

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

LAQUITTA SPURGEON,

Appellant.

No. 39426-0-II

UNPUBLISHED OPINION

Armstrong, J. — Laquitta Spurgeon appeals her conviction for second degree possession of stolen property (an access device). She argues that the statute prohibiting the unlawful redemption of food stamps is concurrent with the statute prohibiting the possession of a stolen access device and, therefore, that the State’s decision to charge her with possession of stolen property rather than unlawful redemption of food stamps violated her right to equal protection. Because the two statutes in question are not concurrent, we affirm.

FACTS

Carol Armstrong receives welfare benefits from the Department of Social and Health Services through the use of an electronic benefits transfer (EBT) card. EBT cards allow welfare recipients to receive their benefits—cash or food stamps or both—electronically.

On February 6, 2009, Armstrong and her friend, Lisa Love, went to a grocery store. Armstrong filled her cart with groceries, and she and Love got in line to check out. Armstrong took out her EBT card, remembered she needed another item, and rushed off to retrieve it. When Armstrong returned to the check-out stand, both Love and the EBT card were gone.

Laquitta Spurgeon came into possession of Armstrong’s EBT card but does not remember

how. On February 7, 2009, Spurgeon used Armstrong's EBT card to purchase groceries worth \$155.60.

The State charged Spurgeon with second degree possession of stolen property (an access device) and third degree theft, and a jury found her guilty.¹

ANALYSIS

I. Concurrent Statutes

Spurgeon contends that the statute prohibiting the unlawful redemption of food stamps—RCW 9.91.144—is concurrent and specific in relation to the statute prohibiting the possession of stolen access devices—RCW 9A.56.160(1)(c). Consequently, Spurgeon argues that the State violated her right to equal protection by charging her with the more general of two concurrent statutes.

The constitutional right to equal protection requires that when two criminal statutes are concurrent, the State may charge a defendant only under the more specific—or special—statute. *State v. Leech*, 114 Wn.2d 700, 711, 790 P.2d 160 (1990); *State v. Shriner*, 101 Wn.2d 576, 580, 681 P.2d 237 (1984). Otherwise, the State could arbitrarily select which crime to charge and thereby obtain varying degrees of punishment while proving identical elements. *State v. Shelby*, 61 Wn. App. 214, 219, 811 P.2d 682 (1991).

Statutes are concurrent if the general statute will be violated in each instance where the special statute has been violated or, in other words, if a person cannot violate the special statute without necessarily violating the general statute. *Shriner*, 101 Wn.2d at 580; *State v. Karp*, 69

¹ Spurgeon was also charged with first degree criminal impersonation but the trial court dismissed this charge after the State's case-in-chief.

Wn. App. 369, 372, 848 P.2d 1304 (1993). Because the issue on which this case turns is purely legal, the standard of review on appeal is de novo. *In re Elec. Lightwave, Inc.*, 123 Wn.2d 530, 536, 869 P.2d 1045 (1994).

There are two reasons the statutes in question are not concurrent. First, at the time the crime was committed, a person could unlawfully redeem food stamps without possessing an access device.² Second, a person may unlawfully redeem food stamps by using an access device that is not stolen.

A. Unlawful Redemption of Food Stamps without Possessing an Access Device

A “person is guilty of possessing stolen property in the second degree if . . . [h]e or she possesses a stolen access device.” RCW 9A.56.160(1)(c). A stolen access device is:

[A]ny card, plate, code, account number, or other means of account access that can be used . . . to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds

RCW 9A.56.010(1). An EBT card, which allows food stamp benefits to be transferred electronically, qualifies as an access device because it is a “card . . . that can be used . . . to obtain . . . goods.” In contrast, a food stamp—the tangible coupon itself—is not a card, plate, code, account number, or other means of account access. It is merely a paper voucher that substitutes for cash in eligible purchases. Therefore, a food stamp is not an access device.

A person is guilty of unlawful redemption of food stamps if he or she, “in violation of 7

² On June 18, 2008, Congress enacted a law that phased out paper food stamp coupons in favor of EBT cards. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651, 1866 (codified as amended in scattered titles and sections of the U.S.C.). Congress specified June 18, 2009, as the date on which paper coupons would no longer be redeemable. 7 U.S.C. § 2016(f)(3). This fact has no bearing on the present case, however, since the crime was committed on February 7, 2009, some three months before paper coupons became invalid.

U.S.C. Sec. 2024(c), obtains and presents food stamps . . . , *or* food stamp benefits transferred electronically, for redemption” RCW 9.91.144 (emphasis added). The statute’s use of the disjunctive “or” is significant—a person can violate the statute by presenting *either* food stamp coupons *or* an EBT card. *See Childers v. Childers*, 89 Wn.2d 592, 595-96, 575 P.2d 201 (1978) (“When the term ‘or’ is used it is presumed to be used in the disjunctive sense”) (quoting 1A C. Sands, *Sutherland on Statutory Construction* § 21.14, n.1 (4th ed. 1972)). Since it is possible to unlawfully redeem food stamps by presenting food stamp coupons, and since food stamp coupons are not access devices, it is possible to unlawfully redeem food stamps without possessing an access device.

Because RCW 9A.56.160(1)(c) is not violated every time RCW 9.91.144 is violated, they are not concurrent. The State did not, therefore, violate Spurgeon’s right to equal protection by charging her under RCW 9A.56.160(1)(c), rather than RCW 9.91.144.

B. Unlawful Redemption of Food Stamps by Using an Access Device that Is Not Stolen

A person unlawfully redeems food stamps if he or she knowingly presents food stamp benefits for redemption in violation of certain other provisions. RCW 9.91.144; 7 U.S.C. § 2024(c).³ Possible violations of these provisions³ include, but are not limited to, presenting food stamp benefits at an unauthorized store or in exchange for ineligible food or cash. 7 C.F.R. § 278.2(a).⁴ Each of these violations can be accomplished with an access card that is not stolen.

³ According to 7 U.S.C. § 2024(c), a person may not present, or cause to be presented, “benefits for payment or redemption . . . knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this chapter or the regulations issued pursuant to this chapter.”

⁴ 7 C.F.R. § 278.2(a), a regulation pursuant to 7 U.S.C. § 2024, states that food stamp coupons “may be accepted by an authorized retail food store only from eligible households or the

The State correctly draws attention to a number of federal cases that support this analysis. In each case, the defendant unlawfully redeemed food stamps without possessing a stolen access device. *See United States v. Hassan*, 211 F.3d 380 (7th Cir. 2000) (redeemed food stamp benefits that were purchased at a cash discount from stores that were unauthorized to accept food stamps); *United States v. Hebeke*, 89 F.3d 279 (6th Cir. 1996) (redeemed food stamp benefits that were fraudulently received); *United States v. Marshall*, 683 F.2d 1212 (8th Cir. 1982) (purchased food stamp benefits for cash).

The fact that unlawful redemption of food stamps can occur without using a stolen access device also shows that RCW 9.91.144 and RCW 9A.56.160(1)(c) are not concurrent.

II. Statement of Additional Grounds (SAG)

Spurgeon raises three additional issues in her SAG. First, she claims that the police failed to properly investigate the case because they did not question “the first person accused” and did not view video footage showing Armstrong in the store on February 6, 2009. This claim would require the court to speculate on matters outside the record and thus cannot be addressed on appeal. *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). Moreover, regardless of its thoroughness, the investigation still produced sufficient evidence for a rational jury to find Spurgeon’s guilt beyond a reasonable doubt. *See State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Second, Spurgeon argues that she should not have been charged with theft because Armstrong did not report her EBT card as stolen until six days after it went missing. This

households’ authorized representative, and only in exchange for eligible food. Coupons may not be accepted in exchange for cash, except when cash is returned as change in a transaction in which coupons were accepted in payment for eligible food”

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argument is without merit. A minor delay in reporting a theft does not have any bearing on the prosecution of the crime.

Finally, Spurgeon claims ineffective assistance of counsel by stating that her “council [sic] did not defend [her] the way [she] should have been defended.” SAG at 2. However, she offers no supporting instances in which her counsel was deficient. Although Spurgeon need not cite to the record in her SAG, she must make explicit the nature and occurrence of any alleged errors. RAP 10.10(c). Spurgeon’s vague implication does not meet this standard.

Affirmed.

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.

Armstrong, J.

We concur:

Van Deren, J.

Worswick, A.C.J.