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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0651**

State of Minnesota,
Respondent,

vs.

Tomak Zain Zarif,
Appellant.

**Filed April 20, 2020
Affirmed
Jesson, Judge**

Blue Earth County District Court
File No. 07-CR-18-4035

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Patrick McDermott, Blue Earth County Attorney, Mankato, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Rodenberg, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

JESSON, Judge

When a police officer arrived at a local gas station seeking to arrest appellant Tomak Zain Zarif for outstanding warrants, Zarif attempted to flee the gas station. A struggle

between Zarif and the officer ensued, resulting in the officer fracturing his pinky finger. A jury convicted Zarif of felony obstruction of legal process. Because sufficient evidence supports the conviction and any alleged prosecutorial misconduct did not affect Zarif's substantial rights, we affirm.

FACTS

On September 27, 2018, as part of her typical work responsibilities, a gas station employee checked for outstanding local warrants. She noticed that appellant Tomak Zain Zarif, who was at the gas station, had an outstanding warrant. Zarif regularly frequented the gas station, and the employee knew who he was. After speaking with the manager, the employee called the police to report that Zarif was at the gas station.

When police received the call, no officers were available to immediately respond. As a result, the public safety commander responded to the call. Typically, at least two officers respond to warrant calls. But after speaking with another officer just arriving at the police station, the commander responded to the call alone, knowing the other officer was following him shortly after. The other officer told the commander that he was familiar with Zarif and that Zarif usually cooperated with police.

When the commander arrived at the gas station, the manager pointed out Zarif. The commander approached him and asked for his name and identification. Zarif questioned the commander about the request and did not provide his name. Eventually, after the commander asked several times, Zarif replied with a name that the commander recalled was something "like Doug Johnson." The commander expressed that he knew that was not

Zarif's name. But he told Zarif that he did not intend to charge him for providing a false name if he provided his actual name.

At this point, Zarif began moving toward the middle of the store. The commander moved with him, remaining in between Zarif and the door. According to the commander, Zarif struck him and began running toward the door in an attempt to flee. Either Zarif or the commander knocked over a display of snacks, and the commander grabbed Zarif's right arm. Although the commander used a defensive technique intended to cause Zarif to end up on the ground on his stomach, Zarif landed on his back. On the ground, according to the commander, the two were "all out struggling" and Zarif was resisting arrest. The commander yelled for the gas station employees to call 911 because he needed help. After struggling for about one and a half minutes, another officer arrived and arrested Zarif. Following the struggle, the officer noticed that his left pinky finger was bent at a strange angle. Later, x-rays revealed that the finger was fractured.

Based on his actions, the state charged Zarif with third-degree assault, fourth-degree assault, obstruction of legal process (a gross misdemeanor), and giving a false name to a police officer. Later, the state amended the complaint to add a charge of felony obstruction of legal process. The case proceeded to a jury trial.

At trial, the state presented testimony from the commander, who testified as described above. At the beginning of his testimony, the prosecutor asked the commander if there was a difference between someone obstructing or resisting arrest and someone actively engaging physically with police. After the commander described the difference, the prosecutor asked if what the commander described would be obstruction. The

commander indicated that it would. Additionally, the commander testified that, during the struggle, he was concerned that Zarif may have been able to grab his gun, heightening his need to maintain control over Zarif. The commander also reiterated that Zarif struck or pushed past him when he attempted to flee from the store.

Two gas station employees also testified about the encounter. The manager testified that after Zarif made “a run for it,” the commander tackled him near the doors. According to the manager, Zarif was “wrestling” with the officer and trying to resist arrest. But the manager believed that the commander made contact with Zarif first. The other employee, describing the interaction, testified that Zarif ran into the commander, ran the commander through the snack display, and was resisting the officer and fighting him on the ground. In addition to this testimony, the state admitted several photos and surveillance camera footage from four different angles. The footage depicts the officer initially speaking with Zarif and the ensuing struggle between the two.

The jury acquitted Zarif of third and fourth-degree assault. But it found Zarif guilty of the other three charges. Zarif moved for a judgment of acquittal on the felony obstruction-of-legal-process charge, which the district court denied. The district court sentenced Zarif to 21 months in prison for felony obstruction of legal process. Zarif appeals.

DECISION

I. Sufficient evidence supports Zarif’s felony conviction of obstruction of legal process.

Zarif first argues that insufficient evidence supports his felony conviction of obstruction of legal process. Specifically, Zarif contends that the state failed to prove that he engaged in a physical act directed toward the commander that frustrated or hindered his official duties.

When direct evidence supports an element of an offense, we undertake “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). In doing so, we assume that the jury believed the state’s witnesses. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). If the jury could have reasonably found the defendant guilty, giving due regard to the presumption of innocence and the burden of proof beyond a reasonable doubt, we will not overturn a jury verdict. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016).

To obtain a felony conviction for obstruction of legal process, the state must prove that Zarif intentionally “obstruct[ed], resist[ed], or interfere[d] with a peace officer while the officer is engaged in the performance of official duties.”¹ Minn. Stat. § 609.50, subd. 1(2) (2018). We have “construe[d] the statute narrowly to proscribe conduct directed at the police officer that ‘obstructs, resists, or interferes’ with the police officer in the

¹ The provision making this offense a felony requires substantial bodily harm. *See* Minn. Stat. § 609.50, subd. 2(1) (2018). In this appeal, Zarif does not contest that the commander’s fractured pinky finger amounts to substantial bodily harm.

performance of official duties under the statute.” *State v. Morin*, 736 N.W.2d 691, 698 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). In general, fleeing a police officer, without more, does not amount to obstructing legal process. *Id.* But “obstructing, resisting, or interfering with one’s own arrest” provides a sufficient basis for a conviction of obstructing legal process, so long as the police officer is making the arrest as part of his or her official duties. *State v. Litzau*, 893 N.W.2d 405, 409 (Minn. App. 2017), *review denied* (Minn. June 20, 2017).

Here, Zarif argues that the evidence did not show that he engaged in a physical act directed toward the officer. But there is significant evidence in the record to the contrary. First, the state presented surveillance video footage depicting the interaction. That video depicts Zarif attempting to flee the gas station, which resulted in him and the commander engaging in a physical struggle on the ground for nearly one and a half minutes. In addition to the surveillance video footage, the jury heard testimony from the commander and two employees who witnessed the altercation. The commander testified that Zarif struck or pushed past him when attempting to flee and described the encounter on the ground as “all out struggling.” One of the employees testified that Zarif “ran into [the commander and] ran [the commander] through the display,” and both employees described Zarif as resisting arrest when he was on the ground. This evidence provided the jury with a sufficient basis to conclude that Zarif engaged in an act directed at the officer, which frustrated his official duties.

Zarif contends that, at best, the surveillance video shows him attempting to flee and that, once on the ground, Zarif “briefly tried to get out from under [the commander.]” Even

if we accepted Zarif's argument that the video is unclear, this argument ignores the testimony from the commander and gas station employee that Zarif engaged in some type of physical contact with the commander when attempting to flee. It also ignores testimony from the commander and the two employees that Zarif continued to struggle and resist arrest while on the ground. We assume that the jury believed the state's witnesses, including the commander and the gas station employees. *Moore*, 438 N.W.2d at 108. Further, any assessment of witness credibility is the function of the jury. *State v. Reese*, 692 N.W.2d 736, 741 (Minn. 2005). Here, it is evident that the jury chose to credit testimony that Zarif physically engaged with the commander and resisted arrest once on the ground. Accordingly, we conclude that sufficient evidence supports Zarif's conviction.

II. Any alleged prosecutorial misconduct did not affect Zarif's substantial rights.

Next, Zarif maintains that the prosecutor committed misconduct warranting a new trial by questioning the commander about what constitutes obstruction, the ultimate legal issue. Specifically, Zarif points to the following exchange:

Q. Is there a difference between someone who is just obstructing or resisting arrest and someone who is actively either engaging physically or assaulting an officer?

A. Yes.

Q. How would you describe that?

A. Well, when you go hands on and you tell them they're under arrest sometimes they'll tense up and yet they don't want to do, that but if there's a couple of us there then you're just grabbing their arms and getting it behind their back so that you can handcuff them.

Q. And that would be an obstruction or resistance in your book?

A. That is correct.

Zarif did not object to this line of questioning at trial. We review claims of unobjected-to prosecutorial misconduct under the modified plain-error standard of review. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under that standard, Zarif must establish plain error. *See id.* Upon a showing of plain error, the burden shifts to the state to demonstrate “that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury. *Id.* (quotations omitted). If each element is satisfied, this court must then determine whether to address the error to ensure the fairness and integrity of judicial proceedings. *Id.*

Here, we need not decide whether the prosecutor committed misconduct amounting to plain error because we are satisfied that the state has demonstrated that any error did not affect Zarif’s substantial rights.² *See State v. Pearson*, 775 N.W.2d 155, 164 (Minn. 2009) (declining to decide if a closing argument was misconduct because it did not affect the defendant’s substantial rights). “An error is prejudicial if there is a reasonable likelihood that the error had a significant effect on the jury’s verdict.” *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017) (quotations omitted). We consider factors such as “the pervasiveness of improper suggestions” and “the strength of evidence against the

²The state does not argue on appeal that the prosecutor did not commit misconduct. Rather, the state focused its argument on demonstrating why any error did not affect Zarif’s substantial rights.

defendant” when evaluating an alleged error’s effect on substantial rights. *Id.* (quotations omitted).

Strong evidence supports Zarif’s conviction. The state presented surveillance video footage from four different angles which captured the encounter. Moreover, the commander and two gas station employees testified about what happened. Additionally, the challenged questions and testimony were not pervasive. Zarif challenges only three questions from the prosecutor and three answers from the commander. The commander was the first witness to testify, and this questioning occurred at the beginning of his testimony. The challenged testimony amounts to about half a page in the commander’s just over 40 pages of testimony. Further, the prosecution did not reference the challenged testimony during closing arguments. *See State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007) (concluding that a prosecutor’s improper suggestions were not pervasive where they covered less than one of the 64 pages containing the witness’s testimony).

Finally, as the state notes, the jury returned a mixed verdict, acquitting Zarif of the two assault charges. “Where the jury has acquitted the appellant of some counts, but convicted the appellant of others, we view the verdicts as an indication that the members of the jury were not unduly inflamed by the prosecutor’s comments.” *State v. Washington*, 521 N.W.2d 35, 40 (Minn. 1994) (quotation omitted). The jury’s decision to find Zarif not guilty of third and fourth-degree assault indicates that any misconduct did not significantly impact the jury’s verdict. Accordingly, we conclude that the state has met its burden of proving that any alleged prosecutorial misconduct did not affect Zarif’s substantial rights.

Affirmed.