

68905-3

68905-3

No. 68905-3

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

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY E. B.,

Appellant.

FILED

DIVISION ONE

NOV 7 2012

K

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

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENTS OF ERROR

1. The State did not prove the elements of the crime of obstructing a law enforcement officer beyond a reasonable doubt because the State did not prove the officer was discharging his official duties at the time of the alleged offense.

2. In the absence of substantial evidence, the court erred in finding “Officer Rice arrived with probable cause to arrest Respondent for Possession of Marijuana.”¹ CP 31.

3. In the absence of substantial evidence, the court erred in finding “Respondent then moved his legs as if to position himself to kick Officer Rice.” CP 32.

4. The court erred in concluding the State proved the elements of obstructing a law enforcement officer beyond a reasonable doubt and adjudicating him guilty of the crime. CP 33-34.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

When the State charges a person with the crime of obstructing a law enforcement officer, the State must prove, as an element of the crime, that the officer was discharging his official duties at the time of the offense. A law enforcement officer discharges his official duties

¹ A copy of the juvenile court’s written findings and conclusions following the bench trial is attached as an appendix.

only when acting within the constitutional bounds of his authority.

Here, a police officer arrested Anthony B. for the crime of possession of 40 grams or less of marijuana but the officer did not have constitutional authority for the arrest because he did not have probable cause. Did the State therefore fail to prove beyond a reasonable doubt that Anthony was guilty of obstructing the officer during the arrest?

C. STATEMENT OF THE CASE

On the evening of February 5, 2012, Renton Police Officer Thomas Smith went to a home in Renton in response to a 911 call. RP 23. A woman had called 911 because she found a plastic baggie containing what she thought was marijuana in her 15-year-old son Anthony's bedroom. RP 23-24, 36-37. The woman gave Officer Smith the baggie. RP 26. Anthony was not home at the time. RP 27-28. Therefore, Officer Smith returned to the police station without contacting Anthony. RP 26-29. At the station, the officer weighed the contents of the baggie and determined the substance weighed .45 grams. RP 29. Officer Smith did not attempt to get an arrest warrant for Anthony.

Later that night, Anthony returned home and Police Officer Steven Rice went there to contact him. RP 67-68. Before arriving,

Officer Rice spoke to Officer Smith, who told him there was probable cause to arrest Anthony for the misdemeanor crime of possession of 40 grams or less of marijuana. RP 68-69. But Officer Rice did not himself witness the alleged crime or have any personal knowledge of it. RP 68.

At the home, Officer Rice contacted Anthony in his bedroom, where he was lying on his bed in his boxer shorts. RP 68-69. Officer Rice asked Anthony to put his pants on, which he did. RP 69. Officer Rice then asked Anthony to turn around and put his hands behind his back so that he could conduct a pat-down search for weapons. RP 69-70. Anthony did as directed but became argumentative. RP 69, 84. He turned his head and neck, looked over his shoulder, and asked the officer what he was being arrested for. RP 69, 84, 89-92. The officer responded that he had “just been told that there was probable cause.” RP 70. Anthony became increasingly upset and agitated and yelled at the officer that he could not prove his case. RP 70.

Due to Anthony’s agitation, the officer decided not to pat him down but immediately to put him in handcuffs instead. RP 71. After placing Anthony in cuffs, the officer began to read him his Miranda rights. RP 70-71. As he did so, Anthony “began to pull away from

[the officer]” in an attempt to “go deeper into the room.” RP 71-72. In response, the officer slid his right hand under Anthony’s left hand, placed his palm onto Anthony’s back between his shoulder blades, told him not to pull away, and continued reading the Miranda rights. RP 72. Anthony then “made a much more dramatic and emphatic twist, or turn, to pull away from [the officer].” RP 72. To counteract the turn, the officer applied downward pressure with his right arm and placed his right foot in front of Anthony’s legs. RP 72. Anthony lost his footing and fell onto the bed. RP 72. He continued to move his legs, so the officer pushed his hand into his cheekbone and told him to calm down. RP 73. At that point, Anthony stopped moving. RP 86. The officer picked him up, took him outside, and placed him in the patrol car. RP 74, 86.

The entire episode lasted about two minutes. RP 73. Anthony did not strike the officer or assault him in any way during the incident. RP 73, 76, 85.

The State charged Anthony with one count of possession of 40 grams or less of marijuana, RCW 69.50.4014, and one count of obstructing a law enforcement officer, RCW 9A.76.020(1). CP 10-11.

At the conclusion of the State's case, the court dismissed the possession of marijuana charge, finding the State did not prove the substance contained in the baggie was actually marijuana. RP 79. But the court found Anthony guilty as charged of obstructing a law enforcement officer. RP 97; CP 12.

D. ARGUMENT

The State did not prove the elements of the crime of obstructing a law enforcement officer because the State did not prove that Officer Rice was lawfully discharging his official powers or duties at the time of the alleged offense

1. When the State charges a person with obstructing a law enforcement officer based on the person's actions during a police detention, the State must prove, as an element of the crime, that the detention was lawful.

The statute defining the crime of obstructing a law enforcement officer provides, “[a] person is guilty of obstructing a law enforcement officer if the 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). The essential elements are (1) an action or inaction that hinders, delays, or obstructs a law enforcement officer, (2) while the officer is in the midst of discharging his official powers or duties, (3) the defendant knows the officer is discharging his public

duty, and (4) the action or inaction is done knowingly. State v. Contreras, 92 Wn. App. 307, 315-16, 966 P.2d 915 (1998).

To satisfy constitutional due process, the State has the burden to prove each of these elements beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 477, 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); U.S. Const. amend. XIV; Const. art. I, § 3. In determining whether the State satisfied its burden, the Court views the evidence in the light most favorable to the State and asks whether a rational trier of fact could have found the essential elements 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).

An essential element of the crime of obstructing a law enforcement officer is that, at the time of the offense, the officer was engaged “in the discharge of his or her official powers or duties.” RCW 9A.76.020(1). In State v. Graham, 130 Wn.2d 711, 719-22, 927 P.2d 227 (1996), the Washington Supreme Court held that whether a police officer was discharging his “official powers or duties” for purposes of the statute turns on the facts of each case. It is the nature of

the acts performed by the officer which determines whether the officer was executing his official duties. Id. at 719-20. When a police officer conducts a search or performs an arrest pursuant to his or her authority as a police officer, the officer is acting on behalf of the State and is required to comply with the constitution. Id. at 723. Therefore, the officer is engaged in his “official powers or duties” when he acts to enforce the law within the bounds of the constitutional authority provided to him as a police officer. Id. at 719-22. An officer who arrests an individual does so within the bounds of his constitutional authority, and is discharging his “official duties” for purposes of the statute, only if the arrest is based upon probable cause. Id. at 722-26. In Graham, the court held the off-duty police officers were discharging their official duties when they arrested Graham because they had probable cause and were therefore acting lawfully.² Id. at 726.

² In State v. Valentine, 132 Wn.2d 1, 21, 935 P.2d 1294 (1997), the Supreme Court held a person may not use force to resist even an unlawful arrest except in self defense if the arresting officer attempts to inflict injury on the individual. The court upheld Valentine’s conviction for assault after he punched an officer in the head during an arrest because he was not acting in self defense. Id. at 4-5. But notwithstanding Valentine, the lawfulness of the arrest is at issue when an individual is charged with the crime of obstructing a law enforcement officer because it is an element of the crime. RCW 9A.76.020(1); Graham, 130 Wn.2d at 724-26. Here, Anthony did not use force to resist the arrest and was not charged with assault. RP 73, 76, 85.

Under both the federal and state constitutions, a police officer has constitutional authority to arrest an individual only if the officer has probable cause to believe the person committed a crime.³ *Id.* at 724; U.S. Const. amend. IV; Const. art. I, § 7. An arrest is a “serious personal intrusion.” *United States v. Watson*, 423 U.S. 411, 428, 96 S. Ct. 820, 46 L. Ed. 2d 598 (1976) (Powell, J., concurring). The probable cause requirement is a fact-based determination that represents a compromise between the competing interests of enforcing the law and protecting the individual's right to privacy. *See generally Brinegar v. United States*, 338 U.S. 160, 176, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949) (probable cause must be based on more than mere suspicion). Probable cause requires reasonable grounds to believe that a person is guilty of a crime. *Maryland v. Pringle*, 540 U.S. 366, 371, 124 S. Ct. 795, 157 L. Ed. 2d 769 (2003).

Like the Supreme Court in *Graham*, the Court of Appeals has similarly held that a person cannot be convicted of the crime of

³ The Fourth Amendment to the United States Constitution provides, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause.” Our state constitution similarly protects our right to privacy in article I, section 7, stating, “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

obstructing a law enforcement officer based on his actions during an arrest unless the State proves the arresting officer had probable cause. State v. Barnes, 96 Wn. App. 217, 224-25, 978 P.2d 1131 (1999). In Barnes, a police officer detained Barnes based on his belief that Barnes had an outstanding arrest warrant, but it turned out the warrant had been cleared. Id. at 219. The detention rose to the level of an arrest because a reasonable person in Barnes's position would not have felt free to leave. Id. at 223-24. Because Barnes struggled during the detention and physically resisted a pat-down search, police then arrested him for obstructing. Id. at 220. The Court concluded the initial seizure was unlawful because the officer did not have probable cause. Id. at 224. Therefore, Barnes's arrest for obstructing, based on his actions during the unlawful seizure, was also unlawful, and the contraband seized during the search incident to arrest must be suppressed. Id. at 225 ("The determination of whether the arrest for obstructing was lawful depends on whether the police were carrying out lawful duties. An unlawful detention is by definition not part of lawful police duties.") (citation omitted). Barnes could not be guilty of obstructing because the arrest was unlawful and the officer was therefore not engaged in his official duties. Id.; cf. State v. Turner, 103

Wn. App. 515, 526, 13 P.3d 234 (2000) (upholding conviction for obstructing because officer had probable cause to arrest Turner for crime of public indecency where officer saw Turner standing with his legs apart, his hands between his legs, and a steady stream of urine); State v. Hudson, 56 Wn. App. 490, 496-97, 784 P.2d 533 (1990) (upholding conviction for obstructing because detention was reasonable and lawful).

2. Officer Rice was not discharging his “official duties” because he did not have probable cause to arrest Anthony for possession of marijuana.

To justify an arrest, the officer must have probable cause to believe that an offense has been or is being committed and that the person to be arrested committed the offense. State v. Gaddy, 152 Wn.2d 64, 70, 93 P.3d 872 (2004). “Probable cause exists where the facts and circumstances within the arresting officer's knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed.” Graham, 130 Wn.2d at 724 (quoting State v. Terrovona, 105 Wn.2d 632, 643, 716 P.2d 295 (1986)).

Here, Officer Rice—the arresting officer—had no personal knowledge that Anthony had committed a crime. Officer Rice did not

find any marijuana in Anthony's possession. There is no evidence that Officer Rice spoke to Anthony's mother or that she told him she had found what she suspected was marijuana in Anthony's bedroom. As Officer Rice acknowledged to Anthony during the arrest, he himself had not investigated the crime but had "just been told that there was probable cause." RP 70.

It was Officer Smith, not Officer Rice, who investigated the crime. It was Officer Smith who went to the house earlier that day, who spoke to Anthony's mother, and who took the baggie of suspected marijuana from her and entered it into evidence. RP 23, 26, 29. Officer Smith did not take Anthony into custody at that time because Anthony was not at home. RP 27-28.

Officer Rice went to the house later that evening after Anthony returned. RP 67-68. Before arriving, he spoke to Officer Smith, who told him there was probable cause to arrest Anthony for possession of marijuana. RP 68-69. Therefore, the only information Officer Rice was aware of that could establish probable cause was information he had received from Officer Smith. Officer Rice had no personal knowledge of the crime.

Generally, when the crime at issue is a felony, an arresting officer need not have personal knowledge of the facts establishing probable cause, but may rely on another officer's assessment. Whitely v. Warden, 401 U.S. 560, 568, 91 S. Ct. 1031, 28 L. Ed. 2d 306 (1971) (“fellow officer rule”); Gaddy, 152 Wn.2d at 70-71 (officer may rely on information from a police bulletin or “hot sheet” if the issuing agency has probable cause).

But the “fellow officer rule” does not apply in the case of misdemeanors. State v. Ortega, 159 Wn. App. 889, 898, 248 P.3d 1062 (2011), review granted, 171 Wn.2d 1031, 257 P.3d 665 (2011). Here, Officer Rice arrested Anthony for the crime of possession of 40 grams or less of marijuana. RP 29; CP 10-11. That crime is a misdemeanor. RCW 69.50.4014. Therefore, Officer Rice was not entitled to rely on information from Officer Smith in determining whether there was probable cause for the arrest. Ortega, 159 Wn. App. at 898.

Had Officer Smith obtained a warrant for Anthony’s arrest, the arrest by Officer Rice would have been lawful. “[I]n cases of minor violations, where no danger exists, and where there is no threat of destruction of the evidence,” the State does not have a compelling need for a warrantless arrest. State v. Hatchie, 161 Wn.2d 390, 401 n.6, 166

P.3d 398 (2007). The warrant requirement serves an important purpose in overseeing police intrusions and minimizing the risk of abuse. State v. Reep, 161 Wn.2d 808, 818, 167 P.3d 1156 (2008) (J.M. Johnson, J., concurring). Requiring police to obtain a warrant where no exigent circumstances exist is not particularly onerous. Officer Smith could have expeditiously obtained a warrant via telephone. See, e.g., CrR 2.3(c).

“Police action that deviates from the narrow bounds of this authority [to arrest] has no authority of law.” Hatchie, 161 Wn.2d at 400. Here, Officer Rice did not have probable cause to believe Anthony committed a crime and therefore the arrest was unlawful. Gaddy, 152 Wn.2d at 70. Because the arrest was unlawful, Officer Rice was not discharging his “official duties.” Graham, 130 Wn.2d at 722-26; Barnes, 96 Wn. App. at 225. Therefore, the State failed to prove an essential element of the crime. RCW 9A.76.020(1).

3. Anthony’s conviction must be reversed and the charge dismissed.

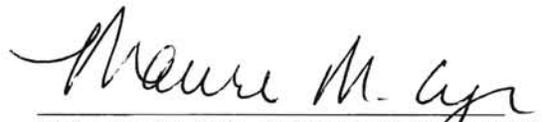
If the reviewing court finds insufficient evidence to prove an element of the crime, reversal is required. State v. Lee, 128 Wn.2d 151, 164, 904 P.2d 1143 (1995). Retrial following reversal for insufficient evidence is “unequivocally prohibited” and dismissal is the remedy. State

v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996) ("The double jeopardy clause of the Fifth Amendment to the U.S. Constitution protects against a second prosecution for the same offense, after acquittal, conviction, or a reversal for lack of sufficient evidence.") (citing North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969), overruled in part on other grounds by Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201, 104 L. Ed. 2d 865 (1989)). Therefore, Anthony's adjudication for obstructing a law enforcement officer must be reversed and the charge dismissed.

E. CONCLUSION

Because the State did not prove an essential element of the crime, Anthony's adjudication for obstructing a law enforcement officer must be reversed and the charge dismissed.

Respectfully submitted this 16th day of November, 2012.


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Washington Appellate Project - 91052
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APPENDIX

FILED
KING COUNTY WASHINGTON

JUN 14 2012

ORIGINAL

SUPERIOR COURT CLERK
BY HEIDI L STEWART
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DEPARTMENT

6	STATE OF WASHINGTON,)	
)	
7)	Plaintiff,
)	No 12-8-00272-1
8	vs)	
)	FINDINGS OF FACTS AND
9	ANTHONY BISHOP,)	CONCLUSIONS OF LAW
	B D 3/15/96)	PURSUANT TO JuCR 7 11(d)
10)	
)	Respondent
11)	
12)	

THE ABOVE-ENTITLED CASE having come on for fact-finding on March 12, 2012, before Judge Bruce Hilyer in the above-entitled court, the State of Washington having been represented by Deputy Prosecuting Attorney Mary Cobb, the respondent appearing in person and having been represented by his attorney, Rick Lichtenstadter, the Court having heard sworn testimony and arguments of counsel, now makes and enters the following findings of fact and conclusions of law

FINDINGS OF FACTS

- 1 On February 5, 2012 at approximately 10 50pm, Respondent was at his house located at
- 1402 Harrington Ave, SE, Renton Present at the home with Respondent was his mother,
- Cora Bishop
- 2 Officer Rice arrived with probable cause to arrest Respondent for Possession of Marijuana
- 3 Officer Rice made contact with Respondent Respondent was in his bedroom dressed in
- boxers
- 4 Officer Rice told Respondent to put on pants Respondent complied
- 5 Officer Rice told Respondent to put his hands behind his back Respondent complied

1 6 While Officer Rice was positioned behind Respondent preparing to pat-down Respondent,
2 Respondent asked Officer Rice about the evidence against Respondent Respondent also
3 told Officer Rice he (Officer Rice) would not able to prove Respondent had possessed
4 marijuana

5 7 Respondent became progressively more upset during the encounter with Officer Rice, and
6 began yelling at Officer Rice Respondent also turned his upper body back towards Officer
7 Rice

8 8 Based on Respondent's degree of agitation, Officer Rice placed Respondent into handcuffs

9 9 Officer Rice removed his code book from his pocket and began to read Respondent his
10 Miranda rights

11 10 While Officer Rice was reading Respondent his Miranda rights, Respondent tried to turn his
12 body away from Officer Rice

13 11 Officer Rice attempted to gain control of Respondent by using a maneuver where he slid his
14 right arm underneath Respondent's right arm and raised Respondent's arms behind his back

15 12 This maneuver caused Respondent and Officer Rice to fall onto his bed

16 13 After Respondent fell onto the bed, Officer Rice pressed his fist on Respondent's cheek,
17 holding Respondent's head on the bed Respondent then moved his legs as if to position
18 himself to kick Officer Rice Respondent never did kick Officer Rice

19 14 Officer Rice instructed Respondent to "stop resisting "

20 15 Officer Rice escorted Respondent out of the bedroom and down the stairs As he escorted
21 Respondent, Respondent challenged Officer Rice to a fight

22 16 Officer Rice placed Respondent into his patrol vehicle
23
24

1 17 Two minutes elapsed between Officer Rice first making contact with Respondent and
2 Respondent being escorted from the residence and placed into the patrol car

3 18 Respondent made the arrest more difficult than necessary

4 19 The Court finds the testimony of Officer Rice to be credible

5 20 Respondent testified that Officer Rice contacted him in his bedroom, and that he complied
6 with the Officer's request to put on his pants and place his hands behind his back

7 21 Respondent testified he did turn his body towards Officer Rice after Officer Rice asked him
8 to place his hands behind his back, and that this movement occurred while he was asking
9 Officer Rice about the sufficiency of evidence in the case

10 22 Respondent testified that he was moving his legs while on the bed with Officer Rice because
11 he was trying to keep from falling off the bed

12 23 The Court does not find the testimony of Respondent as contained in paragraph 22 to be
13 credible

14 24 The incident occurred in King County, Washington

15 And having made those Findings of Fact, the court also now enters the following

16 CONCLUSIONS OF LAW

17 I

18 The above-entitled court has jurisdiction of the subject matter and of the Respondent,
19 ANTHONY BISHOP, who was born March 15, 1996

20 II

21 The State has proven the following elements of Obstructing a Law Enforcement Officer,
22 contrary to RCW 9A 76 020(1), beyond a reasonable doubt
23
24

- 1 a That on or about February 5, 2012, Respondent willfully hindered, delayed, or
2 obstructed Officer Rice in the discharge of Officer Rice's official powers or
3 duties
4
5 b That Respondent knew Officer Rice was discharging his official duties at the
6 time
7
8 c That the acts occurred in King County, Washington

8 III

9 Bishop is guilty of the crime of Obstructing a Law Enforcement Officer

11 IV

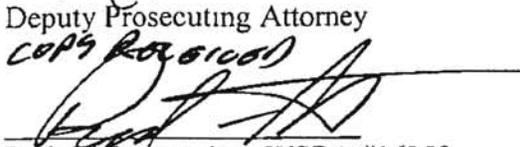
12 Judgment should be entered in accordance with Conclusion of Law III In addition to
13 these written findings and conclusions, the Court hereby incorporates its oral findings and
14 conclusions as reflected in the record

15 SIGNED this 17 day of June, 2012

16 
17 The Honorable Bruce Hilyer

18 Presented by

19 
20 Mary Cobb, WSBA #44335
21 Deputy Prosecuting Attorney

22 
23 Rick Lichtenstadter, WSBA #16359
24 Attorney for Respondent

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

FILED

STATE OF WASHINGTON,)

Respondent,)

v.)

ANTHONY BISHOP,)

Appellant.)

NO. 68905-3-I

APPEALS
COURT
12/14

DECLARATION OF DOCUMENT FILING AND SERVICE

I, NINA ARRANZA RILEY, STATE THAT ON THE 16TH DAY OF NOVEMBER, 2012, 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:

[X] KING COUNTY PROSECUTING ATTORNEY
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() _____

[X] ANTHONY E. BISHOP
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RENTON, WA 98058

(X) U.S. MAIL
() HAND DELIVERY
() _____

SIGNED IN SEATTLE, WASHINGTON THIS 16TH DAY OF NOVEMBER, 2012.

X _____

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