16, 42. Officer Hassinger and Officer Lane believed that Downing was going to physically assault them. RP 16, 43.

At this point, Officer Hassinger wanted to handcuff Downing and get him into a more controlled situation. RP 16-17. Officer

Hassinger then grabbed Downing's other arm. RP 17. The officers attempted to just handcuff Downing in a standing position. RP 17. They were unable to do that because Downing resisted their efforts to handcuff him. RP 44. Downing's whole body was rigid and he was trying to pull his arms to the front of his body. RP 17. Downing did not allow officers to put his hands behind his back. RP 43. The officers told Downing to stop resisting, to put his hands behind his back and to stop fighting them. RP 44. The officers were unable to pull Downing's hands close enough together behind his back to handcuff him. RP 18. Because Downing was continually trying to break the officers' grasp, Officer Hassinger told Officer Lane to put Downing in a noncompliant cuffing position on the ground. RP 18. Officer Hassinger did a leg sweep and Downing fell to the ground. RP 19. The officers continued to try to handcuff Downing. RP 20. The officers were telling Downing to put his hands behind his back. RP 20. Still, he did not comply. RP 20. Downing continued to try to bring his hands to his chest or waist area. RP 20, 45. Downing would not give his name. RP 45. He was using expletives and calling the officers names. RP 45. The officers were eventually able to roll Downing onto his stomach and handcuff him. RP 20.

C. ARGUMENT

1. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT DOWNING'S CONVICTION FOR OBSTRUCTING A LAW ENFORCEMENT OFFICER.

Downing maintains that there was insufficient evidence to support his conviction for obstructing a law enforcement officer, arguing that the State failed to prove an essential element of the crime. Specifically, he claims that the State failed to prove that Downing "hindered" or "delayed" the officers' investigation. His claim should be rejected. Downing's conviction was based on evidence that the officers gave Downing multiple commands to stop, that he did not have anything obstructing his ears such as headphones that could prevent him from hearing the commands, that after the third or fourth command he looked at officers and made eye contact, that he continued to walk despite the officers' commands, that he pulled his arm from officers when they tried to detain him, and that he struggled to bring his hands forward while officers were attempting to place his hands behind his back to handcuff him. Accordingly, there was sufficient evidence to support the juvenile court's finding of guilt.

a. Relevant Law.

Evidence is sufficient if, taken in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 318, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). A claim of insufficiency of the evidence admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence is considered equally as reliable as direct evidence. State v. Delmarter, 94 Wn. App. 634, 638, 618 P.2d 99 (1980). An appellate court must defer to the trier of fact on issues involving conflicting testimony, credibility of the witnesses, and persuasiveness of the evidence. State v. Hernandez, 85 Wn. App. 672, 675, 935 P.2d 623 (1997).

In determining whether there is sufficient evidence, the reviewing court determines not "whether *it* believes the evidence at trial established guilt beyond a reasonable doubt," but whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Green, 94 Wn.2d at 221

(emphasis added); State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107, rev. denied, 141 Wn.2d 1023 (2000).

The crime of obstructing a law enforcement officer requires the State to prove that a person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties. RCW 9A.76.020(1). To "hinder" means "to make slow or difficult the course of progress," "to keep from occurring, starting, or continuing," "to interfere with the activity of," or "to delay, impede, or prevent action." To "delay" means "to stop, detain, or hinder for a time," to "check the motion of, lessen the progress of, or slow the time of arrival of," or "to cause to be slower or to occur more slowly than normal." State v. Hudson, 56 Wn. App. 490, 498, 784 P.2d 533, 537, review denied, 114 Wn.2d 1016, 791 P.2d 534 (1990); State v. Little, 116 Wn.2d 488, 497, 806 P.2d 749, 754 (1991).

b. The State Presented Sufficient Evidence Supporting Downing's Conviction For Obstructing A Law Enforcement Officer.

Under the standard set forth above, the evidence presented at trial was more than sufficient to sustain Downing's conviction for obstructing a law enforcement officer. Officer Hassinger's intention

when she first made contact with Downing was to simply give him a verbal warning. RP 10. Instead of complying with Officer Hassinger's verbal warning, Downing ignored the officers' multiple commands to stop, and then hindered and delayed the officers' efforts to stop and detain him.

The defense emphasizes that the entire encounter was less than two minutes. Defense argues that such a short period of time cannot be sufficient to establish a delay in the officers' investigation. Downing cites no authority to support this proposition. Washington case law as well as RCW 9A.76.020(1) does not specify an amount of time required to "hinder," "delay," or "obstruct." The statute does not mandate that the delay or hindrance must be longer than two minutes. The analysis simply does not hinge on how long the delay was. Rather, the analysis focuses on whether Downing willfully hindered or delayed the officers in any way, regardless of how long he did so. In other words, the analysis should focus on whether Downing made the course of the officers' progress slow or difficult, or whether he interfered with the activity of the officers, or whether he caused the officers' investigation to occur more slowly than necessary.

Here, Downing caused the contact to occur more slowly than it should have when he failed to turn down his music. He slowed down the officers' efforts to detain him when he failed to respond to repeated commands by the officers to stop. Downing made the officers' progress slower and more difficult when he ignored officers' requests to stop resisting and put his hands behind his back. He hindered and delayed the officers when he took a bladed stance and when the officers had to force him to the ground to get him to comply.

Although the contact was less than two minutes, it could have ended much sooner if Downing had simply turned his music down after Officer Hassinger commanded him to; if he had listened to the first, second, third, or even fourth command to stop; or, if he had put his hands behind his back to be handcuffed without resisting or struggling. Having been told multiple times to stop, Downing persisted in disobeying the officers' commands and interfered with their ability to detain him for the transit violation.

Given the evidence presented at trial, the juvenile court's finding of guilt should be affirmed.

D. CONCLUSION

The State presented sufficient evidence to support the juvenile court's finding of guilt as to the charge of obstructing a law enforcement officer. Accordingly, for the foregoing reasons, the State asks this Court to affirm Downing's conviction for obstructing a law enforcement officer.

DATED this 22nd day of May, 2012.

Respectfully submitted,

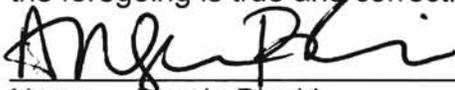
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Thomas M. Kummerow, 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. DARIAN DOWNING, Cause No. 68014-5-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.



Name Angela Blocki
Done in Seattle, Washington



Date May 22, 2012

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