

**FILED: October 16, 2013**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

KURTIS CARL SMITH,  
aka Kurtis C. Smith,  
Defendant-Appellant.

Multnomah County Circuit Court  
100949886

A147759

Marilyn E. Litzenberger, Judge.

Argued and submitted on January 25, 2013.

Elizabeth G. Daily, Deputy Public Defender, argued the cause for appellant. With her on the brief was Peter Gartlan, Chief Defender, Office of Public Defense Services.

Carson L. Whitehead, Assistant Attorney General, argued the cause for respondent. On the brief were John R. Kroger, Attorney General, Anna M. Joyce, Solicitor General, and Jeremy C. Rice, Assistant Attorney General.

Before Armstrong, Presiding Judge, and Nakamoto, Judge, and Egan, Judge.

NAKAMOTO, J.

Conviction for interference with making a report reversed and remanded with instructions to enter a conviction for attempted interference with making a report and for resentencing; otherwise affirmed.

1                    NAKAMOTO, J.

2                    Defendant appeals his conviction for interference with making a report,  
3                    ORS 165.572. Under that statute, as relevant here, "[a] person commits the crime of  
4                    interference with making a report if the person, by removing, damaging or interfering  
5                    with a \* \* \* telephone \* \* \*, intentionally prevents or hinders another person from  
6                    making a report to a \* \* \* 9-1-1 emergency reporting system." Defendant assigns error to  
7                    the trial court's denial of his motion for a judgment of acquittal, arguing that the state  
8                    failed to introduce evidence that defendant's actions hindered the victim's 9-1-1 report.  
9                    We reverse defendant's conviction for interference with making a report and remand with  
10                    instructions to enter a judgment of conviction for attempted interference with making a  
11                    report. Otherwise, we affirm.

12                    In reviewing the denial of a motion for a judgment of acquittal, we view the  
13                    evidence and all reasonable inferences that may be drawn from it in the light most  
14                    favorable to the state to determine whether a rational trier of fact could find that the state  
15                    proved each element of the offense beyond a reasonable doubt. *State v. Hall*, 327 Or 568,  
16                    570, 966 P2d 208 (1998); *State v. Lawrence*, 231 Or App 1, 3, 217 P3d 1084 (2009), *rev*  
17                    *den*, 347 Or 533 (2010). Consistent with that standard, the facts are as follows.

18                    Defendant and his fiancée had been fighting at their apartment. Defendant's  
19                    fiancée called her friend, Russell, to help resolve the dispute. Russell arrived at the  
20                    apartment and helped defendant move his belongings to his parents' house. Afterward,  
21                    defendant told Russell that he had friends he could stay with but that they were at a bar

1 near the apartment. Russell agreed to drop defendant off at the bar so long as defendant  
2 promised not to return to the apartment.

3 Defendant agreed, and, after dropping him off at the bar, Russell returned to  
4 the apartment. Upon arriving at the apartment, Russell plugged her cellular phone, which  
5 had died, into a wall charger. Russell and defendant's fiancée had talked for about 10  
6 minutes when Russell realized that she had left her purse in her truck. Russell left the  
7 apartment to retrieve her purse and encountered defendant outside the apartment. Russell  
8 screamed at defendant, "I told you I would call the cops if you came back." Defendant  
9 and Russell scuffled outside the apartment door, with both of them eventually entering  
10 the apartment.

11 Once inside, Russell went for her cellular phone, and defendant went to talk  
12 to his fiancée. Russell picked up her phone, which was still plugged into the wall  
13 charger, dialed 9-1-1, and told defendant "I'm calling 9-1-1 on you." Defendant then  
14 approached Russell and, without touching her cellular phone, grabbed the charger cord  
15 and yanked on it. The charger cord disconnected from the phone, but defendant did not  
16 pull the phone out of Russell's hand. Russell continued with her call to 9-1-1 despite  
17 defendant's pulling on the charger cord, retaining her connection to 9-1-1 without  
18 redialing. Defendant then put the phone charger in his pocket, and as he left, he told  
19 Russell, "Good luck calling the cops now, bitch."

20 Defendant was charged with harassment, ORS 166.065, interference with  
21 making a report, ORS 165.572, and theft in the third degree, ORS 164.043. At the close

1 of evidence at trial, defendant moved for a judgment of acquittal on the interference  
2 charge on the ground that there was no evidence that defendant had intentionally  
3 prevented or hindered Russell from making her 9-1-1 call. Defense counsel argued:

4 "Best case scenario for the State is still, [defendant] yanks a phone  
5 cord, doesn't get a phone out from [Russell's] hand, doesn't interfere with  
6 her making that call in any manner whatsoever."

7 The court denied defendant's motion. The jury acquitted defendant on the harassment  
8 charge but found him guilty on the interference and theft charges.

9 On appeal, defendant challenges only his conviction for interference with  
10 making a report and argues that ORS 165.572 requires the state to prove that defendant's  
11 conduct caused a specific result, namely that it "prevent[ed] or hinder[ed] another person  
12 from making a report." Applying the analytical framework in *State v. Gaines*, 346 Or  
13 160, 206 P3d 1042 (2009), defendant further argues that the plain meaning of "prevents  
14 or hinders" requires that a defendant's actions, at minimum, have some detrimental effect  
15 on another person's ability to make a report. The state agrees with defendant's  
16 construction of the statute, and so do we. The parties disagree, however, over whether  
17 the state introduced evidence establishing that detrimental effect. Because we agree with  
18 defendant that it did not, we reverse defendant's conviction.

19 We initially address what the state was required to prove. Beginning as we  
20 always do with the text, ORS 165.572(1) provides:

21 "A person commits the crime of interference with making a report if  
22 the person, by removing, damaging or interfering with a telephone line,  
23 telephone or similar communication equipment, intentionally prevents or  
24 hinders another person from making a report to a law enforcement agency,

1 a law enforcement official, an agency charged with the duty of taking  
2 public safety reports or a 9-1-1 emergency reporting system."

3 As an initial matter, ORS 165.572(1) plainly requires the state to prove that a defendant  
4 engaged in specific conduct and that the defendant intentionally caused a specific result.

5 The structure of the statute provides that the state must prove three elements: First, the  
6 state must prove that the defendant took an action, specifically that he "remov[ed],  
7 damag[ed] or interfer[ed] with a \* \* \* telephone." Second, the state must establish that  
8 the defendant's act of removing, damaging, or interfering with a telephone had the *effect*  
9 of "prevent[ing] or hinder[ing] another person from making a report to \* \* \* 9-1-1."

10 Third, the state must show that the defendant did so intentionally. Thus, the act of  
11 interfering with a telephone is separate and distinct from its effect, namely the prevention  
12 or hindrance of another person from making a report.

13 We now focus on what the legislature intended by the phrase "prevents or  
14 hinders another person from making a report." The legislature did not define the terms  
15 "prevents" and "hinders." When no statutory definition exists, we presume that the  
16 legislature intended the terms to have their plain, natural, and ordinary meaning. *PGE v.*  
17 *Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143 (1993). The plain  
18 meaning of the verb "prevent" suggests stopping something from occurring altogether.  
19 *State v. Hansen*, 253 Or App 407, 412, 290 P3d 847 (2012). Common definitions of  
20 "prevent" are "to deprive of power or hope of acting, operating, or succeeding in a  
21 purpose: FRUSTRATE, CIRCUMVENT," and "to keep from happening or existing esp.  
22 by precautionary measures: hinder the progress, appearance, or fulfillment of: make

1 impossible through advance provisions," as well as "to hold or keep back (one about to  
2 act): HINDER, STOP." *Webster's Third New Int'l Dictionary* 1798 (unabridged ed  
3 2002).

4           Common definitions of "hinder" include "to make slow or difficult the  
5 course or progress of: RETARD, HAMPER," and "to keep from occurring, starting, or  
6 continuing: hold back: PREVENT, CHECK," *id.* at 1070. Although "prevent" and  
7 "hinder" are synonymous under those definitions, the legislature's decision to use both  
8 terms suggests that it intended the statute to cover two different effects--stopping a report  
9 completely *and* hampering a report. *See Hansen*, 253 Or App at 413 (discussing the  
10 significance of legislature's use of both "obstruct" and "prevent" in ORS 162.325).  
11 Therefore, the text indicates that culpability under ORS 165.572 is predicated on the  
12 defendant either (1) keeping another person from making a report altogether or (2)  
13 making it slow or difficult for another person to make a report--both of which require  
14 some actual detrimental effect on the making of a report.

15           The legislative history confirms that construction. When it was introduced  
16 in 1999, House Bill (HB) 3591 provided that culpability would attach if the person  
17 "prevents or hinders *or attempts to prevent or hinder* another person from making a  
18 report." (Emphasis added.) However, a later amendment removed the "attempts to  
19 prevent or hinder" language from the bill. HB 3591 § 1 (A-Engrossed). During a House  
20 Judiciary Committee work session, Committee Counsel John Horton explained the reason  
21 behind the amendment:

1 "[A]ttempting to prevent or hinder is removed because that would mean, if  
2 you left that language in, that even though this is a misdemeanor you  
3 couldn't have a lesser included offense, which is sort of contrary to what the  
4 criminal structure in Oregon for most misdemeanors allows for."

5 Tape Recording, House Committee on Judiciary-Criminal Law, HB 3591, Apr 28, 1999,

6 Tape 165, Side B (statement of Committee Counsel John Horton). Through that

7 amendment, the legislature intended to punish only acts that had the effect of preventing

8 or hindering another person from making a report, not merely attempts to do so. *Id.*

9 Therefore, we conclude that, to prove that a defendant "hindered" a report under ORS

10 165.572, the state must establish that the defendant's actions made it slow or difficult for

11 another person to make a report. That requires proof of some discernible interruption or

12 delay in the making of a report; evidence that there was a *de minimis* effect is not

13 sufficient.

14 We now apply that requirement to this case. Defendant argues that his

15 actions did not have a detrimental effect on Russell's 9-1-1 report. The state disagrees,

16 arguing that the evidence showed that defendant's actions did hinder Russell's report to 9-

17 1-1 by making her call occur more slowly and adding difficulty to the process.

18 Russell's trial testimony was the only evidence presented that related to the

19 interference charge. However, Russell's testimony about the events provides no evidence

20 that defendant's act of pulling on the charger cord made it slow or difficult for Russell to

21 make her call and to give her report to 9-1-1. For example, Russell explained at trial that

22 her phone charger was the type that "just plugs directly in, which can just pull directly

23 back out" rather than the kind that "pinches and plugs into your phone." Furthermore,

1 she testified that she had dialed 9-1-1 before defendant grabbed the charger cord. Thus,  
2 when defendant pulled on the charger cord, "he only [got] the charger. He [did] not end  
3 up with the phone because the phone separate[d] from the charger," the phone stayed in  
4 Russell's hand, and Russell was able to continue her call with the 9-1-1 dispatcher.  
5 Additionally, Russell testified that defendant left the apartment after disconnecting the  
6 charger and made no further attempt to interfere with her phone. During the encounter,  
7 Russell did not have to redial 9-1-1 or use another phone to make the report. In sum,  
8 defendant's act of pulling on the charger cord did not have any detrimental effect on her  
9 making her report to 9-1-1.

10           At oral argument, the state argued that at least an inference could be drawn  
11 that a person pulling on a charger cord could make a call more difficult. The problem  
12 with that theory, however, is that no such inference can be drawn in this case. Russell's  
13 trial testimony eliminates that possibility. Because she had already dialed 9-1-1 when  
14 defendant grabbed the charger, the phone stayed in her hand, she did not have to redial  
15 her call to 9-1-1, and she continued to make her report while defendant left the apartment,  
16 a reasonable jury could not have inferred that the mere pulling of the charger cord made it  
17 slow or difficult for Russell to make a report.

18           Thus, we conclude that, based on the evidence at trial, a rational jury could  
19 not have found that defendant hindered Russell from making a report. Accordingly, the  
20 trial court erred in denying defendant's motion for a judgment of acquittal on the  
21 interference charge. The state contends--and defendant concedes--that the state proved



1 attempted interference. We therefore reverse defendant's conviction for interference with  
2 making a report and remand to the trial court for entry of a judgment of conviction for  
3 attempted interference with making a report; otherwise, we affirm.

4 Conviction for interference with making a report reversed and remanded  
5 with instructions to enter a conviction for attempted interference with making a report  
6 and for resentencing; otherwise affirmed.