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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CRAIG LLOYD SIDES,

Defendant and Appellant.

E052920

(Super.Ct.No. SWF10000288)

OPINION

APPEAL from the Superior Court of Riverside County. Dennis A. McConaghy, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Ann Bergen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Christine Levingston Bergman, and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant Craig Lloyd Sides created a false identity for himself as Allan Stokes, and then lied under penalty of perjury when applying for a replacement driver's license. Following a jury trial, defendant was convicted of perjury (Pen. Code, § 118)¹ and sentenced to four years in prison. The trial court suspended defendant's sentence and granted him 36 months formal probation. Defendant appeals from judgment. He contends there was insufficient evidence to support his conviction because there was no evidence he made a material false statement. We disagree and affirm the judgment.

II

FACTS

In summary, the trial testimony established that defendant had several driver's licenses, with differing numbers and under two different names. Defendant's first California driver's license was issued in 1973, in his true name, Craig Lloyd Sides (driver's license No. N3468987). He has maintained this license since 1973. Defendant applied for and was issued a second California driver's license in 1979, using the alias, Allan Wayne Stokes. The driver's license number was N9153843. This driver's license likely expired when defendant moved to Arizona, and the number probably was purged from the Department of Motor Vehicle's (DMV) records. While in Arizona, defendant obtained an Arizona driver's license, Z606674. It is unclear what name was used. Upon

¹ Unless otherwise noted, all statutory references are to the Penal Code.

returning to California, in 2001 defendant reapplied for a California driver's license in the name of Allan Stokes and was issued license No. D4158833. The instant perjury conviction arises from defendant losing this driver's license in 2007, when he was robbed, and applying for a replacement license in the name of Stokes.

At trial defendant testified that in 1978, he worked as a radio personality under the name "Country Craig Sides." Defendant acknowledged his true name is Craig Lloyd Sides, which he was using while working in radio. Defendant was first issued a California driver's license under his name of Craig Lloyd Sides in 1973 (license No. N3468987).

In 1978, defendant's car was vandalized and he was harassed. Because defendant's employer was concerned about his safety as a radio personality, his employer urged him to apply for a California driver's license under the alias of "Allan Wayne Stokes." Defendant testified he did so in 1979 to protect himself and family from threats received while working as a radio promoter and from threats from ex-girlfriends. The California DMV issued defendant a driver's license under the name of Allan Wayne Stokes (Stokes), with the number, N9153843. His car was also registered in the name of Stokes in the event someone attempted to trace his car registration and license plate to his home address. The Stokes driver's license expired when defendant moved to Arizona. Defendant later reactivated it in 2001, when he returned to California.

Defendant further testified that on July 24, 2007, at 3:00 a.m., he was beaten and robbed. The thieves stole his Stokes driver's license, among other things. That same day defendant went to the DMV and applied for a replacement driver's license under the

name of Stokes. In response to the application inquiry asking if he had been issued a driver's license under a different name, defendant said, "No." Defendant claimed he answered "no" because DMV personnel told him that the question only applied to people who had changed their name because of a marriage, divorce, adoption or a legal name change, and this did not apply to him.

Sheriff's Corporal David Douglas testified that on June 6, 2009, he stopped defendant because he was driving a vehicle with expired registration tags. Defendant handed Douglas a California driver's license with the name, Craig Sides, on it. Douglas did a vehicle registration check which showed that the vehicle defendant was driving was registered to Allan Stokes. When Douglas asked defendant who owned the vehicle, defendant said he borrowed it from his cousin, Allan Stokes, who was living in Arizona. Douglas asked defendant if he could contact Stokes. Defendant gave Douglas a telephone number. When Douglas called the number, he received a message that said the phone was not in service.

Douglas requested to search defendant's vehicle, and defendant consented. Behind the car seats, Douglas found a purple velvet bag containing several credit cards and a driver's license with defendant's photograph on it, but in the name of Allan Stokes. Douglas concluded defendant was the same individual shown on both the driver's license defendant handed him and the driver's license Douglas found in the car. Some of the credit cards in the purple bag were in the name of Craig Sides and others were in the name of Allan Stokes. Douglas arrested defendant. At the station, defendant admitted he was Stokes.

DMV investigator Victor Santiago testified he was assigned to investigate the matter regarding defendant. Santiago requested the DMV provide all certified DMV documents regarding the driver's license Nos. D4158833 and N3468987. In response, Santiago received driver's license applications in the name of Sides and Stokes, including:

(1) A driver's license application (form DL44) in the name of Allan Wayne Stokes, under license No. D4158833, dated August 24, 2001;

(2) Form DL44 in the name of Craig Lloyd Sides, under license No. N3468987, dated June 24, 2003;

(3) Form DL44 in the name of Allan Wayne Stokes, under license No. D4158833, dated March 3, 2005;

(4) Form DL44 in the name of Allan Wayne Stokes, under license No. D4158833, dated July 24, 2007.

The driver's license applications were signed under penalty of perjury.

With regard to the Stokes driver's license application dated August 24, 2001, the applicant stated "No," in response to the question, "Have you ever been issued, applied for a driver's license or ID card under a different name or names?" The applicant also stated, "Yes," in response to the inquiry as to whether the applicant had ever applied for or been issued a California driver's license, and listed No. N9153843. The applicant stated "Yes," in response to the question asking whether he had ever held a driver's license in another state or country, with the license number listed as Z606674.

Santiago further testified that he also investigated driver's license No. N9153843, which was listed on the August 24, 2001 application. The only document he received from the DMV was an identification report regarding the fingerprint analysis. He did not receive any documentation relating to license No. N9153843. None of defendant's DMV documentation related back to the 1970's. Santiago explained that, normally, only one driver's license number is issued to a person but it is possible that, after defendant moved to Arizona, his previous Stokes driver's license documents were purged and he was issued a new license number upon returning to California and reapplying for a driver's license. If the previous license records were not purged, the applicant would most likely be given the previous license number.

With regard to the Stokes driver's license application dated March 4, 2003, the applicant stated "No," in response to the question, "Were you ever employed or been issued a driver's license identification card or instruction permit in the state of California or any other state using a different name or number."

The Stokes driver's license application dated July 24, 2007, also stated "No," in response to the question, "Have you ever been issued a driver's license or identification card in the state of California or any other state or county using a different name or number within the past 10 years?"

DMV technician Florence Miller, who received and processed defendant's July 24, 2007, driver's license application, testified that she did not have any independent recollection of processing the Stokes application on July 24, 2007. However, she said she always followed the same procedures when processing each driver's license

application. If an applicant requested renewal of a driver's license, the applicant normally would produce the previous driver's license. If the applicant did not have the driver's license or was not requesting a renewal, Miller would retrieve the applicant's photograph on the computer and check to see if it matched the applicant. She would also verify information such as the name, address, and birth date of the applicant. After checking over the application, the applicant would sign the application under penalty of perjury in her presence.

When shown the Stokes July 24, 2007, driver's license application, Miller testified that the photograph used for the application was dated March 3, 2005. This indicated that, most likely, she used the photograph from the March 3, 2005, driver's license because defendant did not give her a prior driver's license when he submitted his application on July 24, 2007. In addition, Miller noted defendant checked the box on the application stating that the applicant's driver's license was "stolen." The July 24, 2007, application was for a duplicate driver's license.

The parties stipulated the thumb prints on the Sides and Stokes driver's licenses matched defendant's thumbprint.

III

SUFFICIENCY OF EVIDENCE OF PERJURY

Defendant contends there was insufficient evidence to support his perjury conviction under section 118 because the prosecution failed to establish that defendant's false statement in his July 24, 2007, driver's license application was material. Defendant argues that in order to establish materiality, the prosecution had to produce evidence that

defendant's false statement had an impact on the outcome of his application for a replacement driver's license. Specifically, there was no evidence that the DMV would have denied him a replacement driver's license under the name of Stokes had he truthfully admitted he had previously applied for and was issued a driver's license under a different name.

Under section 118, perjury is committed when a person "who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true *any material matter* which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true *any material matter* which he or she knows to be false, is guilty of perjury." (Italics added.)

Under section 118, "a falsehood must be material in order to sustain a charge of perjury." (*People v. Pierce* (1967) 66 Cal.2d 53, 61.) "The test is whether the statement could probably have influenced the outcome of the proceedings, . . ." (*Ibid.*) The trial court in the instant case instructed the jury on the definition of "materiality" as follows: "Information is material if it is probable that the information would influence the outcome of the proceedings, but it does not need to actually have an influence on the proceedings."

Even though the People did not object to this instruction at trial, they now assert that this definition of material information is inapplicable because this matter does not involve perjury made during court proceedings. Citing *People v. Hedgecock* (1990) 51 Cal.3d 395, 406, the People argue that, when perjury is based on a false filing, “an omission or misstatement of fact is material if there is a substantial likelihood that a reasonable person would consider it important in evaluating” the information disclosed against the purpose for which disclosure was required.

Under either definition of “material,” there was more than sufficient evidence to support the jury finding that defendant’s false statement in his July 24, 2007, driver’s license application was material. Santiago testified that normally an individual is given only one driver’s license number, unless the license has expired and the number has been purged from the system. Then, upon reapplying for a license, a license with a new number is issued.

The jury could reasonably infer from Santiago and Miller’s testimony that an individual is issued only one California driver’s license number, regardless of how many aliases he or she might have. Therefore defendant’s false statement that he had never applied for “a driver’s license or identification card in the state of California or any other state or county using a different name or number within the past 10 years” was material. Defendant simultaneously had two separate California driver’s licenses, with different numbers and different names, and he concealed this from the DMV. It was probable that, had the DMV been aware of this, it would not have issued defendant a replacement license under the false name of Stokes.

In defendant's appellate opening brief, defendant attempts to distinguish *U.S. v. Whitecloud*, 59 Fed.Appx. 918, 920, 2003 WL 1459508 (C.A.9 (Cal.)), an unpublished federal district court decision. In *Whitecloud*, the defendant falsely stated on a California state DMV identification card application that he had never applied for a California identification card under any other name. (*Id.* at p. 920.) The federal district court revoked the defendant's supervised release in part on the ground the defendant committed perjury. The defendant argued his misstatement was not material because he would have been issued the identification card anyway. (*Ibid.*) The *Whitecloud* court disagreed, concluding the prosecution demonstrated by a preponderance of the evidence that the defendant's false answer, which was made under penalty of perjury, constituted perjury because, had he answered the application truthfully, he might not have been issued an identification card. The *Whitecloud* court stated: "Whether an individual previously has applied for DMV identifications under different names is particularly material to the DMV application because issuance of a State identification card gives credence to an individual's representation of who he or she is." (*Ibid.*) Such is also the case with regard to a driver's license, which is commonly used for identification purposes.

Although, as defendant notes, the *Whitecloud* decision is not binding on this court and the evidentiary burden of proof in *Whitecloud* differs, the reasoning in *Whitecloud* applies here. Just as a DMV identification card is used for identification purposes, so is a driver's license. Any misrepresentation as to whether an applicant previously applied for an identification card or driver's license is a material representation.

IV
DISPOSITION

The judgment is affirmed.

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CODRINGTON
J.

We concur:

HOLLENHORST
Acting P.J.

MILLER
J.