STATE OF MINNESOTA
IN COURT OF APPEALS
A11-0698

State of Minnesota,
Respondent,

vs.

Roshawn White,
Appellant.

Filed December 10, 2012
Affirmed and remanded
Kalitowski, Judge

Ramsey County District Court
File No. 62-CR-10-5142

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Sara R. Grewing, St. Paul City Attorney, John Lesch, Clifford Berg, Assistant City Attorneys, St. Paul, Minnesota (for respondent)

Diane M. Dodd, Dodd Law Offices, L.L.C., Eagan, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Chutich, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

Appellant Roshawn White challenges her conviction of misdemeanor obstructing legal process. Appellant claims (1) there was insufficient evidence to support the conviction; (2) the district court committed prejudicial plain error by failing to include

unrequested language in the jury instructions; and (3) appellant's trial counsel was ineffective. We affirm appellant's conviction but remand for clarification and correction of the Warrant of Commitment.

D E C I S I O N

I.

Appellant argues there was insufficient evidence to support her conviction because her acts and words of noncompliance were not directed at the police officer and did not substantially frustrate or hinder the officer in her duties. We disagree.

When considering a claim of insufficient evidence, this court "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This court "will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense." *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

Whoever intentionally "obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties" is guilty of obstructing legal process. Minn. Stat. § 609.50, subd. 1(2) (2008). Either physical acts or words that have the effect of physically obstructing or interfering with a police officer may constitute

obstructing legal process. *State v. Tomlin*, 622 N.W.2d 546, 548 (Minn. 2001). The conduct must be directed at the police officer. *State v. Morin*, 736 N.W.2d 691, 698 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). And, a person must substantially frustrate or hinder the officer in the performance of her duties; mere interruption is not enough. *State v. Krawsky*, 426 N.W.2d 875, 877 (Minn. 1988).

Here, the police officer testified that she stopped appellant's vehicle because of an obstructed license plate and speeding. Appellant initially ignored the officer and the officer's requests to provide identification. When appellant finally acknowledged the officer's presence, appellant yelled and swore at the officer and continued to refuse to identify herself. Because there was heavy traffic and three passengers in appellant's car, including two children, the officer instructed appellant to shut off the engine and get out of the vehicle to prevent a chase situation. Appellant refused, so the officer physically removed appellant from the vehicle.

The officer told appellant to face the vehicle and put her hands on her head so that the officer could pat appellant down for weapons and escort her to a safer position, but appellant refused to comply and continued "yelling and carrying on," in a "very confrontational" manner. The officer testified that appellant lunged at and pushed the officer in the chest, forcing the officer to step back into a lane of traffic.

As appellant continued to yell and swear, the officer physically directed appellant to the area between appellant's vehicle and the squad car and ordered appellant to the ground. Appellant did not comply. The officer removed her taser and again ordered

appellant to the ground. Appellant continued to refuse, and the officer deployed her taser.

Once on the ground, appellant prevented the officer from handcuffing her, and the officer deployed her taser a second time. At that point, appellant allowed the officer to handcuff her. Appellant refused to get up from the ground and walk to the squad car, and assistance from back-up officers was required.

Appellant argues her conduct was not directed at the officer. Appellant relies on *Morin*, in which the court held that the "directed at" requirement is not met by a fleeing defendant who says nothing to the police officers. 736 N.W.2d at 698. In reaching this decision, the *Morin* court referenced *State v. Patch*, 594 N.W.2d 537, 538-39 (Minn. App. 1999), which held that oral acts directed at third parties and not at officers do not fall under the obstructing-legal-process statute. *Id.*

The record here indicates that all of appellant's physical and oral conduct—including her words in refusing to comply with the officer's request to identify herself and her conduct in refusing to shut off her engine, exit the car, turn around and face the car, move to the rear of the car, lie on the ground, put her hands behind her back so that she could be handcuffed, and walk to and get into the squad car—was directed at the officer. Appellant did not flee the officer nor were her oral acts directed at a third party. Most of appellant's actions occurred outside of the vehicle with only appellant and the officer present, and all of these actions occurred in response to the officer's requests.

Appellant contends that the only conduct alleged to be directed at the officer occurred when appellant pushed the officer into the lane of traffic. Thus, she argues,

because the jury found that she did not use force or violence, there was no conduct directed at the officer. We disagree. The jury's finding that appellant did not use force or violence or the threat of force of violence is not determinative of whether appellant's conduct was directed at the officer. The officer's testimony about appellant's conduct provided sufficient evidence for the jury to find that appellant's conduct was directed at the officer.

Appellant also argues that her conduct did not substantially frustrate or hinder the officer because the officer's step back into the traffic lane was merely a "brief and fleeting interruption," and the entire encounter lasted only minutes. But appellant's argument that the only "interruption" occurred when the officer stepped back into traffic is belied by the evidence. Throughout the traffic stop, appellant's degree of noncompliance was severe and persistent and accompanied by out-of-control behavior. *Cf. State v. Richmond*, 602 N.W.2d 647, 653 (Minn. App. 1999) (determining no probable cause to arrest for obstructing legal process because defendant maintained calm demeanor, did not pose risk to officer safety, and ultimately complied with officer's requests), *review denied* (Minn. Jan. 18, 2000). Furthermore, appellant's conduct required not only the continued attention of the officer, but the assistance of additional officers. Thus, appellant's conduct substantially frustrated and hindered the officer.

II.

Appellant argues that the district court committed prejudicial plain error by failing to include language from caselaw (1) explaining that appellant's conduct must be directed

at the officer and (2) clarifying when words alone may constitute obstructing legal process. We disagree.

Appellant did not previously object to or raise any concerns about the jury instructions. Failure to object to jury instructions before they are given to the jury generally is considered a waiver of the right to appeal. *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). But "a failure to object will not cause an appeal to fail if the instructions contain plain error affecting substantial rights or an error of fundamental law." *Id.* An error is plain if it is clear or obvious. *State v. Burg*, 648 N.W.2d 673, 677 (Minn. 2002). A plain error affects substantial rights if it is prejudicial and affects the outcome of the case. *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998). Plain error is "prejudicial if there is a reasonable likelihood that the giving of the instruction in question would have had a significant effect on the verdict of the jury." *Id.* (quotation omitted).

Appellant argues that plain error occurred because the jury instructions did not specify that physical conduct must be directed at the officer. *See Morin*, 736 N.W.2d at 698 ("[T]he statute applies only to conduct directed at police officers engaged in the performance of official duties."). We disagree. The failure to include *Morin*'s "directed at" language did not affect the outcome of the trial because the record indicates that all of appellant's noncompliant conduct and words were directed at the officer.

Appellant also argues that plain error occurred because the jury instructions did not explain the type of words that may constitute obstructing legal process. *See Krawsky*, 426 N.W.2d at 877-78 (stating that the "statute may be used to punish 'fighting words' or

any other words that by themselves have the effect of physically obstructing or interfering with a police officer" but "does not apply to ordinary verbal criticism directed at a police officer"). We disagree. The evidence regarding appellant's words was minimal compared to the evidence of her physical conduct directed at the officer. Moreover, there is no evidence that the jury based the conviction on appellant's name-calling and questioning of the officer. *Cf. State v. Hager*, 727 N.W.2d 668, 677 (Minn. App. 2007) (concluding that defendant's substantial rights were affected because question jury asked during deliberations indicated its uncertainty about whether obstruction or interference included verbal actions). The state presented ample evidence of obstruction by physical conduct.

Finally, appellant argues that plain error occurred because the jury instruction did not specify that "physically" not only modifies "obstructs," but also modifies "resists" and "interferes" in the following sentence: "[T]he Defendant physically obstructed, resisted or interfered with [the officer] in the performance of official duties." We disagree. Appellant's argument that the instruction as given constitutes plain error is based on meritless speculation and is without support.

Additionally, district courts have considerable latitude in selecting the language for jury instructions. *State v. Goodloe*, 718 N.W.2d 413, 421 (Minn. 2006). When counsel does not request specific language and the facts of the case do not demand its inclusion in jury instructions, we cannot say that the district court committed plain error by not sua sponte including such language in its instructions to the jury.

We conclude that the plain-error standard is not met because the alleged errors did not cause any prejudice to appellant and therefore did not affect appellant's substantial rights.

III.

Appellant argues that her trial counsel was ineffective by failing to fully cross-examine and impeach the officer regarding the contents of the police report. But this court does not review for competency matters of trial strategy, such as cross-examination and impeachment. *State v. Vick*, 632 N.W.2d 676, 689 (Minn. 2001). Therefore, appellant's ineffective-assistance-of-counsel claim fails.

IV.

Finally, we note that there are discrepancies between the complaint, the jury instructions, and the Warrant of Commitment. The state charged appellant under Minn. Stat. § 609.50, subd. 1, using language primarily from subd. 1(2). On the record all parties implicitly agreed appellant was charged under subdivision 1(2), and the jury was instructed with language from the Criminal Jury Instruction Guide specific to that provision. But the Warrant of Commitment states appellant was charged with two counts of obstructing legal process under Minn. Stat. § 609.50, subd. 1(1) (2008), that Count 1 was dismissed, and that appellant was convicted of Count 2. It appears that Count 2 references Minn. Stat. § 609.50, subd. 1(1), in error, and it should instead reference Minn. Stat. § 609.50, subd. 1(2). Therefore, we remand for clarification and correction of the Warrant of Commitment.

Affirmed and remanded.