COURT OF APPEALS
DECISION
DATED AND FILED

August 3, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 04-0067-CR **Cir. Ct. No. 00CM000225**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JILL A. MOORE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Lincoln County: J. MICHAEL NOLAN, Judge. *Affirmed.*

¶1 CANE, C.J.[1] The State appeals an order vacating Jill Moore's judgment of conviction for obstructing an officer, contrary to § 946.41(1). *See* WIS. STAT. § 974.05(1)(a); ***State v. Newman***, 162 Wis. 2d 41, 51 n.11, 469

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

N.W.2d 394 (1991). The State challenges the trial court's conclusion that the evidence was insufficient to support the conviction. We affirm the order.

¶2 On May 19, 2000, around 11 p.m., Merrill police officers responded to a hit-and-run accident that involved a fleeing dark colored pick-up truck. When the officers arrived on the scene, they found a vehicle registration plate lying on the ground. Dispatch informed them that the plate was registered to Keaven B. Moore. The officers responded to Moore's residence and observed a black Ford pick-up truck with the same registration plate number found at the scene. They also observed that the vehicle had extensive front-end damage and was leaking fluids. The officers testified they heard two people shouting inside the residence.

¶3 The officers knocked on the residence's front door and Jill eventually came outside. As Jill came outside, the officers testified they saw a male standing inside, who quickly moved beyond the officers' field of vision. The officers explained to Jill that the vehicle in her driveway was involved in a hit-and-run accident. Jill told the officers she was not the driver and that she just awakened. The officers indicated they wanted to speak with the other person who was in the house and requested that Jill go inside to see if that person would come out to talk. Jill stated she was confused about what she needed to do at that point.

¶4 For about a half hour the officers, who at that time numbered as many as four, conversed with Jill and continued to request that she get the other person to come out of the house. Jill repeatedly stated that she was confused about her legal obligations and did not want to do anything more than what she was obligated to do. Hoping Jill would cooperate with the investigation, the officers did not tell Jill she had no obligation to comply with their request, and they continued to ask that she go inside and get the other person. Eventually, the police

allowed Jill to go inside to change out of her pajamas. A short time later, Jill exited the residence and stated there was no one else inside.

¶5 By a second amended complaint, the State charged Jill with obstructing an officer. The complaint alleged that Jill knowingly provided false or misleading information that interfered with a police investigation of a hit-and-run incident. At the conclusion of a jury trial, the court submitted two verdicts for the same charge: one verdict for obstructing by providing false information with intent to mislead and another verdict for obstructing by conduct which prevented or made more difficult the performance of the officers' duties. The jury found Jill not guilty of the former but guilty of the latter.

¶6 Jill later moved to set aside the conviction. Given that the jury acquitted her of providing false information with intent to mislead, Jill claimed there was insufficient evidence to sustain the conviction that she rendered the performance of the officers' duties more difficult. The trial court agreed, and the State appeals.

¶7 The State argues that when the evidence is viewed in the light most favorable to sustaining the conviction, a reasonable trier of fact could have found Jill intentionally misled the police officers, thereby making the performance of their duties more difficult. The test of the sufficiency of the evidence on a motion to dismiss in the trial court is the same as that on appeal. ***State v. Duda***, 60 Wis. 2d 431, 439, 210 N.W.2d 763 (1973). We affirm the verdict unless the evidence viewed most favorably to the State and the conviction is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990).

¶8 The State relies on three pieces of evidence to support its position that a reasonable trier of fact could have convicted Jill for obstructing an officer by conduct that prevented or made more difficult the performance of the officers' duties. First, considering Jill's initial comment to the police that she had just awakened, the State argues this comment was said with intent to mislead the officers into believing she knew nothing about the person who had just entered the residence (with whom Jill was arguing) and who was driving the hit-and-run vehicle. According to the State, this statement intentionally misled the officers into tailoring their questioning in a way that was not going to give fruitful results. Second, as to Jill's expressing confusion about her legal obligations for approximately thirty minutes, the State claims that this further misled the police by providing her husband, the alleged driver of the vehicle, time to flee the residence without detection, thus making the officers' duties more difficult. Third, turning to Jill's statement to the police after she reemerged from the house that there was no one in the house, the State argues this also intentionally misled the police because the police reasonably inferred that Jill meant that, to her knowledge, no one else had ever been in the house during the police contact.

¶9 The difficulty with the ultimate inferences the State makes from portraying the evidence in the light most favorable to the conviction is that the jury found Jill not guilty of "knowingly giving false information to an officer with the intent to mislead the officer in the performance of his duties."[2] Thus, considering

[2] Contrary to the State's assertion that the jury convicted Jill of "obstructing by intentionally misleading law enforcement and hindering their ability to do their duties" and acquitted her of "lying to an officer," as noted above, the verdicts plainly indicate the jury convicted Jill of obstructing by conduct which prevented or made more difficult the performance of the officers' duties and acquitted her of obstructing by providing false information with intent to mislead. Only one of the verdicts explicitly asked the jury to consider whether Jill expressed falsehoods, and on that verdict the jury acquitted her.

the jury's acquittal, either of two scenarios occurred: (1) the jury found Jill's statements and responses to the officers' questions were truthful and her questions to the officers were made in good faith, and, hence, were not misleading, or (2) the jury concluded the State did not prove (a) Jill actually made false statements, (b) Jill knew she made false statements, or (c) Jill's collateral objective in knowingly making false statements was with the intent to mislead. Through these possibilities, we consider whether the evidence was sufficient to sustain the conviction of obstruction by conduct that rendered the performance of the officers' duties more difficult.

¶10 If the first scenario is correct, we conclude the trial court properly vacated the conviction. Whatever inferences of misleading the State draws from Jill's statement to the police that she just woke up and that no one was in the house, we reject them given that under this scenario the jury found Jill gave truthful answers.[3] And, without more, a person simply asking good-faith questions about legal obligations—questions the police officers admitted they were not going to answer because they wanted Jill to cooperate with their investigation—is insufficient to support an obstructing conviction. That is, asking

[3] We question the State's contention that a truthful answer can be misleading. A "truthful" answer is one that is "accurate and sincere." WEBSTER'S THIRD NEW INT'L DICTIONARY 2457 (unabr. 1993). In contrast, a "misleading" answer is one that is "Delusive; calculated to lead astray or to lead into error." BLACK'S LAW DICTIONARY 1000 (6th ed. 1990); *see also* WEBSTER'S THIRD NEW INT'L DICTIONARY 1444 (unabr. 1993) (defining "mislead" as "to lead in a wrong direction or into a mistaken action or belief **:** Deceive. … to lead astray.").

good faith questions about legal obligations cannot be criminal conduct, even though it makes the performance of the officers' duties more difficult.[4]

¶11 If the second scenario is correct, the conviction still must be vacated. While we must normally search the record for evidence to sustain the conviction, our task in this case is severely constrained, if not rendered impossible, by the jury's acquittal. As the trial court observed, in view of the jury's acquittal, it would be pure speculation to conclude a reasonable trier of fact could conclude Jill's answers and assertions were actually false, or that her expressions of confusion as to her obligations were feigned. Thus, we cannot conclude with any degree of certainty that the probative value and force of the evidence is sufficient to allow a reasonable trier of fact to find beyond a reasonable doubt that Jill's conduct made the performance of the officers' duties more difficult. Consequently, we agree with the trial court that the conviction must be vacated.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

[4] Besides, we agree with the trial court that Moore's continued confusion regarding her legal obligations did not make the officers' job more difficult. After all, the officers chose to linger on Moore's porch for a half hour, hoping Moore would eventually yield to their request. Yet, at any time, they could have proceeded to apply for a search warrant. And aside from conclusory statements otherwise, the State has failed to explain how Moore's actions diminished the likelihood of the police being able to obtain a search warrant.