

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **CITY OF ROSWELL,**

3 Plaintiff-Appellee,

4 v.

NO. 34,286

5 **SYLVIA J. MARIN,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY**

8 **James M. Hudson, District Judge**

9 Paul V. Sanchez

10 Roswell, NM

11 for Appellee

12 Kennedy, Kennedy & Ives, LLC

13 Theresa Hacsí

14 Joseph Patrick Kennedy

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **GARCIA, Judge.**

19 {1} Defendant appeals her conviction for obstructing an officer based on a city

1 ordinance. We issued a calendar notice proposing to affirm. Defendant has responded
2 with a memorandum in opposition. We affirm.

3 {2} Defendant continues to challenge the sufficiency of the evidence to support her
4 conviction for obstructing an officer. A sufficiency of the evidence review involves
5 a two-step process. Initially, the evidence is viewed in the light most favorable to the
6 verdict. Then the appellate court must make a legal determination of “whether the
7 evidence viewed in this manner could justify a finding by any rational trier of fact that
8 each element of the crime charged has been established beyond a reasonable doubt.”
9 *State v. Apodaca*, 1994-NMSC-121, ¶ 6, 118 N.M. 762, 887 P.2d 756 (internal
10 quotation marks and citations omitted).

11 {3} Under the applicable City of Roswell ordinance, obstructing an officer is
12 defined as “Resisting, obstructing or abusing . . . [a] peace officer in the lawful
13 discharge of his duties.” [RP 7] Here, officers responded to Defendant’s residence
14 after Defendant called about a domestic disturbance, alleging that her husband was in
15 the house breaking their personal property. [DS 2] The officers told Defendant that the
16 alleged acts were not a crime, but they advised her that it was in the parties’ interest
17 to separate for the evening. [DS 2] Defendant’s husband agreed to spend the night at
18 a separate residence owned by the couple. [DS 2-3] Officers thereafter received a call
19 from Defendant’s husband, who informed them that Defendant had come over to the

1 other residence. [DS 3] When an officer arrived at the other residence, he saw the two
2 in the driveway, with Defendant refusing to leave until she got an apology from her
3 husband. [DS 3] The officer testified that he tried to interview husband, but was
4 having trouble hearing him because Defendant was verbally objecting to the officer's
5 presence. [DS 3; MIO 2-3] The officer told Defendant to be quiet, but she would not
6 stop. [DS 3-4] The officer told Defendant that she was under arrest and told her to
7 place her hands behind her back. [DS 4] She refused to do so, instead crossing her
8 arms in front of her. [DS 4] One officer then grabbed her left arm and another grabbed
9 her right arm, placing handcuffs on her. [DS 4]

10 {5} Defendant continues to argue that she was lawfully entitled to be on her own
11 property. However, the issue is whether the officers were engaged in the lawful
12 discharge of their duties, and there is no dispute that they were responding to and
13 investigating a domestic disturbance call. As such, the ownership of the property was
14 irrelevant insofar as Defendant was not entitled to obstruct the officers. Defendant's
15 main argument continues to be that she had a first amendment right to express herself
16 during the incident. Again, however, constitutionally-protected conduct and speech
17 can become unlawful under certain circumstances, including when it rises to the level
18 of obstructing an officer acting within the scope of his or her duties. *See generally,*
19 *City of Hobbs v. Biswell*, 1970-NMCA-086, ¶¶ 5-9, 81 N.M. 778, 473 P.2d 917

1 (discussing the exercise of municipal police power).

2 {5} To the extent that Defendant is arguing that she had committed no crime when
3 the officers attempted to arrest her, we disagree. Defendant’s refusal to obey the
4 officers prior to her arrest was sufficient to support probable cause for her arrest. *See*
5 *State v. Diaz*, 1995-NMCA-137, ¶¶ 16–23, 121 N.M. 28, 908 P.2d 258 (providing that
6 resisting refers not only to a defendant's overt physical act, but also to the failure to
7 act when refusing to obey lawful police commands); *City of Roswell v. Smith*, 2006-
8 NMCA-040, ¶ 5, 139 N.M. 381, 133 P.3d 271 (affirming the defendant's conviction
9 for obstructing an officer based on his conduct of refusing to leave a parking lot even
10 though he had been instructed several times by officers to do so). Defendant’s reliance
11 [MIO 8] on *State v. Wade*, 1983-NMCA-084, 100 N.M. 152, 667 P.2d 459 is not
12 persuasive. That case held that the defendant’s yelling did not constitute abuse of an
13 officer. *Id.* ¶ 17. Unlike the present case, where Defendant had been ordered to stop
14 her verbal obstruction of the officer’s questioning of husband, the defendant in *Wade*
15 had not been ordered to be quiet, and the conviction was overturned because the words
16 alone were not enough to convict under that statute. *Id.*

17 {6} For the reasons set forth above, we affirm.

18 {7} **IT IS SO ORDERED.**

19
20

TIMOTHY L. GARCIA, Judge

1 **WE CONCUR:**

2 _____
3 **CYNTHIA A. FRY, Judge**

4 _____
5 **M. MONICA ZAMORA, Judge**