STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0261

State of Minnesota,
Respondent,

vs.

Bradley Maximilian Dodds,
Appellant.

Filed April 21, 2009
Affirmed
Worke, Judge

Douglas County District Court
File No. K1-06-000917

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

Christopher Karpan, Douglas County Attorney, Megan Burkhammer, Assistant County Attorney, Douglas County Courthouse, 305 Eighth Avenue West, Alexandria, MN 56308 (for respondent)

Charles Hawkins, 150 South Fifth Street, Suite 3260, Minneapolis, MN 55402 (for appellant)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Stauber, Judge.

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

WORKE , Judge

Appellant challenges his conviction of obstructing legal process, arguing that (1) the evidence is insufficient to support his conviction; (2) the guilty verdict is inconsistent with his acquittal of fourth-degree assault; (3) the district court erred by instructing the jury on the elements of obstructing legal process; and (4) the district court erred by refusing to instruct the jury on the voluntary-intoxication defense. We affirm.

D E C I S I O N

Sufficiency of the Evidence

Appellant Bradley Maximilian Dodds first argues that the evidence is insufficient to sustain his conviction of misdemeanor obstructing legal process. In considering a claim of insufficient evidence, this court's review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction," is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court will not disturb the verdict "if the jury, acting with due regard for the presumption of innocence" and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

Following an encounter with police officers, appellant was charged with assault of an officer and obstructing legal process. *See* Minn. Stat. §§ 609.2231, subd. 1, .50, subds. 1(2), 2(1) (2004). A jury acquitted appellant of assault by fighting and choking an

officer, and found him not guilty of felony obstructing legal process. *See* Minn. Stat. § 609.50, subd. 2(1) (making obstructing legal process a felony-level offense if "the person knew or had reason to know that the act created a risk of death, substantial bodily harm, or serious property damage; or [] the act caused death, substantial bodily harm, or serious property damage"). The jury, however, did find appellant guilty of the lesser-included misdemeanor obstructing legal process. *See id.*, subd. 1(2) (stating that it is a crime to intentionally "obstruct[], resist[], or interfere[] with a peace officer while the officer is engaged in the performance of official duties"). Appellant argues that the evidence is insufficient to support this conviction. However, our review of the record leads us to conclude that the evidence is sufficient to sustain appellant's conviction.

The record shows that on July 27, 2006, shortly after 1:00 a.m., a resident on Lake Lakota heard male voices coming from below her bedroom window and called the police. Deputies Paul Trautman and Ron Boyden responded to the call. The officers heard voices as they exited their vehicles. Trautman believed that the voices sounded very young, and due to their comments and slurred speech suspected that the individuals he heard were drinking underage. The officers made contact with the persons of interest and asked their ages. One female stated that she was 17 years old and one male stated that he was 19 years old; the others did not respond. The officers also found alcoholic beverages and piles of clothing, although all of the people were fully clothed. When the officers escorted the individuals to their squads to process them for underage alcohol consumption, Trautman noticed appellant lying outside completely nude, and detected a strong odor of an alcoholic beverage coming from him.

Trautman testified that he identified himself as a deputy and attempted to wake appellant several times. Appellant responded by stating: "f**k you," and went back to sleep. Trautman again attempted to wake appellant, who tried to grab hold of the officer's leg to assist him in getting up. The officer backed away and, despite the officer's demand to remain seated, appellant stood up and walked away. Trautman told appellant to stop. Appellant responded: "f**k you," and told the officer to get away from him. Trautman grabbed appellant's arm, which caused appellant to fall. While on the ground appellant told the officer, "f**k you, dude, I can't believe you did that. You're done. . . . You're done." Trautman decided to restrain appellant with handcuffs. Appellant tensed up and started to pull away. Trautman told appellant to stop resisting, otherwise he was going to deploy his taser. Appellant got up and walked away, but then turned and ran toward the officer. Trautman ran backwards, fell onto his back, and rolled onto his stomach. Appellant got on the officer's back and put his arm around his neck. Appellant applied pressure to the officer's throat for approximately 10 seconds before Trautman pushed appellant off of him and appellant rolled down a hill.

Following appellant's arrest, Trautman was treated for his injuries. Trautman's treating physician testified that Trautman's neck injury was consistent with his report that he had been choked. Trautman also had abrasions on his forearm, tenderness of his left shoulder, injury to his left ear, and tenderness of his larynx. Photos of Trautman's injuries were admitted into evidence. The evidence shows that appellant physically obstructed, hindered, or prevented the officer from arresting him—an official duty of a peace officer. Therefore, the evidence is sufficient to sustain appellant's conviction.

Inconsistent Verdicts

Appellant next argues that because he was acquitted of assault based on fighting and choking the officer, the guilty verdict for obstructing legal process based on the same conduct is inconsistent. "Whether verdicts are legally inconsistent is a question of law reviewed de novo." *State v. Laine*, 715 N.W.2d 425, 434-35 (Minn. 2006).

Logical inconsistencies between verdicts do not entitle a defendant to a new trial. *State v. Leake*, 699 N.W.2d 312, 326 (Minn. 2005). Reversal is warranted, however, if a jury renders legally inconsistent verdicts. *State v. Moore*, 481 N.W.2d 355, 360 (Minn. 1992). "Verdicts are legally inconsistent when proof of the elements of one offense negates a necessary element of another offense." *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996). The supreme court has noted that *Moore* has been applied only when a defendant "alleged inconsistencies between multiple *guilty* verdicts" and that "the majority of states do not reverse inconsistent verdicts when there is one acquittal and one conviction." *Leake*, 699 N.W.2d at 326.

Appellant was acquitted of fourth-degree assault, which makes it a crime to physically assault a peace officer when the "officer is effecting a lawful arrest or executing any other duty imposed by law." Minn. Stat. § 609.2231, subd. 1. The elements of fourth-degree assault include an assault on a peace officer while the officer is effecting an arrest or executing a legally imposed duty—an assault is the intentional infliction of bodily harm, an intentional attempt to inflict bodily harm, or an act done with intent to cause fear of immediate bodily harm or death. 10 *Minnesota Practice*, CRIMJIG 13.22 (2006). The jury found appellant guilty of obstructing legal process.

The elements of obstructing legal process include the defendant physically obstructed, resisted, or interfered with a peace officer while the officer was engaged in the performance of an official duty—physically obstructed, resisted, or interfered with means that the defendant's actions or words must have the effect of substantially frustrating or hindering the officer in the performance of the officer's duties. 10A *Minnesota Practice*, CRIMJIG 24.26 (2006).

The elements of the two offenses are different. Fourth-degree assault requires the intentional infliction of bodily harm; whereas, obstructing legal process requires physical obstruction, resistance, or interference with the officer in the performance of his duties. The jury found that appellant was not guilty of intentionally inflicting or attempting to inflict bodily harm, but found him guilty of physically obstructing, resisting, or interfering with the officer in the performance of his duties. The acquittal of the assault does not negate the conviction for obstructing legal process. Further, appellant was convicted of one count and acquitted of the other count; therefore, he is not entitled to relief on the theory of inconsistent verdicts. *See Leake*, 699 N.W.2d at 326.

Jury Instructions

Appellant also argues that the district court abused its discretion in instructing the jury on obstructing legal process. Appellant did not object to this jury instruction. The failure to object to jury instructions before they are given to the jury generally constitutes a waiver of the right to appeal. *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). "Nevertheless, 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.; see also* Minn. R. Crim. P. 31.02.

It is within this court's discretion whether to review the jury instructions here. *State v. Goodloe*, 718 N.W.2d 413, 420 (Minn. 2006) (noting that a reviewing court has "discretion" to review an unobjected-to jury instruction). This court "may review and correct an unobjected-to, alleged error only if: (1) there is error; (2) the error is plain; and (3) the error affects the defendant's substantial rights." *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001) (citing *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998)). An error is plain if the error is clear or obvious. *State v. Burg*, 648 N.W.2d 673, 677 (Minn. 2002). "Usually [plain error] is shown if the error contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). A plain error affects substantial rights if it is "prejudicial and affect[s] the outcome of the case." *Griller*, 583 N.W.2d at 741. If those three prongs are met, this court may correct the error only if it "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Id.* at 742.

District courts are allowed "considerable latitude" in the selection of language of jury instructions. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). This court reviews jury instructions in their entirety to determine whether they fairly and adequately explain the law of the case. *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). "An instruction is in error if it materially misstates the law." *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001). The district court need not provide detailed definitions of all of the elements of the offense if the jury instructions "do not mislead the jury or allow it to

speculate over the meaning of the elements." *Peterson v. State*, 282 N.W.2d 878, 881 (Minn. 1979); *see also State v. Clobes*, 417 N.W.2d 735, 738 (Minn. App. 1988) (concluding that the district court did not err by failing to define "specific intent" in assault case when the "jury instructions, viewed in their entirety, explained the law of the case fairly and accurately"), *rev'd on other grounds,* 422 N.W.2d 252 (Minn. 1988).

The district court instructed the jury on obstructing legal process as is provided in CRIMJIG 24.26. *See* 10A *Minnesota Practice*, CRIMJIG 24.26. The district court instructed the jury that it is a crime to physically obstruct, resist, or interfere with a peace officer while the officer is engaged in the performance of official duties. Regarding the elements, the district court stated that appellant could have physically obstructed, resisted, or interfered with Trautman by fighting and choking him. The district court then defined "physically obstructed, hindered, or prevented" to mean that appellant's words or acts substantially frustrated or hindered Trautman in the performance of his official duties. Appellant argues that the district court misstated the law by defining "physically obstructed, hindered, or prevented" because a conviction required a finding that appellant engaged in obstruction by "fighting and choking" Trautman. Appellant apparently argues that "fighting or choking" was the *only* basis for finding that he obstructed legal process. But the definition the district court provided did not necessarily preclude the jury from finding that appellant's acts of "fighting and choking" substantially frustrated or hindered the officer in the performance of his duties. "Fighting and choking" were not defined to mean something other than acts having the effect of substantially frustrating or hindering

the officer in the performance of the officer's duties. Therefore, the district court did not commit plain error in instructing the jury.

Voluntary-Intoxication Defense

Finally, appellant argues that the district court erred by preventing him from presenting a voluntary-intoxication defense and refusing to give a voluntary-intoxication jury instruction. Appellant sought to present this defense through expert testimony. The admission of expert testimony rests within the district court's discretion and will not be reversed absent an abuse of that discretion. *State v. Griese*, 565 N.W.2d 419, 425 (Minn. 1997). The district court's refusal to give an instruction is also reviewed for an abuse of discretion. *Cole*, 542 N.W.2d at 50.

In Minnesota, voluntary intoxication is a defense to a criminal charge only if a specific intent or purpose is an essential element of the charged crime. *State v. Fortman*, 474 N.W.2d 401, 403 (Minn. App. 1991). If the only intent required is to do the act which is prohibited by the statute, then the crime is a general-intent crime. *Id.* A defendant is entitled to a voluntary-intoxication jury instruction when (1) he is charged with a specific-intent crime; (2) the preponderance of the evidence shows that the defendant was intoxicated; and (3) the defendant offers intoxication as an explanation for his actions. *State v. Torres*, 632 N.W.2d 609, 616 (Minn. 2001).

Appellant sought to have expert witnesses testify to the issue of his proffered voluntary-intoxication defense, arguing that the experts would testify regarding the general effects of alcohol on the ability of an intoxicated individual to process

information and control his behavior. The district court ruled that the crimes are nonspecific-intent crimes and the intoxication defense is not available for general-intent crimes, but ruled that if appellant testified, he could use intoxication to explain his behavior.

Appellant argues that he was entitled to the jury instruction because obstructing legal process is a specific-intent crime. Appellant relies on an unpublished opinion, in which this court stated that, "[t]he crime of obstructing arrest/legal process requires a specific intent to obstruct, resist, or interfere with a peace officer while the officer is engaged in the performance of official duties." *State v. Bjork*, A06-809, 2007 WL 2363834, at *3 (Minn. App. Aug. 21, 2007), *review denied* (Minn. Nov. 13, 2007). But *Bjork* is an unpublished opinion without precedential effect and appellant's reliance is further misplaced because *Bjork* merely stated in dicta that obstructing legal process requires a specific intent. Obstructing legal process is a general-intent crime because the only intent required is the intent to do the very act which is prohibited—acting in a manner that obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties. Further, appellant was not entitled to the jury instruction because, although the district court precluded him from presenting the defense by way of expert testimony, the court did allow appellant to testify using his intoxication to explain his behavior. But appellant did not testify. Most cases reviewing application of the voluntary-intoxication defense resolve the issue based on the fact that defendants are unable to use intoxication to explain their actions because the defense relates to a defendant's state of mind rather than to his physical control or coordination.

See Torres, 632 N.W.2d at 617; *State v. Willey*, 480 N.W.2d 127, 130 (Minn. App. 1992), *review denied* (Minn. Mar. 19, 1992). Appellant sought only to present the defense by way of expert witnesses who would generally explain the behavior of an intoxicated individual. But that evidence would not have explained appellant's actual behavior, because it did not go to appellant's state of mind. Therefore, the district court did not abuse its discretion by refusing to allow expert testimony to explain appellant's actions by way of his intoxication and by refusing to instruct the jury on the defense.

Affirmed.