IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ROBERT DOYLE LIBBY, III, Appellant.	No. 39044-2-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury found Robert Doyle Libby III, guilty of unlawful possession of a controlled substance – methamphetamine in violation of RCW 69.50.4013,[1] second degree identity theft in violation of RCW 9.35.020, and obstructing a law enforcement officer in violation of RCW 9A.76.020. This appeal requires that we address the following issues: (1) whether the statutes are concurrent such that the State improperly charged Libby with both identity theft and obstructing a law enforcement officer; (2) whether the trial court erred when it admitted hearsay to prove the identity theft charge; and (3) whether the evidence is insufficient to support the jury verdict finding Libby guilty of obstructing a law enforcement officer conviction. The State agrees that there is no applicable hearsay exception allowing for the admission of the challenged

[1] Libby does not challenge this conviction on appeal.

statements and that, as to Libby's identity theft conviction, the admission of this evidence was not harmless error. We accept the State's concession and reverse Libby's identity theft conviction. But because sufficient evidence supports the jury's verdict finding Libby guilty of obstructing a law enforcement officer, we affirm that conviction and remand to the trial court for further proceedings consistent with this opinion.

FACTS

A restaurant manager called 911 to report that two men in a van used a counterfeit bill to pay for their drive-through order. A police officer arrived at the restaurant and detained the van. Libby was the van's passenger.

When a second officer arrived and asked Libby for identification, Libby stated that he did not have identification but that his name was "Ryan D. Libby" and that his birth date was April 18, 1980. 1 Report of Proceedings at 52. Officer Paul Evers ran a wants and warrants records check which revealed no outstanding warrants for the name "Ryan D. Libby." But the records indicated that "Ryan D. Libby" was six feet, five inches tall and weighed 290 pounds. Believing that Libby was around six feet tall and weighed closer to 200 pounds, Evers asked Libby to confirm his name. When Libby again stated that his name was "Ryan D. Libby," Evers arrested him for obstruction.

Libby subsequently admitted that his real name was Robert Doyle Libby and that his birth date was April 1, 1979. The State charged Libby with unlawful possession of a controlled substance – methamphetamine (count I), forgery (count II),[2] second degree identity theft (count

[2] The trial court dismissed count II.

III), and obstructing a law enforcement officer (count IV). A jury found Libby guilty of counts I, III, and IV, and the trial court imposed a standard range sentence of 16 months confinement.

Libby appeals, arguing that the State is precluded from charging both identity theft and obstructing. We have reversed Libby's identity theft conviction on other grounds. However, we address the sufficiency of the evidence supporting Libby's obstructing a law enforcement officer conviction.

ANALYSIS

Sufficiency of the Evidence

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Credibility determinations are for the trier of fact, here the jury. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201. We draw all reasonable inferences from the evidence in favor of the verdict. *Salinas*, 119 Wn.2d at 201. Circumstantial evidence is no less reliable than direct evidence and "specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability." *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The trier of fact is the sole and exclusive judge of the evidence. *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). Our role as the reviewing court is not to reweigh the evidence and substitute our judgment for that of the jury. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Instead, we defer to the trier of fact's resolution of conflicting testimony,

evaluation of witness credibility, and decisions regarding the persuasiveness of evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

Here, the State charged Libby with obstructing a law enforcement officer. A person commits the crime of obstructing a law enforcement officer when he willfully hinders, delays, or obstructs any law enforcement officer in the discharge of the law enforcement officer's official powers or duties. RCW 9A.76.020. To convict Libby, the State was required to prove three elements: (1) that on December 7, 2008, Libby "willfully hindered, delayed, or obstructed a law enforcement officer in the discharge of the law enforcement officer's official powers or duties"; (2) that Libby "knew that the law enforcement officer was discharging official duties at the time"; and (3) "[t]hat any of these acts occurred in the State of Washington." Clerk's Papers at 37.

As relevant to the obstructing a law enforcement officer charge, Officer Evers testified that on December 7, 2008, while working patrol in Olympia, Washington, he responded to a 911 call from a drive-in restaurant reporting tender of a counterfeit bill. Officers had detained the van in which Libby was a passenger in the restaurant's parking lot. Evers detained Libby and asked him for identification. Libby did not have any identification and twice told Evers that his name was "Ryan D. Libby" and gave his date of birth as April 18, 1980. Libby later admitted that his real name was Robert Doyle Libby and that his birth date was April 1, 1979. Evers testified that Libby's decision to provide a false name and birth date delayed and hindered the officer's investigation. *See, e.g.*, *State v. Williams*, 152 Wn. App. 937, 943, 219 P.3d 978 (2009) (a false statement to a police officer is as capable of hindering or delaying an officer's ability to investigate a crime as a physical act, such as fleeing the scene of a crime), *review granted*, No. 83992-1 (Wash. Mar. 31, 2010). Based on this evidence, any rational trier of fact could find beyond a

reasonable doubt that Libby willfully obstructed a law enforcement officer in the performance of his official duty to investigate the tender of a counterfeit bill at the restaurant. Accordingly, sufficient evidence supports the jury's verdict finding Libby guilty of obstructing a law enforcement officer.

Because the issue may arise on remand, we address Libby's claim that RCW 9.35.020 and RCW 9A.76.020 are concurrent and that he may be charged only under RCW 9A.76.020, the more specific statute.

Concurrent Statutes

Libby argues that RCW 9.35.020, the statute for identity theft, is concurrent with RCW 9A.76.020, the statute for obstructing a law enforcement officer, and that because the latter statute is more specific, the State improperly charged him with both crimes. Because the statutes are not concurrent, we disagree.

When a specific statute punishes the same conduct that a general statute punishes, they are concurrent statutes and the State must charge only under the specific statute. *State v. Presba*, 131 Wn. App. 47, 52, 126 P.3d 1280 (2005) (citing *State v. Shriner*, 101 Wn.2d 576, 681 P.2d 237 (1984)), *review denied*, 158 Wn.2d 1008 (2006). Statutes are concurrent if the general statute is violated every time the special statute is violated. *Presba*, 131 Wn. App. at 52. Put differently, statutes are concurrent when "'[a]ll of the elements required to be proved for conviction of [the general statute] are also elements that must be proved for conviction of [the specific statute].'" *Presba*, 131 Wn. App. at 52 (alterations in original) (quoting *Shriner*, 101 Wn.2d at 579-80).

In *Presba*, Division One of this court addressed this issue and held that the statute for

identity theft, RCW 9.35.020, and the statute for obstructing a law enforcement officer, RCW 9A.76.020, have different elements. 131 Wn. App. at 53. Obstructing a law enforcement officer is a "very general crime" which can be committed without using another person's identity. *Presba*, 131 Wn. App. at 53. *See, e.g.*, *State v. Blatt*, 139 Wn. App. 555, 160 P.3d 1106 (2007), *review denied*, 163 Wn.2d 1040 (2008) (defendant screamed, swore, and struck officer after being asked to move his truck); *City of Spokane v. Hays*, 99 Wn. App. 653, 995 P.2d 88 (2000) (defendant refused to roll down the car window when asked to do so by police officers conducting a traffic stop). Additionally, the obstruction statute also does not require the person to have the "'intent to commit . . . any crime,'" an element required by the identity theft statute. *Presba*, 131 Wn. App. at 53 (alteration in original) (quoting RCW 9A.76.020). We agree with Division One that the statutes have different elements and are not concurrent and the State is not precluded from charging Libby with both crimes.

We accept the State's concession and reverse Libby's identity theft conviction. But because sufficient evidence supports the jury's verdict finding Libby guilty of obstructing a law enforcement officer, we affirm that conviction and remand to the trial court for further proceedings consistent with this opinion.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

BRIDGEWATER, P.J.

ARMSTRONG, J.