STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0467

State of Minnesota,
Appellant,

vs.

Patricia Mavoureneen Gearin,
Respondent.

Filed September 29, 2009
Reversed in part and remanded
Hudson, Judge

Ramsey County District Court
File No. 62-T3-08-604403

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Considered and decided by Hudson, Presiding Judge; Johnson, Judge; and Larkin, Judge.

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

HUDSON, Judge

Appellant State of Minnesota challenges the district court's pretrial order suppressing evidence of building-code violations obtained pursuant to an administrative warrant and dismissing the charges of obstructing legal process and fifth-degree assault. Because the suppression of evidence concerning the building-code violations does not critically impact the state's ability to prosecute the case, we do not reach the merits of the district court's decision to suppress evidence of building-code violations. But because the district court erroneously dismissed the charges of obstructing legal process and fifth-degree assault (intent to cause fear), and because the dismissal has a critical impact on the state's ability to prosecute the case, we reverse the dismissal of the charges and remand for trial.

FACTS

In January 2008, there was a fire at respondent Patricia Gearin's business. Because there was significant smoke damage from the fire, the City of Maplewood closed respondent's building and issued a stop-work order to prevent respondent's staff from working in the building. The city subsequently issued a cleaning and restoration permit to a cleaning contractor. No persons other than the cleaning contractor were permitted into the building.

On February 12, 2008, David Fisher—a building official for the city—attempted to inspect the building but was denied access by respondent. Fisher observed several vehicles in the building's parking lot that did not appear to belong to the cleaning

contractor. This led Fisher to believe that respondent and her employees were working in the building. As a result, Fisher issued a citation to respondent for failing to adhere to the stop-work order.

Fisher then applied for an administrative warrant to inspect respondent's building. In the warrant application, Fisher stated that he first inspected respondent's building in the summer of 2007 upon reports that respondent was about to utilize the building following a period of dormancy. After the 2007 inspection, respondent was given a "punch list" of requirements that needed to be met before respondent would be issued a certificate of occupancy for the building. Several ensuing inspections revealed that respondent remained noncompliant with the certificate-of-occupancy requirements.

Fisher also stated that after the January 2008 fire, another letter was sent to respondent detailing the requirements for a certificate of occupancy. Fisher said that the permit issued after the fire was for cleaning purposes only, and that "[n]o Certificate of Occupancy was in effect or has ever been in place." He claimed that a search warrant was necessary in order to "verify the conditions inside the building" and to determine whether work was being done in the building "beyond the scope of the cleanup permit." Fisher stated that "[i]f the interior of the subject premises is as suspected, the Maplewood Building Department will seek orders to have the building secured against further abuse and authorize only certified contractors to enter for purposes of bringing the premises into compliance."

The district court authorized the administrative warrant and on February 15, 2008, Fisher, accompanied by several police officers, attempted to inspect respondent's

building pursuant to the warrant. Fisher and the officers repeatedly knocked on the building's doors, but no one responded. The officers then broke through one of the doors and forced their way into the building. They observed respondent in the building with several employees.

The officers claimed that respondent immediately began yelling at the officers to leave the building and told her employees not to talk to the officers. The officers warned respondent that she was obstructing official police duties and that if she continued, she would be arrested for obstructing legal process. When respondent tried to physically move one of the officers away from her employees, respondent was restrained and arrested. As respondent was being handcuffed, she kicked out at the officers, ultimately kicking one officer in the leg and stomping the officer's foot.

Respondent was charged with one count of misdemeanor obstructing legal process in violation of Minn. Stat. § 609.50, subd. 1(2) (2008), and two counts of misdemeanor "Certificate of Occupancy" in violation of Maplewood Ordinance § 12-40. The district court dismissed the two charges of "Certificate of Occupancy" for lack of probable cause. The state subsequently filed an amended complaint that included the original charge of obstructing legal process but also added one count of fifth-degree assault in violation of Minn. Stat. § 609.224, subd. 1(1) (2008) (intent to cause fear), one count of fifth-degree assault in violation of Minn. Stat. § 609.224, subd. 1(2) (2008) (intentionally inflicting bodily harm), and one count of misdemeanor disorderly conduct in violation of Minn. Stat. § 609.72, subd. 1(3) (2008). The state did not recharge respondent with "Certificate of Occupancy."

Respondent moved the district court to suppress any evidence obtained pursuant to the administrative warrant, arguing that Fisher's warrant application contained several alleged facts that were "reckless, untruthful, and/or inaccurate." Specifically, respondent claimed that Fisher failed to disclose that there was a certificate of occupancy issued to the building's prior tenant and that the occupancy classification in effect did not require respondent to make any changes to the building or seek a new certificate of occupancy.

The district court determined that

> [s]ince much of Fisher's application deals with the need to inspect the premises to determine [respondent's] eligibility for a [certificate of occupancy], and Fisher knew that the [prior certificate of occupancy] existed, the failure to tell the issuing judge that the [prior certificate of occupancy] already existed and/or why it did not cover [respondent's] use of the building, was, at a minimum, a reckless omission.

According to the district court, "[t]he omission . . . about the existence of the [prior certificate of occupancy] was a material misrepresentation recklessly made and fatal to [the] grounds for the administrative search warrant."

As a result, the district court held that the "evidence about building code violations obtained pursuant to the search warrant must be suppressed." The district court noted, however, that "suppression of the evidence of building code violations . . . does not necessarily bar the criminal charges alleged in the complaint" because "[t]he exclusionary rule does not require suppression of the evidence of the assault on the officers even if the entry were in violation of the Fourth Amendment."

The district court also considered respondent's motion to dismiss the four charges in the amended complaint. In regard to the charge of obstructing legal process, the

district court held that the state failed to allege that the officers were engaged in the performance of official duties, an essential element of the offense. Accordingly, the district court dismissed the charge as failing to state an actionable crime. The district court similarly dismissed the charge of fifth-degree assault (intent to cause fear), finding that the state failed to allege that respondent intended to cause fear of "immediate bodily harm or death." As to both charges, the district court specifically found that, apart from the omitted elements, there was probable cause for each charge.

The district court also dismissed the charge of disorderly conduct, concluding that there were insufficient facts to sustain the charge. But the district court denied respondent's motion to dismiss the remaining count of fifth-degree assault (intentionally inflicting bodily harm), finding that there was "probable cause stated in the complaint to show that [respondent] kicked [the officer] in the left shin area and that she stomped on the officer's left foot."

The district court dismissed the obstructing-legal-process and fifth-degree assault charges on March 8, 2009—eight days before the scheduled trial date of March 16, 2009. Rather than amend the complaint to include the omitted elements pursuant to Minn. R. Crim. P. 17.06, subd. 4(3), the state now appeals the district court's pretrial suppression order and the dismissal of the charges of obstructing legal process and fifth-degree assault (intent to cause fear).[1]

[1] The state does not challenge the dismissal of the disorderly conduct charge.

D E C I S I O N

Subject to certain exceptions, the rules of criminal procedure permit the state to appeal from a district court's pretrial order. Minn. R. Crim. P. 28.04, subd. 1(1). To prevail on an appeal from a pretrial order, the state must clearly and unequivocally show that the order is erroneous and will critically impact the state's ability to prosecute the case. *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005).

The parties do not dispute whether the district court's pretrial order is appealable under Minn. R. Crim. P. 28.04, subd. 1. They disagree, however, as to whether the state can show critical impact and whether the district court's order was erroneous. We review the state's challenges individually to determine whether the district court erred and whether its ruling "significantly reduces the likelihood of a successful prosecution." *State v. Rambahal*, 751 N.W.2d 84, 89 (Minn. 2008) (articulating the state's burden under the critical-impact test) (quotation omitted).

Suppression order

The district court concluded that Fisher's failure to inform the warrant-issuing judge about the prior certificate of occupancy was "a material misrepresentation recklessly made and fatal to [the] grounds for the administrative search warrant." *See State v. Jones*, 678 N.W.2d 1, 12 (Minn. 2004) ("Misrepresentations invalidate a warrant when they are (1) deliberately or recklessly made, and (2) material to establishing probable cause."). The state contends that respondent's business required a different occupancy classification than the one obtained by the previous tenant; therefore, the prior certificate of occupancy was irrelevant and the district court erroneously concluded that

Fisher's omission was material. The state further asserts that the city had several alternative bases to inspect respondent's business that did not rely on respondent's need for a new certificate of occupancy.

But we need not determine whether the district court's conclusion was error because, even if we were to agree with the state's position, the state cannot show that the suppression order impaired its ability to prosecute the case. The four charges in the amended complaint relate solely to respondent's actions toward the officers. The district court did not suppress any evidence regarding respondent's actions. Rather, the district court only suppressed evidence of building-code violations—evidence that is neither necessary nor relevant to the state's case. Because the suppressed evidence is entirely unrelated to the charges in the amended complaint, the suppression order does not significantly reduce the likelihood of a successful prosecution.

The state suggests that the mere fact of the suppression significantly reduces the likelihood of a successful prosecution because respondent allegedly intends to use the suppression of the search warrant as a weapon against the state by arguing that the officers had no right to be in her building. But there is simply no authority to sustain the state's position that the mere fact of suppression—in and of itself—is sufficient to constitute critical impact. Moreover, the mere fact of suppression reduces the likelihood of a successful prosecution only in the sense that *any* ruling adverse to the state reduces the likelihood of a successful prosecution. Critical impact is intended to be a "demanding standard," *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995), and to accept the state's argument here would be to strip the critical-impact test of its heft and practical effect.

The state cannot show that the suppression order had a critical impact on its ability to prosecute the case, and therefore, we do not reach the merits of the district court's decision to suppress evidence of building-code violations. *See State v. Jones*, 518 N.W.2d 67, 69–70 (Minn. App. 1994) (declining to address merits of issues raised where critical impact was not found), *review denied* (Minn. July 27, 1994).

Dismissal of the Charges

The district court dismissed the charges of obstructing legal process and fifth-degree assault (intent to cause fear), finding that the state failed to allege essential elements of both offenses. "The complaint is a written signed statement of the essential facts constituting the offense charged." Minn. R. Crim. P. 2.01. The purpose of the complaint is to clearly apprise the accused and the court of the offenses charged. *See State v. Wurdemann*, 265 Minn. 92, 94, 120 N.W.2d 317, 318 (1963) (stating that an indictment or information must fairly apprise the defendant of the charges brought against him and inform the court of the facts alleged so that it may decide whether they are sufficient to support a conviction). As a result, the complaint must aver every essential element of the charged offense. *See State v. Suess*, 236 Minn. 174, 184, 52 N.W.2d 409, 416 (1952) (holding than an information or indictment must positively put forth every essential element of the crime).

The test to determine the validity of a complaint "is not whether the information is technically correct but whether the defendant has demonstrated that he was misled by the information." *State v. Dunbar*, 296 Minn. 497, 498, 207 N.W.2d 289, 290 (1973). The statement of the offense is generally sufficient "if [it] spells out all essential elements in a

manner which has substantially the same meaning as the statutory definition." *State v. Pratt*, 277 Minn. 363, 365, 152 N.W.2d 510, 512 (1967); *see also State v. Ewald*, 373 N.W.2d 358, 359 (Minn. App. 1985) (finding that a complaint was sufficient where the "essential facts constituting the offense were stated" and the failure to list an element of the offense was not significant). The complaint "must be considered in its entirety" and "it will not do to dissect it and predicate attacks upon each portion by itself." *Suess*, 236 Minn. at 184, 52 N.W.2d at 416 (quotation omitted).

In regard to the offense of obstructing legal process, the state—in the charging portion of the amended complaint—alleged that respondent "intentionally obstructed/interfered with a peace officer by physically trying to move the officer out of the way while the officer was trying to identify the employees of [respondent's business]." The district court determined that, under Minn. R. Crim. P. 2.01, the state did not aver all of the essential elements of obstructing legal process because it did not specifically allege that the officers were "engaged in the performance of official duties." *See* Minn. Stat. § 609.50, subd. 1(2) (providing that a person is guilty of obstructing legal process if that person "obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties").

While we agree that the charging portion of the complaint fails to allege that the officers were engaged in the performance of official duties, the remainder of the complaint sufficiently alleges all of the essential elements of obstructing legal process. In the fact portion of the complaint, the state averred that the officers accompanied Fisher to assist in the enforcement of an administrative warrant and that respondent was warned

that she was obstructing the officers in the performance of official duties. These facts clearly allege that the officers were engaged in the performance of official duties. Further, the state identified the specific statute and subdivision under which respondent was being charged, which put respondent on notice of the offense that the state intended to prove.

Respondent contends that simply because the officers warned her that she was obstructing official duties does not mean that the officers were actually engaged in official duties. But the validity of a complaint is not measured by whether the factual allegations in the complaint are necessarily true; rather, its validity is determined by whether the complaint, in its entirety, apprises the accused of the charged offense. *Dunbar*, 296 Minn. at 498, 207 N.W.2d at 290. Because the complaint spells out all essential elements of obstructing legal process "in a manner which has substantially the same meaning as the statutory definition," the district court erred by dismissing the charge of obstructing legal process.[2] *See Pratt*, 277 Minn. at 365, 152 N.W.2d at 512.

With respect to the charge of fifth-degree assault (intent to cause fear), the state alleged that respondent "committed an act with intent to cause fear in another by kicking out at officers while they were trying to detain her." The district court held that the state

[2] Respondent also argues that, under *State v. Morin*, 736 N.W.2d 691 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007), the state is required to show "physicality directed at the officer" in order to prove obstructing legal process. But *Morin* does not require the showing of a physical act toward an officer to prove obstructing legal process. *See* 736 N.W.2d at 698 (recognizing that some oral conduct can have the effect of obstructing or interfering with police duties). Further, even if *Morin* did require such a showing, the complaint plainly alleges that when an officer attempted to question one of respondent's employees, respondent "physically tried to move [the officer] away."

failed to aver that respondent intended to cause fear of "immediate bodily harm or death." *See* Minn. Stat. § 609.224, subd. 1(1) (stating that a person is guilty of assault who "commits an act with intent to cause fear in another of immediate bodily harm or death"). But again, when considered in its entirety, the complaint sufficiently apprised respondent of the charged offense. The state clearly identified the specific statute and subdivision for the charge, thereby placing respondent's alleged actions within the statutory framework and putting respondent on notice of the offense that the state intended to prove—namely that respondent, by kicking out at the officers when she was arrested, intended to cause fear of immediate bodily harm or death. Accordingly, the complaint sufficiently spells out all essential elements of fifth-degree assault, and it was error for the district court to dismiss the charge.

Having determined that the district court erred by dismissing the two charges, we must now determine whether the dismissal had a critical impact on the state's ability to prosecute the case. Our recent critical-impact jurisprudence suggests that the critical-impact test is automatically satisfied if charges are dismissed on the basis of a legal determination. *See State v. Dunson*, 770 N.W.2d 546, 550 (Minn. App. 2009) (stating that the dismissal of a complaint based on a question of law satisfies the critical-impact requirement); *State v. Whitley*, 649 N.W.2d 180, 183 (Minn. App. 2002) (holding that the critical-impact test was satisfied "because the district court's order was based on its interpretation of a rule of criminal procedure that bars further prosecution of respondent").

Nevertheless, respondent argues that the dismissal did not impact the state's ability to prosecute the case because the state had the opportunity to amend the complaint. As discussed below, we fail to understand why the state did not simply amend the complaint—even if amendment was not technically necessary. But we decline to hold that the state's ability to unnecessarily amend the complaint precludes a showing of critical impact. *See Dunson*, 770 N.W.2d at 550 ("[W]e are unwilling to hold that critical impact is lacking simply because the state has the ability to comply with a pleading requirement that is not mandated by law."). Accordingly, we conclude that the dismissal of the charges here had a critical impact on the state's ability to prosecute the case. We therefore reverse the dismissal of the charges of obstructing legal process and fifth-degree assault (intent to cause fear) and remand for trial.

That said, we cannot help but observe that although the district court erroneously concluded that the state failed to allege an essential element of the two dismissed offenses, the district court's order specifically identified the words that it felt were lacking in the charging portion of the complaint and provided the state seven days to amend its complaint to bring it into compliance with the court's requirements.[3] At a time when all stakeholders in the justice system are attempting to conserve resources, we fail

[3] Moreover, here, it appears that the amended complaint would have been presented to the same district court judge, thereby alleviating any concerns regarding "judge-shopping" or hesitation among district courts to overrule each other's legal determinations—factors which have undergirded our decisions holding that critical impact is automatically satisfied if charges are dismissed on the basis of a legal determination. *See State v. Duffy*, 559 N.W.2d 109, 110 (Minn. App. 1997); *State v. Aarsvold*, 376 N.W.2d 518, 520 (Minn. App. 1985), *review denied* (Minn. Dec. 30, 1985).

to understand why the state would not simply amend its complaint and thereby maintain its ability to prosecute the dismissed charges without causing multiple stakeholders to incur the time and expense of an appeal. The costs of the amendment are negligible, and we discern no prejudice or harm to the state as a result of the amendment. Just because the state *may* pursue a pretrial appeal does not mean that it *should*, especially when the state can otherwise easily achieve the same result that it seeks on appeal, i.e., reinstatement of the dismissed charges.

In the future, when the state has a simple means of reinstating a dismissed complaint, which in no way compromises any significant interest that is at stake in the criminal prosecution, we encourage the state to weigh the costs and benefits before electing to pursue a pretrial appeal instead of investing the diminutive amount of time and effort necessary to perfect an admittedly unnecessary amendment. *See* Minn. R. Crim. P. 17.06, subd. 4(3) (stating that if a dismissal can be avoided by amending the complaint, the state shall have seven days to amend the complaint and "prosecution for the same offense shall not be barred"); *see also State v. Dwire*, 409 N.W.2d 498, 503 (Minn. 1987) (holding that under rule 17.06, dismissal is automatically stayed for seven days if for curable defect).

Reversed in part and remanded.