[Cite as *State v. Roy*, 2010-Ohio-2540.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-06-168
	:	O P I N I O N
- vs -		6/7/2010
	:	
MARIA E. ROY,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2008-12-2133

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RINGLAND, J.

{¶1} Defendant-appellant, Maria E. Roy, appeals her conviction for obstructing official business in the Butler County Court of Common Pleas. We affirm.

{¶2} Sometime after midnight on November 1, 2008, officers of the West Chester Township Police Department were dispatched to 8740 Cincinnati-Dayton Road in response to a reported fight and unknown trouble at the property. The property is a large parcel of land of approximately 78 acres referred to as the Skinner property.

Situated on the property is the site of a former junkyard, a large wooded area and grassy field, a number of abandoned vehicles and trailers, multiple residential structures and trailers, and a barn. The officers proceeded to the barn area where a woman was found lying on the ground bleeding, a man with blood on his face standing next to her talking on a cell phone, and a girl in the backseat of an SUV crying and talking on her cell phone. Officer Paul Lovell radioed the dispatcher to request back-up units. He then approached the woman on the ground to determine what had occurred. She explained that her daughter (the 17-year-old girl in the SUV) was at a Halloween party in the barn that evening, but wanted to go home and called her parents to pick her up. After arriving at the location and approaching her daughter, an unknown black male verbally confronted the mother and struck her in the mouth. The husband attempted to intervene, but the black male struck him as well. The victims told the officer that they believed the man was still inside the barn and that they believed underage drinking had occurred at the party.

{¶3} Approximately three or four minutes later, Officer Guy Michael Veeneman arrived and the officers intended to go into the barn to deal with the suspect while a third officer would take care of the two assault victims. One of the residents of the property, Ray Skinner, approached the officers and to inquire about the disturbance. He told the officer "whoever is in that barn is trespassing. I don't want them on my property." Officer Lovell instructed Skinner to "stay back." Skinner stood by the side of the barn and told the officers, "just do what you need to do." The officers then entered the barn to find three underage individuals with alcohol on a table inside. The juveniles were removed from the barn and held in custody for suspicion of underage consumption.

{¶4} A vehicle then approached at a high rate of speed through the grassy field finally coming to rest near the officers. Officer Veeneman left the juveniles with another

officer and walked over to speak with the driver. Appellant exited the vehicle and approached the officers, repeatedly yelling profanities and telling the officers to leave her property. The officers were familiar with appellant from prior dealings. According to Officer Veeneman, he told appellant "everything is okay. Calm down. I'll let you know what is going on" and "I'll explain to you everything that's going on here in just a minute. Just calm down." However, appellant continued to be verbally disruptive and belligerent towards the officer. Officer Lovell then walked over to assist and calm appellant, but she persisted. Appellant then tried to walk past Veeneman and, although he tried to stop her, she kept trying to push past him. The officer then grabbed her hands and tried to put them behind her back to detain her so the officers could continue with the investigation. He advised her that she was not under arrest, but being detained so that the investigation could be conducted. Appellant continued to struggle. As Veeneman tried to handcuff her, appellant broke free of his grip and swung her left fist toward Officer Lovell. Officer Veeneman attempted to pull her away from Officer Lovell, but in doing so they both fell to the ground. Officer Veeneman hit the ground first and rolled appellant to her stomach where, with the assistance of Officer Lovell, they were able to handcuff her. The officers instructed appellant that she was under arrest.

{¶5} After the case was bound over to the Butler County Grand Jury from Area III Court, appellant was indicted for obstructing official business in violation of R.C. 2921.31(A), a felony of the fifth degree. The case proceeded to trial on April 2, 2009. The trial judge had another jury trial in progress that day. Rather than continue appellant's matter for the following day, the trial began around 3:00 p.m. Appellant's trial counsel informed the court that an expert witness was scheduled to testify on her behalf, but requested the expert be allowed to testify that day before the state's witnesses because the expert was leaving to go on maneuvers with the Army the following day.

After opening statements were given and the state's first witness testified, the jury was excused by the trial court at 5:24 p.m. before the expert could testify. After the jury had been excused, appellant's counsel requested that her expert have an opportunity to testify because he could not return the following day. The trial court noted the time and stated "I can't do anything else." Appellant's counsel replied, "I understand." The trial court then offered for a deposition of the testimony to be taken, which would be read to the jury. No deposition was taken.

{¶6} In support of her defense, appellant submitted the testimony of her next-door neighbor and her brother, Ray Skinner. The neighbor testified that she saw appellant "being grabbed up" and "slung" to the ground and handcuffed by "four or five" officers while appellant was yelling and the officers saying "just wait a minute and we'll tell you." Skinner stated that appellant arrived at the scene in a "panicked, scared to death" state of mind asking what happened, but the officer did not reply to her and merely said "we'll tell you. We'll tell you. Ms. Roy, just calm down." Then as she walked a few more steps, an officer pulled her arm, grabbed her and slammed her to the ground, put his knee on her back and handcuffed her. Skinner claimed an officer held a shotgun to her face.

{¶7} Appellant also testified in her own defense. Appellant testified that she had given $1,000 to her 17-year-old granddaughter to have a Halloween party at the barn. She stated that the party was supposed to be over at 11:30 p.m. at which time the kids came home to eat at the house where they were to spend the night. Before going to bed, she went outside to let her dogs out and looked towards the barn, where she saw a fire truck. She drove her vehicle up the hill where she observed three life squads and five police cruisers. She ran and began asking questions to determine what was happening, but was thrown to the ground, handcuffed, and arrested on unknown

charges. She was taken to Mercy Hospital for injuries where the nurses treated her "like dirt" while the police officers flirted with them. After being released from jail the following morning, appellant stated that she went to a different hospital where she was treated for internal bleeding, fractured ribs, and a ruptured spleen caused by the police. Appellant denied that her motive in telling the police to leave the property was to prevent the juveniles from being arrested for underage consumption. She denied that she told the officers to get off her property.

{¶8} At the conclusion of trial, the jury found appellant guilty as charged. Appellant was sentenced to five years community control, four years of basic supervision, one year of intensive supervision, a $25 monthly supervision fee, drug and alcohol use monitoring, 200 hours of community service and 45 days in the Butler County Jail, with credit for 43 days served. Appellant timely appeals, raising four assignments of error.

{¶9} Assignment of Error No. 1:

{¶10} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY REFUSING TO GRANT A REASONABLE CONTINUANCE BY NOT PERMITTING APPELLANT'S WITNESS TO TESTIFY AND BY PERMITTING IMPROPER REBUTTAL."

{¶11} Appellant first argues that the trial court denied her right to due process and to present a defense by not allowing her expert witness to testify on the first day of trial. Appellant alleges that the "defense tried every way possible to get his testimony in, yet, the Court decided sua sponte to break without even giving counsel a chance to raise the issue." Appellant argues that the court was "so determined to start the case, it had the obligation to permit the defendant to get in her evidence. This was an absolute denial of due process."

{¶12} After review of the record, we cannot say that appellant suffered any prejudice by the trial court's failure to allow the expert to testify out-of-order. Acknowledging that the expert would not be available to testify after the first day of trial, the trial court offered for a deposition of the testimony to be taken, which would be later read to the jury. No deposition was taken. Since appellant failed to take the deposition or proffer the testimony, she has failed to preserve the issue for appellate review. See *State v. Bethel*, 110 Ohio St.3d 416, 2006-Ohio-4853, ¶97; *State v. Barton*, 108 Ohio St.3d 402, 2006-Ohio-1324, ¶67.

{¶13} Similarly, in the instant appeal, appellant again fails to submit any proffer relating to the expert's testimony. Appellant merely states that the expert's testimony would relate to the "etiology of [her] injury." We cannot assess whether appellant was prejudiced by the exclusion of this testimony without knowing what the testimony would have been. Id. Accordingly, appellant's argument is not well-taken.

{¶14} Next, appellant complains that improper rebuttal testimony was offered. Appellant's witnesses testified that she had been "slung," "slammed" or thrown to the ground by the police officers and threatened with a shotgun. The state offered the testimony of Officer Gleason in rebuttal. Officer Gleason was called to testify that, while he was there, he saw no such event occur. Appellant urges that this was improper cumulative rebuttal testimony.

{¶15} "The proper scope of rebuttal testimony lies within the sound discretion of the trial court. Thus, a trial court's decision regarding the scope of rebuttal testimony will not be reversed unless the trial court's decision was unreasonable, arbitrary, or unconscionable." *In re Sadiku* (2000), 139 Ohio App.3d 263, 267.

{¶16} We find no error by the trial court. Following an objection at trial, the trial court specifically instructed the prosecution to limit Officer Gleason's testimony to what

he observed in comparison to appellant's witnesses. The officer merely stated that he did not observe anyone pick up appellant, throw her to the ground, kick her, knee her, hit her in the side, or pull a shotgun on her. The evidence was proper and within the scope of rebuttal.

{¶17} Appellant's first assignment of error is overruled.

{¶18} Assignment of Error No. 2:

{¶19} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN PERMITTING THE PROSECUTOR TO INTRODUCE CHARACTER EVIDENCE IN ITS CASE IN CHIEF TO COMMIT PROSECUTORIAL MISCONDUCT AND TO ENGAGE IN BASELESS IMPEACHMENT."

{¶20} In her second assignment of error, appellant argues the state committed prosecutorial misconduct by making statements and offering evidence to portray appellant as a "bad person." Further, appellant argues that the trial court erred by allowing the prosecutor's conduct. Specifically, appellant claims that there was no basis for the prosecution stating during the opening statement that the case was "about disrespect to police officers" and that appellant acted the way she did to prevent the police from discovering that an underage drinking party occurred at the barn.

{¶21} In order to reverse a conviction based upon prosecutorial misconduct, a defendant must prove that the prosecutor's actions were improper and that they prejudicially affected the defendant's substantial rights. *State v. Elmore*, 111 Ohio St.3d 515, 2006-Ohio-6207, ¶62. The focus of an inquiry into allegations of prosecutorial misconduct is upon the fairness of the trial, not upon the culpability of the prosecutor. *State v. Hill*, 75 Ohio St.3d 195, 203, 1996-Ohio-222, quoting *Smith v. Phillips* (1982), 455 U.S. 209, 219, 102 S.Ct. 940. The Ohio Supreme Court has held that prosecutorial misconduct is not grounds for error unless the defendant has been denied a fair trial.

State v. Maurer (1984), 15 Ohio St.3d 239, 266.

{¶22} The admissibility of relevant evidence rests within the sound discretion of the trial court. *State v. Sage* (1987), 31 Ohio St.3d 173, paragraph two of the syllabus. Absent an abuse of discretion, an appellate court will not disturb a trial court's ruling as to the admissibility of evidence. *State v. Martin* (1985), 19 Ohio St.3d 122, 129. An abuse of discretion connotes more than merely an error of law or judgment; it implies that the trial court's attitude was unreasonable, arbitrary or unconscionable. *State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, ¶40.

{¶23} After review of the record, we find no abuse by the trial court. Upon arriving at the scene the officers discovered evidence of underage drinking. Specifically, after talking to the assault victims, the officers entered the barn and observed three underage individuals with alcohol on a table inside. Additionally, the female assault victim informed the officers that "underage drinking" was occurring at the barn. Clearly, the prosecution had a basis for asking appellant about her knowledge of any underage drinking on her property and whether she sanctioned the drinking party. Further, the assault victim's testimony was not hearsay as appellant contends. Specifically, it was not offered to prove the truth of the matter asserted, i.e., that minors were drinking. Evid.R. 801(C); *State v. Mallette*, Cuyahoga App. No. 87984, 2007-Ohio-715, ¶15. The trial court provided a cautionary instruction regarding the testimony, which the jury presumably followed. *State v. Loza*, 71 Ohio St.3d 61, 79, 1994-Ohio-409. This evidence was instead presented, and was relevant, to show a basis for the officers' investigation and establish a potential motive for appellant's actions toward the officers by impeding their investigation of the underage drinking and assaults.

{¶24} Appellant urges that she was not at the party and, when the officers arrived, neither was her granddaughter. As a result, she claims there is no evidence

that she had knowledge of her granddaughter drinking. However, appellant testified that she provided her granddaughter $1,000 for the party. She claimed that the money was given to purchase candy, snacks, decorations, and her granddaughter's costume. However, it is within the purview of the trier of fact to determine whether appellant's testimony was credible. Further, whether appellant's granddaughter or others were charged or found guilty of underage drinking is irrelevant to the instant matter since appellant's conduct was at issue at trial. Appellant's granddaughter may not have been drinking that evening, but others could have been. Even if appellant's granddaughter was not drinking, appellant may have been aware of that fact that others were and acted as she did in this situation to prevent the police from discovering the minors' crimes. Photos admitted at trial showed a bottle of alcohol and empty cans of Keystone beer in the vicinity of the barn. Inside the barn, more beer cans were visible and a "beer pong" game had been set up. This too is an issue for the trier of fact. Proof of motive in the case at bar was a circumstance bearing on the essential element of appellant's intent; that she acted "with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's capacity." R.C. 2921.31(A). Additionally, based on the foregoing, we find no evidence of prosecutorial misconduct since an evidentiary foundation existed for the all evidence, cross-examination and comments complained about by appellant. See *State v. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, ¶145.

{¶25} Appellant's second assignment of error is overruled.

{¶26} Assignment of Error No. 3:

{¶27} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN DENYING DEFENDANT'S RULE 29 MOTIONS AT THE END OF THE STATE'S CASE AND AT THE END OF ALL THE EVIDENCE."

{¶28} In her third assignment of error, appellant argues that insufficient evidence was presented to overcome her Crim.R. 29 motions and support her conviction.

{¶29} Our review of a trial court's denial of a Crim.R. 29 motion for acquittal is governed by the same standard as that used for determining whether a verdict is supported by sufficient evidence. *State v. Rodriguez*, Butler App. No. CA2008-07-0162, 2009-Ohio-4460, ¶60. Whether the evidence presented is legally sufficient to sustain a verdict is a question of law. *State v. Thompkins,* 78 Ohio St.3d 380, 386, 1997-Ohio-52. An appellate court, in reviewing the sufficiency of the evidence supporting a criminal conviction, examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Carroll,* Clermont App. Nos. CA2007-02-030, CA2007-03-041, 2007-Ohio-7075, ¶117. After examining the evidence in a light most favorable to the prosecution, the appellate court must then determine if "any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." Id. Proof beyond a reasonable doubt is "proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs." R.C. 2901.05(D).

{¶30} Appellant attempts to construe her argument in this assignment of error based upon a charge of "resisting arrest," arguing that she was not under arrest when she was originally detained and handcuffed, and was justified in ordering the police off her property.

{¶31} However, appellant was charged with obstructing official business in violation of R.C. 2921.31(A), not "resisting arrest." R.C. 2921.31(A) provides, "[n]o person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of

the public official's lawful duties."

{¶32} After reviewing the evidence in a light most favorable to the prosecution, we find sufficient evidence to support appellant's conviction for obstructing official business. The officers entered appellant's property in response to an alleged assault. After arriving at the property, the officers discovered two assault victims and evidence of an underage drinking party at the nearby barn. As the officers were attempting to investigate both the assault and underage consumption, appellant actively interfered with the investigation by being belligerent and argumentative, ignoring the officers' requests to calm down and stop, attempting to walk past Officer Veeneman, and struggling with him when he tried to temporarily detain her. Under the circumstances, the evidence was sufficient to show that appellant's conduct hampered or impeded the officers' performance of their lawful duties. See *State v. Wellman*, 173 Ohio App.3d 494, 2007-Ohio-2953.

{¶33} Appellant's third assignment of error is overruled.

{¶34} Assignment of Error No. 4:

{¶35} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN REFUSING TO GIVE APPELLANT'S REQUESTED JURY INSTRUCTIONS WHICH WERE PROPER UNDER THE LAW."

{¶36} In her final assignment of error, appellant argues the trial court abused its discretion in denying requested jury instructions concerning the right to refuse entry upon her land and the right to resist an unlawful arrest.

{¶37} Crim.R. 30(A) requires a trial court to "fully and completely give the jury all instructions which are relevant and necessary for the jury to weigh the evidence and discharge its duty as the fact-finder." *State v. Comen* (1990), 50 Ohio St.3d 206, paragraph two of the syllabus. A determination as to which jury instructions are proper

is a matter left to the sound discretion of the trial court. *State v. Guster* (1981), 66 Ohio St.2d 266, 271. We review the trial court's refusal to give the requested jury instructions under an abuse of discretion standard. *State v. Wolons* (1989), 44 Ohio St.3d 64, 68.

{¶38} In reviewing the record to ascertain the presence of sufficient evidence to support the giving of a proposed jury instruction, an appellate court should determine whether the record contains evidence from which reasonable minds might reach the conclusion sought by the instruction. *State v. Risner* (1997), 120 Ohio App.3d 571, 574. However, a trial court does not err in failing to instruct the jury on an affirmative defense where the evidence is insufficient to support the instruction. *State v. Melchior* (1978), 56 Ohio St.2d 15, 21-22.

{¶39} At trial, appellant's counsel withdrew his request regarding appellant's right to resist an unlawful arrest. Accordingly, the trial court did not abuse its discretion in refusing to give the instruction. Regarding the right to refuse entry onto the land instruction, the officers were lawfully justified in entering the property in response to the emergency situation. Further, one of the lawful owners, appellant's brother, consented to the officers being on the property. There was no factual basis for the instruction and, as a result, the trial court did not abuse its discretion.

{¶40} Appellant's fourth assignment of error is overruled.

{¶41} Judgment affirmed.

YOUNG, P.J., and BRESSLER, J., concur.