**IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON**

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UNPUBLISHED OPINION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

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[1]:

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

[1] 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.

(DOB 6/22/1995). One of [K.B.'s] companions identified 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.].[2] 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

[2] M.B.'s name has been redacted because he was a juvenile at the time of the incident.

1/1/1991) who lived at the same address as [K.B.]. At the time, there was 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. 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 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"[3] 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

[3] "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."

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) 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.[4] His argument is that, given Willet's appearance, no reasonable person would believe he was a public

[4] 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.

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,"[5] and his tool belt contained no 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.[6] 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

[5] 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.

[6] 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.

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 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 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 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).

K.B.'s reliance on White is misplaced.[7] 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.[8] 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 889 (1968). State v. Williams, 171 Wn.2d 474, 481, 251

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[7] 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.

[8] 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.

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*.

Spearman, J.

WE CONCUR:

Leach, C.J.

Becker, J.