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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-778**

State of Minnesota,
Respondent,

vs.

Nancy Carol Lazaryan,
Appellant.

**Filed October 27, 2009
Affirmed
Stauber, Judge**

Ramsey County District Court
File No. 62T507024818

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

John Choi, St. Paul City Attorney, Heidi L. Johnston, Special Assistant City Attorney, Suite 300, 333 South Seventh Street, Minneapolis, MN 55402 (for respondent)

Marie Wolf, Interim Chief Appellate Public Defender, Mark D. Nyvold, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Stauber, Presiding Judge; Klaphake, Judge; and Minge, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from her convictions of trespassing and disorderly conduct, appellant contends that she was deprived of her constitutional right to present a defense because the district court refused to instruct the jury on the defense of citizen's arrest. We affirm.

FACTS

In late 2007, appellant Nancy Lazaryan made a formal request to the City of Saint Paul's Department of Safety and Inspections (DSI) under the Minnesota Government Data Practices Act (MGDPA) to review all government data concerning vacant buildings in the city. In order to accommodate appellant's request, DSI staff had to review each file and redact any non-public information. DSI policy also mandated that a staff member be present to maintain the integrity of the files while appellant reviewed them. Robert Humphrey, an assistant director at DSI, was assigned to appellant's request. Due to the voluminous nature of the request, Humphrey established a protocol that allowed appellant to meet with a DSI employee once a week at a pre-arranged time to review all relevant files that had been prepared for public viewing in the previous week. Appellant agreed to the protocol; however, on several occasions she failed to arrive on time for her scheduled appointments. As a result, Humphrey modified the protocol to require appellant to schedule viewing appointments at least 48 hours in advance.

On November 28, 2007, appellant arrived at the DSI office without providing any notice and asked to review available files. Humphrey denied appellant access to the files because she had failed to schedule an appointment 48 hours in advance. According to

Humphrey, appellant began yelling at him and pushed him into a wall. Appellant told Humphrey that she was placing him under citizen's arrest because he lacked the authority to deny her access to the files. Appellant also called 911 to alert police that she was making a citizen's arrest. In an attempt to evade appellant, Humphrey left the public lobby and used his key card to enter a secured area restricted to city employees only. Appellant chased after Humphrey and managed to gain entrance to the secured area. Humphrey proceeded to search for Sergeant Schoen, a police officer assigned to DSI. Humphrey was unable to locate Sergeant Schoen, but upon entering Sergeant Schoen's office, appellant pushed Humphrey into a chair, ordered him to remain seated, and blocked the doorway with her arm to prevent him from leaving. By that time, police officers responding to appellant's call had arrived at the office. The officers refused to place Humphrey under arrest because they concluded that there was no evidence to suggest that Humphrey's conduct was illegal.

Appellant was subsequently charged with trespassing and disorderly conduct. Prior to trial, appellant provided notice of her intent to defend against the charges by claiming that she was making a citizen's arrest of Humphrey for violating Minn. Stat. § 609.43 (2006), which prohibits misconduct by a public official. Appellant claimed that Humphrey's denial of her request to review public information constituted a violation of the statute because Humphrey did not have the authority to respond to data requests. Under appellant's interpretation of the MGDPA, only the city clerk had the authority to facilitate such requests. At the close of trial, appellant requested a jury instruction on the defense of citizen's arrest. The district court denied the request because appellant had

failed to offer sufficient evidence to raise the defense. The court also noted that, even if appellant had satisfied her evidentiary burden, no exigent circumstances were present to justify her decision to immediately arrest Humphrey by force. The court allowed appellant to testify about her decision to restrain Humphrey, but instructed the jury that the execution of a citizen's arrest was not a valid defense to the charges. At the close of trial, appellant was convicted of both charges. This appeal followed.

D E C I S I O N

Appellant argues that the district court's instruction to the jury that the defense of citizen's arrest was not a valid defense to the charges violated her right to present a complete defense. The effectuation of a citizen's arrest can be a valid defense to criminal charges. *See* Minn. Stat. § 629.30, subd. 2(4) (2006) (stating arrest can be effectuated by private person); Minn. Stat. § 629.37 (2006) (providing grounds under which private person can arrest another); *State v. Lawler*, 571 N.W.2d 486, 489 (Iowa 1997) (recognizing citizen's arrest as a defense to criminal charges). And "[d]ue process requires that defendants be afforded [a] meaningful opportunity to present a complete defense." *State v. McArthur*, 730 N.W.2d 44, 54 (Minn. 2007).

But a defendant is only entitled to a defense instruction on citizen's arrest if there is sufficient evidence "to make the defense one of the issues of the case." *State v. Auchampach*, 540 N.W.2d 808, 817 (Minn. 1995) (concluding if mitigating circumstance or issue is converse of enumerated element of crime charged and negates that element, defendant required to adduce sufficient evidence on proffered defense to make it an issue in case; burden then shifts to state to prove beyond reasonable doubt lack of that defense).

In order to satisfy this standard, a defendant must make at least a “prima facie showing that the proffered defense is an issue.” *State v. Hage*, 595 N.W.2d 200, 205 (Minn. 1999). The district court has broad discretion in crafting jury instructions and will not be reversed absent an abuse of that discretion. *State v. Broulik*, 606 N.W.2d 64, 68 (Minn. 2000).

The district court denied appellant’s request for a citizen’s arrest instruction because appellant failed to produce any evidence that Humphrey had knowingly engaged in misconduct by a public employee. Misconduct by a public employee occurs when an employee “does an act knowing it is in excess of lawful authority or knowing it is forbidden by law to be done in that capacity.” Minn. Stat. § 609.43(2) (2006).

Appellant claims that Humphrey engaged in official misconduct by responding to her data request and refusing her access to the data. Appellant contends that Humphrey lacked the authority to respond to data requests or place limitations on her right to view government data because the city clerk had exclusive authority over data requests.

Under the MGDPA, the “responsible authority” is required to respond to government data requests. Minn. Stat. § 13.03, subd. 1 (2006). A “responsible authority” is an “individual designated by the governing body of that political subdivision as the individual responsible for the collection, use, and dissemination of any set of data.” Minn. Stat. § 13.02, subd. 16 (2006). Appellant introduced the city’s guidelines and procedures for the MGDPA, which designate the city clerk as the responsible authority. But the document also gives the city clerk the authority to assign government data requests to department supervisors as designees. The city clerk designated responsibility

for data requests to the director of Humphrey's department, Robert Kessler, who in turn, assigned the task to Humphrey.

Strictly construed, Kessler's assignment of the data request to Humphrey may have been impermissible under the city's guidelines and procedures because only assignments from the city clerk to department supervisors were explicitly authorized. But even assuming that Humphrey did not have the authority to process appellant's request, appellant failed to produce any evidence demonstrating that Humphrey *knowingly* acted outside the scope of his authority. *See* Minn. Stat. § 609.43(2) (stating that misconduct by a public employee occurs when an employee knowingly acts in excess of lawful authority). In fact, the evidence in the record suggests that Humphrey believed, in good faith, that he had the authority to respond to appellant's request. Humphrey testified that responding to data requests was part of his job and claimed that he was operating under the direction of Kessler in processing appellant's requests. Humphrey was conscientious about processing requests and regularly consulted with the city attorney's office, the city clerk, and the Minnesota Information Policy Analysis Division to ensure compliance with the data practices laws. Humphrey also copied the city clerk on email correspondence between him and appellant to ensure that the clerk was aware of the status of appellant's request. Humphrey never gave any indication that he doubted his authority to respond to the requests, and Kessler also testified that Humphrey was acting pursuant to his orders.

The only evidence that appellant produced to demonstrate that Humphrey may have been aware that he was acting outside his authority was her own testimony that she

told Humphrey at some point that he did not have the authority to process her request. Although appellant's testimony could suggest that Humphrey knowingly violated the law, the district court apparently did not find her credible. *See State v. Kramer*, 668 N.W.2d 32, 38 (Minn. App. 2003) (indicating that credibility determinations are entitled to deference on appeal), *review denied* (Nov. 18, 2003). Because this court defers to the district court's credibility determinations and because appellant failed to present sufficient evidence to suggest that she was making a valid arrest at the time of the offenses, the district court did not abuse its discretion in refusing to instruct the jury on a citizen's arrest defense.

Another consideration that factored into the district court's decision to deny appellant the right to rely on the defense was the lack of immediate necessity to forcibly arrest Humphrey by trespass. State law permits a private citizen to make arrests for public offenses committed or attempted in the arresting person's presence. Minn. Stat. § 629.37(1). But, as we have previously noted, a statutory construction granting an absolute right of trespass in order to effect a citizen's arrest is unsupported and would uniquely threaten the privacy of others. *State v. Rein*, 477 N.W.2d 716, 719 (Minn. App. 1991), *review denied* (Minn. Jan. 30, 1992). Before a citizen may trespass to make an arrest, it must be shown that deference to law enforcement was not feasible. *Id.* ("Private arrest powers likely cannot supercede public law enforcement activity absent extraordinary circumstances."). Here, no exigent circumstances were present to necessitate appellant's trespass and physical restraint of Humphrey. Accordingly,

appellant should have refrained from taking matters into her own hands and, instead, referred the matter to law enforcement.

Because appellant failed to present prima facie evidence that Humphrey knowingly violated the MGDPA and because no exigent circumstances were present to support appellant's decision to trespass into a secured area and physically restrain Humphrey, the district court did not abuse its discretion in refusing to provide the jury with a citizen's-arrest instruction.

Affirmed.